

The Rule of Law in China: Incremental Progress

By Jamie P. Horsley

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Western media reporting on China does not give the impression of a rule of law country. We read of frequent corruption scandals, a harsh criminal justice system still plagued by the use of torture, increasingly violent and widespread social unrest over unpaid wages, environmental degradation and irregular takings of land and housing. Outspoken academics, activist lawyers, investigative journalists and other champions of the disadvantaged and unfortunate are arrested, restrained or lose their jobs. Entrepreneurs have their successful businesses expropriated by local governments in seeming violation of the recently added Constitutional guarantee to protect private property. Citizens pursue their grievances more through extra-judicial avenues than in weak and politically submissive courts. Yet China's economy gallops ahead, apparently confounding conventional wisdom that economic development requires the rule of law.

At its core, "rule of law" connotes a system under which law acts as a curb on state and private power. One of the essential functions of a legal system in a transitional country like China is to provide and enforce rules to facilitate the emergence of private ordering in a market economy. Rules are to be set in advance and applied consistently, equally, transparently and uniformly by independent courts that serve as a backstop to protect civil, property, political and human rights. China's leaders also promote another essential function of law, which is to order and regulate the exercise of government power. China is in the process of developing a solid body of administrative law to help restructure the functions and operation of formerly all-powerful government bureaucracies, so as to limit their interference with market activity while implementing systems to achieve rational regulation and more effective social management.

No one claims that China is today a rule of law country. But most would acknowledge that China has moved a long way from the primarily "rule of man" governance approach of traditional China toward establishing a legal system that increasingly seeks to restrain the arbitrary exercise of state and private power, and does provide the promise, if not the guarantee, for Chinese citizens and other actors to assert their rights and interests in reliance on law.

As with most aspects of China's dynamic modernization program, the development of law and a modern Chinese legal system is a complex and often unprecedented process. China's leaders espouse the principle that establishing the "rule of law" is critical to China's ability to sustain its rapid economic growth and effectively manage Chinese society's wrenching transition from a command to a market economy as well as the emergence of a more pluralistic society. Yet China faces multiple challenges in realizing this endeavor. China has no tradition of, and the Chinese Communist Party affirmatively rejects the kind of liberal democratic government typically associated with, the rule of law.

Brief Background

China's legal development since Deng Xiaoping engineered China's "opening to the West" in 1979, like its economic counterpart, has been extraordinary. The 1982 post-Cultural Revolution Constitution called for upholding the "uniformity and dignity of the socialist legal system," set forth the aspirational principle that no individual or organization (including political parties) is above the Constitution or the law, and spelled out certain fundamental rights and duties of Chinese citizens. The explicit goal of "building a socialist rule of law country" was added to the Constitution in 1999. Since 1979, the National People's Congress (NPC), China's supreme legislative body, has enacted and updated more than 200 laws that are still in effect¹ and are generally consistent with accepted principles of international law. Moreover, China has concluded a large number of international agreements, including 21 international conventions on human rights² and World Trade Organization (WTO) accession agreements, which require changes in China's domestic legal system. China's government apparatus, headed by the State Council, has promulgated thousands of implementing rules that regulate many aspects of every day life.

Institutionally, China's primary law-related bodies – the NPC and its Standing Committee, the State Council, the Supreme People's Court and the Supreme People's Procuracy – are all becoming more professionalized and assertive, as well as gradually more transparent. Many Chinese lawyers and legal scholars are increasingly active in promoting legal reform and rights protection, and the Chinese media now regularly reports on legal issues and controversial cases. The Chinese people have proved to be strikingly adept at using the law to assert their rights and interests against the government and others.

Despite the growth of an increasingly robust legal system and legal consciousness, the Party retains ultimate control, especially over handling sensitive issues. It has, to be sure, gradually ceded a good deal of authority in the ordinary course to the market and the government, the courts and other institutions that grapple on a daily basis with the complex decisions and policies required of a rapidly changing society and economy. This partial withdrawal by the Party provides a degree of political space for the development of "rule of law with Chinese characteristics," as it were. But China's progress toward rule of law under a single party system takes us, as in so many other issue areas, into previously uncharted waters.

The National People's Congress: Toward a More Open Legislative Process

Although the NPC is touted as the "highest organ of state power" through which the Chinese people exercise state power, in fact it has long been dismissed as a "rubber stamp" by both Chinese and Western observers. The entire Congress of nearly 3,000 deputies meets only once a year and most of its decisions are made by the 200-member Standing Committee between annual meetings, in close consultation with the Party, which sets the NPC's annual agenda. Nonetheless, recent practices reflect an effort to make the NPC and its local counterparts more professional, transparent and responsive to the concerns of the people they purport to represent.

People's congress (PC) deputy elections, ostensibly democratic but in fact traditionally orchestrated by the Party, are becoming incrementally more competitive, many deputies are now reaching out to their putative constituents for suggestions and feedback, and some deputies are seeking to more effectively carry out their constitutional duty to supervise government through active questioning of government work reports, conducting on-site inspections of how laws are being implemented, and seeking more authority to review government budgets.

The legislative process itself is becoming more participatory and transparent. The NPC and local PCs increasingly consult scholars and interest groups, publish draft legislation over the Internet and through the media to solicit broad input, and hold public hearings on draft legislation felt to be of particular concern to the people, with a trend toward putting virtually all drafts out for comment. The NPC held its first public hearing in September 2005 to obtain input on a proposed amendment of the personal income tax law, and 24 local PCs had held some 38 hearings by the end of 2004.³ Residents can sign up to observe or "audit" congressional proceedings at all levels.

In terms of institutional competence, deputies now undergo various training programs and receive information between congressional sessions to enhance their understanding of the complex policy issues facing China. Legal scholars and other experts are being recruited to the ranks of permanent PC committees, and law professors and lawyers associations are increasingly called on to provide advice during the legislative process. PC leaders hope that increased public participation through hearings and written comments on published draft legislation will not only bolster the credibility of the PCs and educate the public on their work, but will also produce higher quality and more widely accepted laws that better reflect complex social and economic realities.

Under China's unitary legal system, all laws and regulations must conform to the Constitution and national law. Under the WTO, China is further committed to ensuring uniform application of the law, a complicated task in such a large, diverse and rapidly changing country. The NPC Standing Committee (NPCSC) recently established a special office for reviewing all central and local government regulations, as well as court and procuracy legal interpretations, to standardize lawmaking and law interpretation work throughout the nation.⁴ The public also has the right to file petitions with the NPCSC challenging the legality of lower level regulations. While the review office represents a welcome institutional innovation, its work unfortunately has been shrouded in secrecy, and there have been no reports that any laws or regulations have yet been overturned.

Despite continued dominance by the Party of the congressional system, the introduction of more open and participatory legislative processes, stepped up supervision of government activity in implementing the laws set by congress, and the trend toward ensuring more uniform application of the law, all represent positive developments that should help improve and strengthen the legal system.

Government in Accordance with the Law

Over the past 15 years, to promote economic development through improved administrative efficiency and help curb corruption, China's leaders have progressively introduced a number of administrative mechanisms that impose legal restraints on state action and bolster public supervision of government in ways that can be enforced directly

by aggrieved citizens. Chinese leaders and scholars now view administrative law as an important instrument for transforming government functions and increasing the predictability, openness and fairness of China's immense regulatory bureaucracy in its dealings with citizens, businesses and other organizations. China's commitments to market-based regulatory reforms upon its entry into the WTO in 2001 further bolstered these efforts.

The landmark 1989 Administrative Litigation Law (ALL) grants Chinese citizens the unprecedented right to sue the government over "concrete" government actions that violate their rights and interests, although not over "abstract" actions such as decision-making. This law, while limited in scope, actualizes the constitutional concept that the Chinese government is itself constrained by law and accountable to its citizens at least in certain respects. The 1994 State Compensation Law (SCL) further grants citizens the right to claim compensation when they are injured by unlawful government actions. Citizens were quick to begin to file lawsuits against the government under these two unorthodox pieces of legislation. Despite a plaintiff success rate of roughly 30 percent under the ALL, the number of administrative lawsuits has leveled off in recent years. Commentators attribute this not to a decline in grievances but rather to a combination of lowered expectations and the inability of plaintiffs in more politically sensitive cases, such as those involving alleged corruption, to get the courts even to accept the filing of the case.⁵ Relatively few compensation claims have even been filed under SCL, with its low levels of mandated compensation. Work is underway to strengthen these two laws to provide more effective remedies against the abuse of state power. However, the political obstacles to suing the state, including politically deferential courts, remain.

While the ALL and the SCL attempt to limit state action by providing redress after the fact, the 1996 Administrative Penalties Law (APL) and the 2004 Administrative Licensing Law impose procedural constraints on government action itself. The APL is the first Chinese law to provide regulated persons the right to defend their case and the right to a public hearing in the event the agency plans to impose a penalty such as ordering production stoppage, revoking a license or imposing a large fine. This law thus introduced the concept of procedural due process, requiring official action to meet minimum standards of fairness including the right to adequate notice and a meaningful opportunity to be heard before a decision is made. Virtually all government agencies including the Ministry of Public Security, China's police agency, and local governments have adopted regulations implementing the APL and its hearing requirement.

Another important advance in promoting the Chinese leadership's stated goal of "small" or limited government is the Administrative Licensing Law. This unique law, with no counterpart anywhere in the world, establishes the foundational principle that government should intervene only where individual initiative, private associations or the market cannot adequately address a situation. It seeks to restrain government interference with market activity by restricting the number of government agencies that have authority to issue approvals in the form of licensing and limiting the types of activity that can be so regulated. The number of matters requiring licensing approvals at all levels has been nearly halved since the law was adopted. Transparency requirements mandate public hearings in certain situations and require disclosure of information about licensing.

While many officials balk at relinquishing traditional approval powers, the Licensing Law is having an impact. A private Chinese company sued the powerful Ministry of Information Industry over its refusal to grant the company a license to manufacture and sell wireless handsets under its own brand, referring to the equal treatment and non-discrimination principle of the Licensing Law.⁶ Taxi drivers in Beijing banded together to sue the municipal government over its refusal to grant them individual licenses or hold a hearing on the issue, citing the Licensing Law's endorsement of regulation through market competition,⁷ while nearly 300 Zhejiang farmers took the provincial development and reform commission to court for approving a polluting power plant project without any public hearing as required under the Licensing Law.⁸ As one Chinese official describes the impact of this Law, in the past Chinese viewed law as a means to control the people; now law is also being used to control government behavior.

Reinforcing these positive legislative trends, the State Council has launched a concrete 10-year program to promote "administration in accordance with the law."⁹ The program sets forth objectives and tasks for establishing a "law-based" or "rule of law" government, to regulate the exercise of government power and introduce enhanced enforcement mechanisms. One of the hallmarks of this program is "scientific and democratic decision-making." Government leaders are realizing that achieving rational regulation requires administrative agencies to open up their regulatory processes to broader public involvement and scrutiny. Greater participation by individuals, businesses and social organizations through public hearings, soliciting expert and interest group views, and publishing draft rules and policies for widespread comment is now increasingly recognized to be an important mechanism for gathering the information and expertise on which rational regulation is based.¹⁰

By the end of 2005, provincial level governments and central ministries had held a total of 74 rulemaking hearings and 827 expert seminars and released roughly 500 draft rules for public comment.¹¹ Anecdotal evidence suggests that the new public participation process is in fact influencing government decision-making. For example, the Beijing government withdrew a proposed regulation on outside contractors after public comments criticized the proposal as unnecessary and discriminatory. In another case, after two rounds of public comment on draft General Standards of Physical Examination for Recruitment of Civil Servants, during which AIDS activists provided detailed input, the Ministries of Personnel and Public Health issued a final version in January 2005 stipulating that AIDS remains a disqualifying condition but implying that HIV-positive people who do not have full-blown AIDS are fit for governmental jobs. Although the Legislation Law encourages (without directly requiring) the release of draft legislation for public input for selected legislation deemed to be closely related to the "vital interests" of the people, many local governments and PCs are announcing they will start to release virtually *all* draft rules and regulations for public input, except where drafts of proposed legislation involve state secrets, commercial secrets or individual privacy.

Moreover, drafting officials are beginning to realize that providing feedback to the public on how their submitted comments were handled is also critical for gaining public acceptance of and voluntary compliance with regulatory decisions, as well as for encouraging continued public interest in participating. The NPC, for example, issued a

detailed summary of the main categories of the 11,500 comments that it received during a public comment period on the draft Property Law conducted in July-August 2005, explaining why suggestions were accepted or rejected and how they were dealt with in the subsequent re-draft. Local governments have adopted semi-annual press conferences on rulemaking activity or other devices to similarly provide a regulatory response to public participation. Such response or feedback mechanisms could potentially help create a sense of partnership between government and the public and, if institutionalized and made legally enforceable, foster a mutual expectation of greater government accountability.

Recognizing that citizens need information in order to participate constructively in government decision-making, and as an anti-corruption measure, the State Council's program also calls for greater information disclosure. Spurred by China's popularization of E-government since 1999, most governments above the county level now regularly post a great deal of information on their over 10,000 websites and hold periodic press conferences to report and respond to questions on their activities.

Breaking with the centuries-long tradition of government secrecy, the State Council joined the Party Central Committee in 2005 to issue a joint "Opinion" establishing as national policy the presumption that all information should be made public unless exempted as a commercial secret, individual privacy or state secret (still admittedly a huge loophole). The Opinion endorses local experimentation with "open government information" (OGI) systems that give citizens an unprecedented *right* to request information from the government, and impose on government the *obligation* to furnish non-exempt information, both on its own initiative and in response to individual requests. At last count, over 30 Chinese provinces and large municipalities had issued locally-enforceable OGI provisions.¹² Chinese leaders and policy documents now regularly refer to the people's "right to know," although this "right" has yet to be incorporated into national Chinese law. The State Council plans to consider draft national OGI regulations in 2006, as a prelude to adoption by the NPC of an information access law.

Strengthening the Courts

Good laws and well-designed regulatory systems do not mean much if Chinese citizens lack the means to protect their rights and interests through an independent judicial system that has the authority to enforce government and private compliance with the law. China's massive judicial system of over 3,000 basic courts and nearly 200,000 judges cannot yet consistently perform this function. While the courts hear roughly six million cases per year, Chinese government agencies including the courts themselves are flooded with nearly twice as many citizen petitions for administrative assistance to resolve a range of grievances,¹³ 30 percent of which involve complaints about the legal system itself and the handling of specific cases.¹⁴

Institutionally, the courts are part of the government structure answerable to the NPC, not an independent branch of government. The Standing Committee of the NPC, not the Supreme People's Court (SPC), has the authority to interpret national law. Judges are supposed to merely apply the law. Where the law is vague or politically sensitive issues are involved, government officials and the Party may intervene through court-

based adjudication committees that supervise judges' work and other means, and the courts may even decline to accept jurisdiction over cases. Judges are appointed and remunerated by the same-level people's congress, which exacerbates the problem of local protectionism and political influence. Judicial independence is more a slogan than a reality in today's China.

Chinese courts also face challenges of competence and professionalism. Until recently, judges were typically drawn from the ranks of the retired military and appointments were based more on political correctness than on relevant experience or legal knowledge. All judges are now required to hold university degrees (although not necessarily in law) and pass a national unified law exam required for all lawyers, procurators and judges, as well as participate in ongoing legal education programs. However, the SPC reports that only 40 percent of judges today hold a university degree,¹⁵ and the quality of judicial personnel outside the major cities like Beijing and Shanghai is very uneven. Low salaries contribute to widespread judicial corruption.

Another problem is that Chinese courts lack the tradition of issuing public and "reasoned" opinions that do more than merely summarize the facts of the case and proclaim the final decision. Requiring judges to describe in a public record their reasoning in applying certain legal provisions to the facts of the case that leads logically to the ultimate decision acts as a curb on corruption and incompetence. Although trials are increasingly open to the public and the media, and selected opinions are published for reference by other courts and lawyers, judicial transparency is not yet well established and comprehensive.

China's leaders accept in principle the need for a professional and independent judiciary to foster a fair and efficient judicial system. The NPC has scheduled a major revision of the Organic Law on the People's Courts, and proposed structural and other reforms to increase judicial independence from local governments and court adjudication committees are being widely discussed. How far the Party is willing to go in promoting judicial independence, and the challenge to its authority that would represent, remains to be seen.

The Emergence of Procedural Due Process

The importance of procedural fairness is beginning to be reflected in a wide variety of contexts. Revised State Council regulations on land requisition attempt to buttress procedural safeguards that include strengthened requirements for advance notice and public hearings *before* a land requisition is approved and greater transparency in the entire process, as well as mandatory disclosure of the amount and allocation of the compensation for state-requisitioned land. Similarly, revised regulations on the handling of petitions to government agencies for assistance in resolving a wide variety of issues impose obligations to provide a response to petitioners and require for the first time in Chinese history that public hearings be held on "major, complex or difficult" problems raised by petitioners.¹⁶ While the number of protests over land takings and the swelling number of petitions indicate that these procedural safeguards are not yet taking hold, a trend toward requiring greater procedural fairness does seem to be emerging.

Even within the notorious Chinese criminal system, due process is gaining attention. Criminal justice is where the conflict between society's desire to curb crime and corruption on the one hand, and to protect individual rights on the other, is most dramatically played out against a backdrop of Party stewardship. China executes more people every year than the rest of the world combined in pursuit of highly valued "social stability," and there appears to be little popular support for abolishing the death penalty entirely. Nonetheless, recent Chinese media reporting on a series of wrongful convictions that led – in at least one widely publicized case – to the execution of an innocent man, have helped pressure the government to introduce more procedural safeguards in criminal cases, including rulings by some local courts to not allow into evidence confessions elicited through torture, and the joint adoption by several criminal justice agencies of provisions to improve access to lawyers for more categories of criminal suspects and defendants and at an earlier stage of the criminal process to enable a more vigorous defense. The SPC also ruled recently that high courts must hear death penalty appeals in open courts with defense lawyers present, and the SPC itself will in future review all death sentences. Criminal law and procedure revision is on the NPC legislative agenda, and the sensitive issues involved are being debated vigorously in academic, legal and official circles as well as in the media.

The Expanding Role of the Legal Profession

A modern legal system also requires quality legal professionals to assist others to navigate legal complexities, help improve the law and guide government agencies in complying with the law in their routine actions. Starting with less than 2,000 lawyers and two functioning law schools when China began its modernization drive in 1979,¹⁷ China now claims roughly 120,000 certified lawyers and more than 300 law schools.¹⁸

Legal education in China has developed quite rapidly since 1979 and remains another important arena for advancing the rule of law in China. Law school curricula and teaching methods are becoming more diverse, including the introduction in 2000 of clinical legal education that combines teaching with hands-on practical experience representing real clients, and the establishment of law school-based centers that combine research with public interest litigation in such areas as labor, consumer, civil, criminal and women's rights, and provide both legal scholars and their students with practical appreciation of the legal problems facing modern Chinese society.

Chinese legal scholars, many of whom study abroad, are a major source of new ideas about the role of law and legal reform in China. They and the Chinese lawyers they train are getting increasingly involved in policymaking. Local people's congresses and government legal affairs offices frequently commission scholars' drafts and seek input from private law firms and lawyers associations. Law professors serve as consultants to governments, and lawyers are going to work directly for government agencies, under an experiment started in 2002 that had produced 1,800 first-ever government lawyers by June 2005. As China moves toward a system of more limited government power in which all actions and decisions must be based on law, the role of legal professionals in advising government should be heightened.

Chinese lawyers are also beginning to engage more directly in politics. Over 400 lawyers serve as local people's congress deputies at all levels, and more than 1,200, close

to 2 percent of the total number of registered Chinese lawyers, serve on people's political consultative congresses.¹⁹ Hopefully, these lawyer politicians will help further professionalize the work of the PCs.

While many law graduates seek lucrative jobs at China's 12,000-plus law firms, many are also choosing to represent the less fortunate segments of society. Criminal defendants must now have access to legal assistance even if they cannot afford it, and the Ministry of Justice (MOJ), which regulates the legal profession, requires all lawyers to handle a certain number of legal aid cases each year. The Chinese government, law schools and non-governmental organizations sponsor legal aid clinics that assist low income citizens with cases involving employment discrimination, family disputes, urban relocations and rural land takings and the like. More than 3,000 government-sponsored legal aid clinics claim to have aided some 1.6 million clients. For the first time in 2005, the MOJ allocated roughly \$6.2 million for legal aid in impoverished areas, while local governments earmarked another \$32 million.²⁰ Legal aid is becoming firmly rooted in China's changing legal culture and helping to raise rights consciousness among sectors of society that have not had much access to the formal legal system in the past.

A growing number of Chinese lawyers have begun to file so-called "public interest" cases that highlight specific social problems. Though the lawyers frequently lose such cases, the public attention thereby drawn to the issues through the media and other avenues often lead to beneficial changes in law or policy.²¹ Some lawyers take on politically sensitive cases involving criminal defendants, peasant activists, religious worshippers and others. Such cases frequently place the lawyers in direct conflict with the local governments that license and regulate them. Chinese lawyers find that they may be convicted on such grounds as falsifying evidence or revealing state secrets and may lose their jobs, or even their licenses to practice law, under political pressure. As one prominent lawyer, suspended from law practice after he took on a number of controversial cases including representation of outlawed Falun Gong members, put it: "People across this country are awakening to their rights and seizing on the promise of the law . . . But you cannot be a rights lawyer in this country without becoming a rights case yourself."²²

Observations and Recommendations

Fundamental to establishing rule of law is transparency. China should be encouraged to continue to introduce ever increasing transparency into the work of the people's congress system, the NPC's new regulation review office, the government and the courts and procuracy, so as to promote accountability, predictability and competence, and help curb corruption. Giving Chinese citizens the legal right to access information and the means to enforce through the courts an obligation for government to disclose it would be a huge advance in transparency.

China's evolving administrative laws and regulatory practices like public participation in decision-making represent substantial change in traditional Chinese political culture. Although enormously difficult to implement, they provide an unprecedented framework for limiting and guiding the exercise of government power and holding government officials accountable for their actions. This new framework attempts to create more regularized channels for citizens legitimately to supervise government

behavior, make their voices heard through public participation mechanisms and obtain redress against government abuse of power. Bureaucratic culture is slow to change in China as elsewhere, but the Chinese leadership's determination to foster a new culture of government transparency, restraint and accountability, buttressed by law, deserves support.

The courts are the ultimate backstop in a rule of law system to restrain arbitrary and abusive state and private behavior. China's judiciary needs to be strengthened, through structural changes in the court system that promote judicial independence from government or Party interference and increased professional training to enhance competence, so that judges can better fulfill their role to help channel grievances off the streets. A more authoritative and transparent Chinese judiciary would help increase the prestige and effectiveness of the Chinese legal system. Judicial reform is essential to China's rule of law endeavor.

While developing sound laws and building independent institutions to interpret and enforce them are critical to establishing rule of law, so is nurturing a society that is guided by legal rules and that appreciates its rights and responsibilities under the law. The Chinese government promotes periodic legal education campaigns, utilizing the media and social organizations. Law-related curricula is being introduced into primary and secondary schools, to help children internalize from a young age the importance of law in ordering an increasingly complicated and rapidly changing society. Continued development of legal aid programs by government and non-governmental organizations is another significant step in the direction of providing increased access to the legal system and enhanced legal consciousness within society. Encouraging a free press and professional journalists trained in law who provide informed reports on legal issues and cutting edge cases is another critical strategy to promote legal consciousness, restrained and clean government and respect for the law. Such legal education, legal aid and media training programs should all be continued and supported.

Establishing the rule of law in authoritarian China presents yet another paradox, like the creation of a "socialist market economy" or "socialist democracy." Despite the Party's refusal to relinquish ultimate power over the legal system with sometimes distressing results, the Party does seem to recognize the benefits to its own legitimacy and "governing capacity," as well as the Chinese economy and society, in moving toward greater rule of law. While the ultimate outcome of China's rule of law enterprise is unclear, it is very clear that exciting legal changes with far-reaching and possibly unanticipated ramifications for Chinese politics and society are underway and should be acknowledged.

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¹ Information Office of the State Council of the People's Republic of China, *Building of Political Democracy in China*, October 2005, <http://www.china.com.cn/english/features/book/145877.htm>, accessed February 22, 2006.

² *Ibid.*

³ Wu Nanlan, "More Public Hearings Urged," *China.org.cn*, November 1, 2005, http://service.china.org.cn/link/wcm/Show_Text?info_id=147177&p_qry=people's%20and%20congress%20and%20system, accessed November 1, 2005.

⁴ Information Office of the State Council (October 2005).

⁵ Joseph Kahn, "When the Chinese Sue the State, Cases Are Often Smothered," *New York Times*, December 28, 2005.

⁶ Although the court in which the lawsuit was filed apparently never accepted the case, Aux was ultimately issued a manufacturing license in March 2005 under liberalized MII regulations on the issuance of handset manufacturing licenses.

⁷ Although this case was reportedly accepted and heard by a district court in Beijing, it is not known what the decision was. However, the Beijing government has announced it is reviewing the licensing regulations.

⁸ "East China Farmers Say Power Plant Will Pollute Villages," *China Daily*, June 14, 2005.

⁹ Outline for Promoting the Comprehensive Implementation of Administration in Accordance with the Law [*Quannian tuijin yifa xingzheng shishi gangyao*], adopted and effective March 22, 2004, http://news.xinhuanet.com/zhengfu/2004-04/21/content_1431232.htm accessed March 22, 2004.

¹⁰ See: Jamie P. Horsley "Public Participation and the Democratization of Chinese Governance" Political Civilization and Modernization: The Political Context of China's Reform, eds. Yang Zhong & Shipin Hua. (World Scientific Press, 2006).

¹¹ The Central People's Government of the People's Republic of China, *Summary of Legal Work of the State Council in 2005: Accelerating the Establishment of Law-based Government* [*Guowuyuan 2005 fazhi gongzuo zongshu: jiakuai jianshe fazhi zhengfu*], December 29, 2005, http://www.gov.cn/zfjs/2005-12/29/content_141063.htm, accessed December 29, 2005.

¹² See Jamie P. Horsley, "Guangzhou's Pioneering Foray into Open Government," *China Business Review*, July-August 2003, and Jamie P. Horsley, "Shanghai Advances the Cause of Open Information," *Freedominfo.org*, April 20, 2004, <http://www.freedominfo.org/news/20040420.htm>, accessed April 20, 2004.

¹³ U.S. Congressional-Executive Commission on China, *2005 Annual Report*, Part V, Part V(e), http://www.cecc.gov/pages/annualRpt/annualRpt05/2005_5e_access.php#6a, accessed January 23, 2006.

¹⁴ He Dawei, et al., "30 Percent of Petitions Stem from Loss of Popular Faith in Legal Justice," November 29, 2005, *news.xinhuanet.com*, <http://www.chinalawdigest.com/article.php?aid=527>, accessed November 29, 2005.

¹⁵ U.S. Congressional-Executive Commission on China, *Chinese Courts and Judicial Reform*, 2004, <http://www.cecc.gov/pages/virtualAcad/rol/judreform.php>, accessed June 3, 2004.

¹⁶ "Amendments to Improve Petitioner System," *China Daily*, February 24, 2005.

¹⁷ Tim Johnson, "Lawsuits Sprout in China as Interest in Legal Affairs Blooms," *Knight Ridder*, November 12, 2003.

¹⁸ The Democracy White Paper reports there were 118,000 certified lawyers at the end of 2004, and 11,691 law firms. A Ministry of Justice study (the "MOJ Study") reports that the total includes full time lawyers (103,389), part time lawyers (6,841), specialized "gongzhi" lawyers working in government departments (1,817), in-house counsel (733), military lawyers (1,750) and lawyers providing legal aid services (4,768). "Woguo zhiye lvshi da 11.8 wan ren [Our Country's Full-time Lawyers Reach 118,000]," *Legal Daily*, June 14, 2005, http://www.legaldaily.com.cn/bm/2005-06/14/content_154485.htm, accessed June 14, 2005.

¹⁹ *Ibid.*

²⁰ "Legal Aid Helped 430,000 Chinese in 2005," *Xinhua*, January 11, 2006, <http://www.china.org.c/english/2006/Jan/154778.htm>, accessed January 11, 2006.

²¹ One example is lawyer Qiao Zhanxiang, who sued the Ministry of Railways in 2001 for raising tickets prices during Spring Festival without a public hearing. Although he lost his case against the Ministry, it did result in a public hearing in 2002 on ticket price reforms, as required by the Price Law. "More Citizens Winning Cases Against the Government," *China Daily*, December 16, 2003. See "Voices Against Discrimination: Chinese Citizens Challenge Discriminatory Laws and Practices," *China Law and Governance Review*, <http://www.chinareview.info/pages/main1.htm> accessed July 1, 2004, recounting early lawsuits against forms of employment discrimination that, although the legal claims were rejected, resulted in improved policies.

²² Joseph Kahn, "Lawyer Takes on China's 'Unwinnable' Cases," *New York Times*, December 12, 2005.

China's Social Capital Deficit

By Carol Lee Hamrin

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The past quarter century has brought unprecedented growth to China's economy, which now significantly influences global prices and regional economies. China is the world's largest recipient of foreign direct investment (more than US\$60 billion in 2005) and in March 2006 surpassed Japan to become the holder of the world's highest reserves of foreign currency: US\$853.7 billion. But this rapid growth, propelled by investment in infrastructure, has stretched the economy in key sectors and fostered social instability. Policy analysts in China have been warning the government that growth needs to proceed more slowly in the future and be driven more by the domestic consumer market.

Since June 2003, recognizing an urgent need to regain economic and social equilibrium, Chinese leaders have called for a shift to a "people-oriented" development strategy that promotes social development and environmental protection in addition to economic development. Taking a cue from the new approach, Chinese policy advisors have focused more research attention on social concerns such as the public health system, including HIV/AIDS and drug use prevention, and the problems of farmers and migrant workers. China's 11th Five-Year Program (2006-2010) reflects recognition that major social issues are hampering the growth of the consumer market in particular and the further development of the economy and society in general.

Surprisingly though, there has been little attention in Chinese policy or academic circles to the potential for solving China's social problems by building up its meager reserves of social capital, defined as social values, networks, and institutions that promote trust and cooperation. This is the "glue" that holds both market and society together. International analysts and commentators, by contrast, rediscovered the importance of social capital or "social cohesion" residing in voluntary associations in sustaining any economy following the Asian financial crisis of the late 1990s. There has been growing consensus that sustaining human and economic development requires social capital, which can be viewed as a kind of "stock" of human connections based on a shared sense of community.

The International Monetary Fund held a conference in 1999 to discuss a "second generation" of economic reforms, during which social capital was a major topic of discussion. In conjunction with the Asian Development Bank, the World Bank held a consultation in 2000 on promoting "social cohesion and conflict prevention," concluding that this was the paramount policy priority in Asia. As a consequence, World Bank projects, including those in China, have sought to foster social capital through grass-roots "community-driven development" rather than top-down government-run projects.

Yet when first visiting China in 2003, Francis Fukuyama, a prominent social capital theorist, discovered little awareness of his work there, even though he highlighted the importance of social capital for China's future over a decade ago. Chinese interlocutors in academia and the media focused on his "end of history" thesis regarding the Cold War "victory" of liberal capitalism, but had no knowledge of his thesis linking social capital and trust. Similarly, great attention is paid in China to Samuel Huntington's views on cultural competition in international affairs, but none to his argument (presented

in *Culture Matters*) that culture is central to economic development. Only by late 2003 were translations of classic studies of social capital (Bourdieu, Colman, and Putnam) being published. Surveys by Beijing University's Center for Volunteering and Welfare, in four major cities earlier that year found that even scholars and officials working in the nonprofit, nongovernmental third sector have very little understanding of the sector's scope, scale or functioning in the larger economy and society.

China's lagging attention to social development theory may be due in part to the fixation on ensuring social "unity and stability," a static concept unsuited to the reality of China's rapid, unceasing social change. To some extent, the export-driven development strategy has been substituting transnational financial and social capital—overseas Chinese networks—for domestic financial social capital. This will now change with the decision in 2002-2003 to strengthen the domestic market as the primary engine of future growth. China will need to build up its meager reserves of social capital to make this happen.

Giant with Feet of Clay—Account Indicators

While there is no consensus yet on how to measure or generate social capital or how to apply it to development, broad indicators of a country's social capital account would include levels of membership in civic associations as well as levels of public trust. Third-sector (nongovernmental, nonprofit) expenditures and employment rates are also used to measure a country's stock of social capital. A 1999 study by The Johns Hopkins University found that the combined expenditures of the nonprofit sectors (excluding religious organizations) in 22 countries averaged 4.6 percent of their combined GDP. Scholars at Tsinghua University found that in China the figure was 0.46 percent, much lower than in South Korea (4.86 percent) or Australia's (3.3 percent). China's rate may not be much higher today, since the numbers of nongovernmental organizations (NGOs) were deliberately reduced between 1998 and 2002. Clearly, there is much room for China's third sector to grow and contribute to the economy and society.

High levels of social capital in other countries correlate with a widely shared public morality that extends virtues like truth telling, dependability, and reciprocity to all, not just among personal in-groups. Though measurement instruments used elsewhere in the world have not yet been adapted for use in China, there is a widespread sense in the urban public that Chinese society lacks a public morality of honesty and trust.

During the reform era, in the absence of rule of law and suppression of voluntary associations, there has been an explosion in the use of *guanxi*—functioning as private social capital—for personal and family advancement. These particularistic ties tend to inhibit the accumulation of public social capital for the common good of the nation. The common public perception in China has changed from approval of building *guanxi* relations of affection (i.e., ties among family and friends) as a necessity for survival, to moral disapproval of today's instrumentalist *guanxi*, tainted by commercialization and abuse of official authority by special interest groups at the expense of the public. China may be approaching a stage of development in which such "crony capitalism" may constrain advance to the next level of international economic competition.

General indicators of a social capital deficit include the following:

Low-Trust Authoritarian Culture. China lacks a tradition of a strong public culture, an autonomous social sector, and public-benefit philanthropy. Weak cohesion of traditional Chinese society resulted from the family-clan orientation, which inhibited trust outside circles of kinship and personal acquaintance. Philanthropy was targeted at family lineages and hometowns. Social organizations were dependent on vertical ties to patriarchal authority. Under communist “neo-traditionalism,” dependency was transferred to the state bureaucracy. In the Mao era, the party took control of all economic and social functions, even at the expense of government organs. Maoist terror during the Cultural Revolution (1965–1975) reinforced the traditional “insiders versus outsiders” mentality, and “enemies of the people” were hounded to death. Almost all NGO institutions were banned and their staff badly treated. Trust, even within the nuclear family, all but disappeared, devastating China’s stock of social capital.

China’s highly conformist culture, reinforced by the Maoist legacy and current authoritarian institutional structure, poses an obstacle to the development of civil society and the social capital that results from voluntary association. Ordinary Chinese people are hesitant to join or support any NGO without explicit state endorsement, worrying that involvement could invite trouble as long as “nongovernmental” may be interpreted as “antigovernment.” Thus, people who take the lead in the work of nonprofit organizations tend to be lone pioneers, and lack both the public support and the experience needed to build and sustain institutions.

Weak Philanthropic Tradition. There is a deficit of humanitarian values throughout society stemming from decades of class struggle mentality coupled with the current un-tempered pursuit of short-term material gain. These are combined with a weak cultural and institutional basis in China for philanthropy outside of family-clan channels or state patronage mechanisms. The government’s control over society weakens a community sense of ownership, and a lack of transparency in the nonprofit sector makes the public suspicious of donating funds or volunteering time for fear of irregularities.

During the SARS crisis in 2003, government fear of social instability led to tight restrictions on the involvement of nonprofit organizations. Only a few national-level government-run nonprofits were allowed to accept donations and to work with the health ministry to aid victims. Thus the anti-SARS effort lost valuable volunteer hours and skills as well as channels for communicating information. Similarly, in the wake of the 2004 tsunami disaster, only the China Red Cross was allowed to solicit donations from the Chinese public, and donation stations were run by government officials, who orchestrated “mandatory voluntary” contributions from state agencies, companies, and state-run social organizations. Unusual levels of media coverage, however, generated unprecedented popular interest and compassion among the Chinese people about the plight of their Asian neighbors. Notably, many individuals and businesses donated money directly to the embassies of the countries involved, deliberately sidestepping China’s official agencies.

Moral Corrosion. The lack of integrity (*chengxin*, literally “honesty and trustworthiness”), especially in education and medicine, has been a hot topic in China for the past five years, fueled by scandals over cheating on college entrance exams in 2001 and 2004, illegal school fees totaling 1.7 billion *yuan* for 2002–05, and the March 2006

dismissal of an assistant dean at a prestigious university because he plagiarized his thesis and falsified his U.S. credentials. The Chinese are disgusted with their “culture of lies” that fuels a plague of fake products, poisonous food, counterfeit currency, nonpayment of loans and taxes, contract abnegation, and stock market “gambling.” Of course, the scale of the problem is most evident in illegal land or financial deals, such as in the case of the government trader who bet on the price of copper in London in 2005 and left the state to cover hundreds of millions of dollars in losses.

The disease starts at the top. Official corruption is routinely near the top of complaints in public opinion polls and, despite annual anticorruption campaigns, is not diminishing. China had a rating of 3.5 (with 10 being “highly clean”) by Transparency International from 1999 to 2002, with a dip downward to 3.4 in 2003 and 2004, and 3.2 in 2005. The Chinese media reports rough estimates that dishonesty and lack of trust cost China the equivalent of US\$72.5 billion annually between 1980 and 2000, at least 4 percent of annual GDP. This percentage must surely be greater in recent years as the scale of corruption has grown.

Commercialization and transnational “*guanxi* capitalism,” whereby members of the political elite abuse personal connections to steal public assets, has produced a trust deficit of crisis proportions. The poor example set by the elites has inspired an all-out grab for short-term gains at whatever cost, and the corrosion of public confidence has produced mistrust of everyone and everything, including charitable giving. There is a perverse dynamic still at work in which individuals use social networks to bias implementation of central directives via tactics that in turn undermine progress toward effective rule of law. The state’s attempt to co-opt new economic and intellectual elites by expanding the boundaries of the privileged power elite fosters reliance on special relationships, rather than on formal legal institutions that apply laws fairly to all.

Social Tensions. There is widespread concern in China over the violent crime rate, the rapid growth of organized crime, and large-scale outbreaks of social tension and destruction. In the countryside, the majority of conflicts are related to exorbitant fees and taxes extorted by officials and to competing claims to land or water rights. In the cities, property disputes and unemployment are involved. Petitioners with few channels of redress resort to mass demonstrations and strikes, as well as to bombings and suicide. According to a Rand Corporation study of official police reports, there were 60,000 incidents of public protests in 2003 escalating to 80,000 in 2005, with the government in many instances deploying paramilitary troops to control the disturbances. Both the scale of protests and the level of violence is increasing, stretching police capacity—and willingness—to respond. Nearly 100,000 exasperated farmers rioted in November 2004 in Sichuan Province, and the government brought in 10,000 troops to quiet the disturbance. The next month, nearly 50,000 migrant workers rioted in Guangdong.

Income disparities will likely surge through 2010, due to the economic reforms required for World Trade Organization (WTO) compliance. Marriage and family relations suffer from these social and financial tensions. Yet there is little counseling or training in values and techniques fostering tolerance, mutual respect, and nonviolent conflict resolution. Only in the commercial sector, in which dispute resolution is a growing field, and in the legal-judicial sector, with its mediation program, are there some

new measures to augment political education campaigns and police campaigns to deal with extreme situations.

Spiritual/Ideological Contention. The crisis of public trust goes hand in hand with crises of belief and identity. As Chinese one Internet author put it, “Today old-fashioned virtue and moral character have practically died with the new modern world, but new virtue and morality have not been birthed We cast out our belief in God as ‘superstition’ but have found nothing new to replace it.” The Communist Youth League scrambles to help parents and youth wrestle with the moral pressures of academic competition and consumer culture. Even the so-called “winners” who are competing successfully in China’s reform era are experiencing a kind of vertigo from the stress of rapid change. China’s young urban professionals struggle with a sense of paralysis over life choices amid conflicting demands and opportunities posed by traditional family values, requirements of the state, and the highly competitive work environment. According to Chinese university studies of the rapid growth of religion in China, faith is no longer the preserve of ethnic minorities, uneducated women, and the elderly. Many “yuppies” and even prominent celebrities are seeking a moral compass in religious faith and community.

Access to the diverse global market of ideas fuels competition among proponents of alternate moral prescriptions and social philosophies, as they seek to define the common good. China’s national identity is being contested indirectly, which is highly distressing to the central party-state as it seeks to maintain its monopoly as moral arbiter and to marginalize competing moral authorities. The campaign to “modernize Marxism” begun in early 2005 flies in the face of internal polling of Party members wherein the majority considered the effort hopeless.

NGOs and Social Reform: A Risk Worth Taking?

In contrast to the terror of the Mao era, new levels of civility, trust, and cooperation have surfaced over the past twenty years. The demise of the ration system and the availability of more products and services—food, housing, education, transportation, and so on—has lessened the cutthroat nature of social relations. The Chinese people are developing networks of trust based on extended family, hometown, or school ties, as well as professional and recreational associations no longer restricted to the work unit. With the growth of private and foreign enterprise, and especially with the rapid development of the service sector, positive business values focused on serving the consumer have begun to influence other sectors as well.

Chinese society in general is making a comeback with the return of the middle class, as documented for the first time in a 2002 study by the Chinese Academy of Social Sciences. With a 20 percent increase per year, there may be over 400,000 members of the middle class in 2006. Their networks and voluntary associations are planting the seeds of a renewed civil society, trying to blossom and grow in very thin societal soil and discouraging regulatory environment.

The government’s greatest opportunity to generate social capital in China is to loosen the current quotas and other measures that restrict nonprofit organizations and to proactively promote this sector’s growth. As with the earlier economic reform, the first

step in social reform has been the retreat of the state, which was signaled in 1997 by the stated goal of achieving a “small government, big society.” This goal reflected the government’s recognition that the balance in the state-society relationship was shifting rapidly, and that the revival of third sector organizations was well under way.

Government-organized nonprofit organizations have proliferated, providing an umbrella of legitimacy for thousands more private associations that are springing up. By the end of 2003, there were 332,000 civic organizations registered with the Ministry of Civil Affairs, nearly half of them membership associations (“social organizations”) for professions or trades and the others private NGOs (“noncommercial enterprises”) in education, health, culture, science and technology, sports, labor (job placement), and legal aid. But these may represent only a tenth of the total actual NGOs, estimated at 3 million in 2005 by the Tsinghua University NGO Study Center.

New or revised regulations being negotiated and drafted are intended to sort out and redefine the different types of organizations, and add both detail and transparency to the registration process. But drafts so far still provide only minimal incentives for tackling the major hurdles to registering. For example, new regulations in 2004 highlighted the growing importance of public-benefit operational foundations, and yet most of the 936 existing foundations were “re-registered” by the state after they held back their voluntary participation.

Government policy still falls short of what is needed to support its goal of creating a “harmonious society,” which was highlighted at the National People’s Congress early in 2005. To NGOs on the receiving end of policy, the phrase appears to be a cover for cutbacks in state funding, without adequate tax incentives for donors or protection for genuine autonomy in decision-making. The model being piloted in Shanghai’s Pudong District, where the government contracts with NGOs for services, may be simply another way of delegating responsibility while retaining authority.

Registering a private nonprofit organization in China, both for Chinese and international groups, remains a formidable and frustrating task. The dual management system requires not only state registration and auditing, but also intrusive supervision by line agencies. For example, a press conference by the Ministry of Civil Affairs in March 2005 announced a campaign to enforce more accountability among private non-profits. Despite positive words about the value of these organizations, the campaign actually hinged on government inspections at all levels aimed at banning organizations that failed to meet standards by December. No training was offered, nor encouragement provided for efforts by NGOs to set up mechanisms within the sector for voluntary self-discipline. Because of the difficulties, many third-sector organizations forego the registration process altogether or operate as for-profit entities subject to taxation, even though they perform tasks typical of nonprofits.

Development of the third sector is a natural and essential component of China’s commitment to building a consumer economy that can drive future growth. Marketization produces resources that lie outside government control, making it possible for nonprofits to exist and develop with less dependence on the government. Continued downsizing in government organizations necessitates financial independence for many currently public institutions (including universities, museums, orphanages, and hospitals). Most such institutions are already required to recover some of their costs from user charges, sideline activities, and public fundraising. Hundreds of thousands will become fully private by the

end of the decade, under current state plans. In the process, 20 to 30 million state employees will join China's third sector or seek jobs elsewhere, according to estimates by the Beijing University Center for Volunteering and Welfare.

The State's Dilemma

The "people-oriented" development strategy of 2003 reflects lessons learned from the failed cover-up of SARS. This official rethinking provides an opening for policy options that encourage the accumulation of social capital. However, the needs and interests of voluntary nonprofit organizations that could help fill the gap remain far down on the government's list of priorities for positive policy or legislative attention. These organizations remain instead a target of suspicion as potential sources of political opposition.

There is still a strong tendency to rely on vertical command systems to mobilize social capital to counter corruption or promote ethics. These campaigns are often personalized, as with President Hu Jintao's "eight shoulds and should nots," aimed in part at ensuring a polite welcome for Olympics 2008 visitors. (Hu promotes the pursuit of science over ignorance, hard work over laziness, mutual help versus gain at the expense of others, honesty over profit-seeking, discipline versus lawlessness, and plain living over luxury.) Former President Jiang Zemin had earlier set forth a goal of "rule by morality" as well as "rule by law." Media reports on the resulting "citizen ethics-building campaign" spoke of a five-year plan to create a "national ethical code to help social construction" and required mandatory citizen involvement. Such efforts using periodic top-down state campaigns can be helpful, but have diminishing impact in the absence of an independent media and judicial system to place external constraints on officialdom. Educated citizens express annoyance at being lectured over small sins when huge official corruption scandals are covered up.

The literature on social capital, moreover, suggests that only *voluntary* social activity can build rich and lasting social capital, as people experience self-direction and self-fulfillment, learning new skills in the process. Fukuyama pointed out ten years ago that social engineering has reached a dead end. The factors most relevant to true quality of life lie beyond what national governments can affect. The state can act negatively to undermine civil society but cannot act positively to promote the strong bonds of special solidarity or the moral fabric that underlies community. These cultural factors will form key criteria of international stratification in the future.

In China, there is a "missing middle" of organizations effectively linking informal social networks to formal institutions. State policies and regulations are still designed to limit and control such associational activities, redirecting them to state purposes, rather than to encourage the proliferation of start-ups and the creative social entrepreneurship that would allow the nonprofit sector to contribute greatly to progress.

A turnaround in official attitudes and policies could unleash the potential in the nonprofit sector to contribute new humanitarian values, attract funds for development, generate employment, and narrow the gap between rich and poor. Growth in the stock of public social capital would help create the modern large-scale private corporations and private nonprofit organizations needed to compete in the international market, which Chinese planners have decided must fuel future growth. Developing the third sector is

essential for addressing the difficult challenges China now faces, and in turn could ease the transition to more democratic political institutions, increasing the chances for peaceful change as nonprofits play a stronger role in mediating between state and society.

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China's Environmental Crisis: Opening Up Opportunities for Internal Reform and International Cooperation

By Jennifer L. Turner

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On 13 November 2005, an explosion occurred at a PetroChina chemical plant in Jilin Province that released over a hundred tons of the carcinogens benzene and nitrobenzene into the Songhua River. From Jilin the Songhua flows into Heilongjiang Province where it supplies drinking water for the provincial capital of Harbin. It also serves the main water supply for the Russian city of Khabarovsk another 600 kilometers downstream. For several days provincial and local officials in Jilin hesitated to inform downstream governments or the State Environmental Protection Administration (SEPA) about the spill. Once informed, Harbin officials also tried to initially cover up the crisis by telling city residents the water supply system would be cut off for "routine maintenance." However, due to growing rumors of a major chemical spill, municipal officials quickly revised their announcement stating that, the water system would be shut down for four days to prevent citizen exposure to benzene.¹ Upon hearing this news, many citizens fled the city for they had little confidence the local officials could be trusted to provide accurate information on the health risks of the benzene.

The Chinese news media was initially quick and sharp in its criticism of the inadequate local response to the crisis, but toned down the negative reporting after a few days to highlight central government efforts, which included sending water to Harbin, as well as investigating and disciplining local officials.² Notably, before the removal of any local officials, SEPA Minister Xie Zhenhua was asked to resign in light of the perceived initial inadequate SEPA response to the crisis. The Chinese public was informed that those culpable for the benzene accident would be held responsible, but the full scope of the crisis was ultimately downplayed—in stark contrast to international reporting that depicted the accident as one of China's largest environmental disasters.

While distinctive in scale and in the amount of international attention it received, the Songhua pollution spill was not an isolated incident. Less than a week after the Songhua story broke, officials in Guangdong Province announced a major toxic spill from a smelter into the Bei River, which threatened water supplies in the provincial capital Guangzhou.

The Songhua accident was a wake up call for the Chinese government and its citizens, and has already led to government commitments for more spending in controlling pollution accidents and strengthening the Water Pollution Control Law. However, this case extends well beyond the shortcomings in the emergency preparedness of industry. It exemplifies the institutional drivers behind nearly all environmental problems in China—local government protectionism, insufficient government transparency, weak and understaffed environmental enforcement agencies, and a pervasive lack of mechanisms for informing and involving the public in environmental protection issues.

China's Ecological Implosion

China's sustained growth over the past 25 years appears to be an economic miracle. The economic reforms sparked by Deng Xiaoping have sustained an enviable GDP growth rate of 9 percent over the past twenty years and brought millions of Chinese out of poverty. However, the economic explosion that has made

China the world's factory has created an ecological implosion in the country. Severe air and water pollution along with water shortages are threatening human health, industrial production, and crops. Land degradation and deforestation are exacerbating floods and desertification as well as endangering the country's rich biodiversity. Pan Yue, vice minister of China's State Environmental Protection Administration (SEPA), stated quite frankly that China's economic miracle is a myth since environmental degradation is costing the country nearly 8 percent of its annual GDP.³

Without greatly improving its environmental governance structure, China is risking not only slower growth, but growth that ultimately does not improve the well being of its citizens, and could contribute to instability in the country. The central threats China needs to urgently address are air and water pollution, and growing biodiversity loss. While not front-page news today, future ecological time bombs such as solid and hazardous wastes and the destruction of coastal marine ecosystems need to be addressed.

Air Pollution

Coal and Cars

Although air pollution control has been a major policy priority for nearly twenty years, sixteen of the world's twenty most air-polluted cities are located in China. Two-thirds of China's cities do not meet the country's air emission standards and nearly 200 cities fall short of the World Health Organization standards for airborne particulates.⁴

Much of China's air pollution stems from the country's heavy dependence on coal, which contributes to about 70 percent of its energy mix.⁵ Despite measures to increase energy efficiency and develop renewable energy sources China will remain dependent upon coal for the foreseeable future. Furthermore, the usage of low quality coal and the lack of widespread coal washing facilities at industrial facilities have led to serious health problems and the deterioration of China's air quality. One SEPA study revealed that in the 340 cities where air quality is monitored, 75 percent of urban residents breathe unclean air.⁶ Air pollution in China is responsible for between 300,000 and 500,000 premature deaths and 75 million asthma attacks annually.

Besides domestic health problems, the burning of coal releases carbon dioxide—a greenhouse gas that contributes to climate change—and other gases that lead to acid rain. China accounts for 12 percent of global carbon-dioxide emissions. This will increase, as the government is planning 562 new coal-fired power stations by 2012 (nearly half the world's total). SO₂ pollution from high sulfur coal is damaging nearly one-third of China's cropland, as well as impacting the crops of Korea and Japan. Coal burning in China also emits 25 percent of the global mercury. Another regional and global air concern is the growing dust storms that are caused by growing desertification in northern China. China's dust, which can carry other pollutants, has already begun to reach as far as the western coast of the United States.

As China struggles to deal with the adverse effects of coal, the country faces an even bigger source of air pollution linked to the country's growing wealth—car emissions. Car ownership in China trails the United States by a wide margin—with only 22 cars per 1,000 people in China as compared to 764 per 1,000 in the U.S. However, since cars are becoming more affordable the number of vehicles on Chinese roads is rapidly increasing and will most likely rise from 24 million today to 100 million by 2020. This car boom has meant that vehicle emissions in several major cities have replaced coal soot as the major source of air pollution—according to official estimates, auto emissions accounted for 79 percent of total air pollution in China in 2005.

In response to this growing pollution problem, the government rapidly phased-out leaded gasoline and imposed tighter emissions standards (that will reach the highest European standards by 2008), and adopted fuel efficiency standards. These fuel efficiency standards are so strict that if fully implemented in 2007, 90 percent of the SUVs in use in the United States would not meet them. To encourage more fuel-efficient cars, there is discussion within the government about charging higher gas prices and increase taxes on larger cars. However, gas prices still remain well below the market price due to fears that hikes could cause social instability.

Water Pollution

China's Water Woes

While it is China's severe air pollution that often makes international news, water pollution and scarcity problems are perhaps the country's biggest environmental challenges. The World Bank has estimated that water pollution and scarcity are costing China \$24 billion in agricultural losses each year. Water pollution trends in China are particularly sobering:⁷

- More than three-quarters of the surface water flowing through China's urban areas is considered unsuitable for drinking or fishing and 90 percent of urban groundwater is contaminated.
- Nearly 50 percent of river water is worse than grade 5 (not suitable for agriculture or industry).
- 700 million Chinese, mostly in rural areas, lack access to safe water supplies.
- Water pollution is causing growing agricultural losses, as well as increasing protests against industries by farmers who have lost use of land and water, and cannot sell their "toxic" harvests.
- Dramatic increases in aquaculture production since China's accession to World Trade Organization have created growing eutrophication and chemical deposits (especially from antibiotics) in coastal waters; destruction of mangroves; and increasing incidents of red tides.⁸
- Along major rivers and large lakes in China, communities suffer from higher than normal rates of cancer, tumors, spontaneous abortion, and diminished IQs, due to the high level of contaminants in the soil and water.

Although wastewater treatment was a major priority in the Tenth Five-Year Plan (2001-2005), a 2004 inspection by SEPA of sewage treatment plants built since 2001 found that only half of them were actually working and the other half were closed down because local authorities considered them too expensive to operate.⁹ At the end of 2002, the official municipal wastewater treatment rate was 39.9 percent and in rural areas these rates are much lower. It is possible that nationwide merely 20 percent of wastewater is treated, which is entirely inadequate for a country facing such severe water pollution and water shortage problems.¹⁰

Years of major central and local investment into protecting shallow lakes suffering from serious eutrophication (such as Dianchi, Chaohu, and Taihu) have done little to mitigate the pollution and nutrient runoff that have turned them into practically dead lakes.¹¹ This failure stems in great part to the difficulties in pushing local governments to regulate industries that prop up the local economy. However, one notable solution proposed to solve the pollution in Lake Dianchi, Yunnan Province is to build a dam at Tiger Leaping Gorge and transfer water from that reservoir to dilute the pollution.

Perhaps the most telling example of weaknesses in protecting China's waters is the case of the Huai River, which despite a decade-long central government campaign that began in 1993, still remains one of the

most polluted rivers in China. Citizens in the basin statistically suffer from significantly higher rates of cancer and other health problems. For example, for many years no young men from certain villages in this basin have been healthy enough to pass the physical examination required to join the army.¹²

The effects of water pollution are intensified by the water scarcity throughout China. Water scarcity stands as a major threat to China's economic growth as well as human health.¹³

- The low flow of rivers has made them even less capable of naturally treating the pollutants flowing from agricultural runoff, industries, and cities.
- Water scarcity has severely hindered China's agriculture, particularly in northern China where grain production fell by 50 million tons between 1998 and 2004.
- While only 43 percent of the water consumed in agriculture is used efficiently for irrigation (compared to 70 percent to 80 percent in developed countries), industrial water consumption is also highly wasteful. For example, in 2002 the amount of water used for every \$10,000 worth of GDP in China was 537 m³, four times the world average and ten to twenty times that in developed countries.

Threats to Land, Forests, and Biodiversity

In light of China's large population and rapid economic growth it is not surprising that development pressures are also seriously impacting land, forest, and animal species, particularly in western China, which since 1998 has been the target of a major development campaign. The "Go West" campaign aims to narrow the gap between developed and under-developed regions in China and take advantage of vast natural resources in the western region. Currently, soil erosion has impacted 2.8 million square kilometers in the western regions, 77 percent of the national total. The economic costs of soil erosion, desertification, grassland degeneration, and pollution account for 13 percent of the region's yearly GDP.

The "Go West" campaign has accelerated investment in the region and several infrastructure projects that could be equated to modern "Great Walls" include: (1) the 4,000-kilometer West-East Pipeline delivering natural gas from Xinjiang to Shanghai; (2) 1,142 kilometer Tibet-Qinghai Highway linking Golmud in western Qinghai to Lhasa; and (3) plans for constructing 200 dams in southwestern China. While the pipeline and highway projects have undergone better environmental and social impact assessments than is usually the case in China, most of the dams have not undergone thorough and transparent assessments. While China already has 86,000 dams, the country still has considerable hydropower to tap, which could alleviate some shortages in this energy-starved country. However, a number of major dam projects planned in southwest China will destroy wild rivers and threaten China's most biodiverse ecosystems as well as displace hundreds of thousands of ethnic minority communities.¹⁴

Some of China's water problems are not caused directly by water pollutants, but are side effects of other industrialization projects. One of the causes of the major Yangtze River flood in 1998 was deforestation in the upper reaches of the basin. In response, the government initiated two campaigns to increase forest cover in China—the National Forest Protection Program and the Slope Land Conversion Program. The former bans commercial logging in southwest China and limits timber harvests in other regions of the country, as well as protects natural forests and aims to reforest 30 million ha by 2010.¹⁵ These programs have evidently helped increase forest coverage in China from 6.6 percent in 1998 to 18.21 percent in 2005.¹⁶ However, many of these new forests are monoculture plantations, which make them susceptible to pests. China's forest cover still

is only about 61 percent of the global average and ranks 130th in the world.¹⁷ These reforestation programs are not just combating timber cutting, but also the growing conversion of forestland to non-forest use.¹⁸ While China's forests have begun to recover since the timber ban went in place, imports of timber from Indonesia, Burma, and Russia have grown considerably over the past few years, highlighting the global impact of China's escalating resource consumption.

Other Emerging Environmental Problems

Discussions of China's environmental problems focus predominantly on the current threats of air and water pollution, solid and hazardous waste pollution has received less systematic attention both legislatively and in the news media. Less than half of the 20 to 40 million tons of hazardous waste China generates every year is treated or re-used. Over the next decade solid waste production is expected to more than double and very few cities have any form of municipal recycling programs. Notably, this does not include the amount of electronic waste that is imported—legally and illegally—into China.

Furthermore, the hazardous toxins that are increasingly polluting Chinese rivers are producing severe degradation of coastal marine areas. In light of the low rate of wastewater treatment and growing industrial emissions it is not surprising that estuaries and coastal areas near them are plagued with pollution problems. The most heavily polluted coastal areas include Bohai Bay and the mouth of the Yangtze. Exacerbating China's coastal and marine pollution is the fact many coastal cities pump at least half of their wastewater directly into the ocean. In 2004, 169,000 square kilometers (km²) of marine waters were categorized as polluted, an increase of 27,000 km² over 2003. Of this polluted water, 63,000 km² were moderately or heavily polluted.¹⁹

In 2005 the State Oceanic Administration heralded a drop in the number of red tides—from 119 in 2003 to 96 in 2004. However, there was an 83 percent increase in the size of affected marine areas. Although the Bohai Sea was a target for improvement in the Tenth Five-Year Plan, its water quality has grown increasingly worse as a result of red tides and pollution, with at least 35 percent of the water considered heavily polluted.

In light of the growing intensity and magnitude of China's pollution problems it is not surprising that protests and complaints by citizens have been increasing.

Struggling with Growing Environmental Conflicts

In addition to the environmental, human health, and economic costs, pollution and land degradation have contributed to social unrest in China. (See Box 1). In 2005, the central government admitted that 3.76 million Chinese, mostly disadvantaged groups, took part in 74,000 mass protests in 2004. In January 2006, China's Public Security Ministry announced an even higher number for public disturbances in 2005: 87,000.²⁰ Many of these protests involve citizens angered over land grabs by local governments, the closing of factories, and increasingly, environmental pollution.²¹ As early as the mid-1990s, a report from the Chinese Communist Party's Central Committee acknowledged that environmental degradation and pollution represented one of the four leading causes of social unrest in the China.²²

The rise in conflicts centered on environmental issues should be seen in the larger context of growing economic disparity between urban and rural areas. Over the past 20 years economic inequality in China has

increased by more than 50 percent and urbanites earn nearly four times more than their rural counterparts.²³ Between 1997 and 2004, new factories, housing, offices and shopping malls—which cater to the newly rich and often enrich local officials—have consumed about 5 percent of China’s total arable land.²⁴

For Chinese farmers who have seen their development opportunities decrease over the past 20 years, land grabs and pollution from the growing number of factories surrounding their farms are often seen as the last straw.²⁵ Major land grab incidents include a clash between 100,000 farmers and paramilitary troops in Sichuan Province in November 2004, and the shooting of protestors in Dongzhou, Guangdong Province in December 2005.²⁶

It merits mention that not all environmental grievances turn violent, for increasing numbers of Chinese citizens are exercising their right to submit environmental complaints²⁷ to SEPA and Environmental Protection Bureaus (EPBs), as well as take polluters to court.²⁸

Box 1. Environmental Conflicts

Farmers of Huaxi village in Zhejiang Province complained for years to their local government about thirteen chemical plants in an industrial park that had been polluting the soil and water, damaging their crops, and causing health problems. Frustration at being ignored sparked a huge protest of 60,000 farmers in April 2005.²⁹ After police began beating elderly citizens, the situation exploded and farmers from surrounding villages arrived to drive the police away, two people were reported killed in the violence. The local government promised to close the factories, but as of August 2005 nothing had been done and villagers threatened new protests.

In July 2005, more than 10,000 people in another village in Zhejiang Province protested against toxic emissions from a pharmaceutical plant that was contaminating land and water and harming public health.³⁰

Throughout the 1980s and 1990s, villages along the Zhang River (a tributary of the Hai in northern China) engaged in near guerilla warfare, destroying each other’s water diversion canals after government-sponsored water diversions further upstream created a severe water shortage in the basin. For nearly two decades local governments struggled to resolve the conflict but the situation only began to calm down after a major MWR initiative to mediate the conflicts in 2004.³¹

In the Three Gorges Dam area there continue to be periodic, small protests against the mismanagement of the resettlement process (insufficient compensation, use of force against citizens relocating, and local corruption), of which even peaceful protests are being increasingly suppressed by force.³²

Government Response to Environmental Woes

As the Chinese environmentalist Ma Jun noted in an interview on U.S. National Public Radio, time is not on China's side in terms of protecting its citizens, the environment and economy from pollution and resource mismanagement.³³ There is a narrow window—ten to fifteen years at most—for China's leaders and citizens to aggressively control the serious environmental threats facing the country before its problems can no longer be reversed.

Top-Down Efforts

The Chinese government recognizes this threat and has over the past twenty years passed numerous resource protection and pollution control laws and regulations, as well as welcomed environmental assistance from bilateral and multilateral aid agencies and international non-government organizations (NGOs). With international assistance China's environmental legislation has moved quickly from a focus on command and control regulation to more progressive market incentive laws. Environmental protection priorities and investment pledges have increased in the Tenth and Eleventh Five-Year Plans. However, in the Tenth Five Year Plan government investment fell short by 30 percent.

In light of the growing energy shortage (in the summers of 2004 and 2005 nearly two-thirds of the country experienced brown outs) and growing air pollution problems from coal and cars, the Chinese government has prioritized increasing energy efficiency, use of renewable energy, and diversifying energy sources as major energy policy priorities.³⁴ The Renewable Energy Law passed by the National People's Congress (NPC) in March 2005 calls for 10 percent of all China's energy to come from renewable sources by 2020 and for that quantity to be at least 120,000 megawatts. The government also has been developing natural gas markets and hopes to promote a more diverse energy mix through the incentives and market mechanisms required by the 2005 Renewable Energy Law. In the Eleventh Five-Year Plan, the government has set a target to improve the country's energy efficiency by 20 percent by 2010. While investment into alternative energy and fuels have been growing over the past few years, these ambitious goals will demand considerably more investment and incentives for new energy development, as well as better enforcement of existing and future energy efficiency codes for buildings and appliances. However, some examples of encouraging trends in this area include:

The Green Pricing Program, which has been launched in Shanghai to fund wind energy. Fifteen large companies have agreed to use half of the electricity produced by a new wind farm and pay 6.5 cents per kilowatt-hour.

The Changchun government has been working with Toyota to set up a fleet of hybrid taxis.

New electricity pricing policies adopted in April 2005 make energy prices better reflect the cost of supply. The goal is to encourage better demand side management and conservation.

The largest obstacle to strong enforcement of environmental regulations has been the devolution of environmental stewardship to local governments, which prioritize economic growth over pollution control or sound resource management. SEPA's low political standing and meager-sized staff³⁵ have led to weak enforcement of most laws and regulations. Another shortcoming in environmental laws is the notable lack of citizen and NGO involvement in monitoring and enforcement. The failure of China's environmental governance system to motivate or force local governments and the industrial sector to comply with pollution laws or to promote water conservation explains many of the bleak statistics on China's air and water quality.

Efforts to Strengthen Environmental Governance from the Bottom Up

Over the past few years SEPA officials have been emphasizing the need to increase the public's role in shaping environmental laws, and monitoring local governments and industry. Such bottom-up participation will ultimately decrease the government's regulatory and fiscal burden in enforcing environmental regulations. Citizens' rights to influence environmental laws and infrastructure projects have only begun to be clarified and strengthened since the passage of legislation such as the 2003 Environmental Impact Assessment (EIA) Law, which requires evaluation of infrastructure and other construction plans. Notably, EIA reports must now be published and available for public comment.³⁶ In July 2004, the State Council passed the Administration Permission Law, which requires administrative agencies to inform citizens of their right to express their opinions at public hearings regarding any government project that impacts them.³⁷ SEPA was the first agency in China to issue regulations and actually hold public hearings based on this new law.

Besides hearings and EIA public comment developments, three other positive trends in pushing the rule of law in the environmental sphere are: (1) government arbitration attempts surrounding environmental conflicts; (2) growth in administrative law cases; and (3) the increase in class actions suits against polluting industries.

(1) *Government arbitration and mediation.* In the area of water disputes, the government acknowledges the necessity of improving water protection to prevent conflicts, as well as strengthening water conflict resolution mechanisms. Within the National Water Law there are provisions for administrative arbitration when conflicts arise among government jurisdictions. Although the Ministry of Water Resources (MWR) employs 60,000 people to arbitrate water quantity conflicts, administrative arbitration methods do not always work because local protectionism prevents local water bureaus from enforcing judgments.³⁸ In the water pollution sphere, SEPA has set up a third independent party mediation system within the seven major river basins to oversee water management problems. SEPA is also currently drafting a policy to address cross-provincial water pollution disputes.

(2) *Administrative law cases.* EPBs and other government agencies are finding themselves the target of court cases for not sufficiently enforcing environmental protection laws. For example, as part of the preparation for the 2008 Olympics, Beijing municipality began constructing a huge high voltage transmission line through the middle-class suburb of Baiwangjiayuan. The community felt the lines posed health dangers and pushed for SEPA to hold a hearing to review the environmental impact assessment. The hearing did not stop the project, which led the community to then take the Beijing EPB to court. As of January 2006 the court had not yet issued its ruling. There has also been a notable increase in industries taking EPBs and other agencies to court, exemplified by a landmark settlement in January 2006 in Inner Mongolia, when two Chinese paper mills and a local water-treatment bureau agreed to pay \$285,000 to the Baotou City Water Supply Company. In 2004 polluted wastewater from the two paper mills forced the company to stop using water from the Yellow River for five days, which led to over \$300,000 in economic losses.³⁹ This case and others highlight how Chinese courts could potentially become an effective tool for checking weak enforcement of environmental laws at the local level.

(3) *Class action suits.* Chinese citizens who try to sue local industries for pollution damages often face obstacles from courts that are under the control of local leaders wishing to protect industry. Beginning in the late 1990s private Chinese law firms began specializing in environmental disputes, many of which have been

class-action water pollution cases. They have been winning cases by moving them to courtrooms outside the influence of the local government where the conflict took place.⁴⁰ The environmental NGO Center for Legal Assistance for Pollution Victims has also been assisting victims in obtaining justice through the courts; more than half the cases have been related to water pollution.⁴¹ However, even when courts rule in favor of pollution victims, in many cases the courts are unable to press the polluting industries to pay the compensation.⁴²

Openings for International Assistance

Over the past twenty years, many international organizations have worked with the State Council, NPC, SEPA, MWR, and other ministries to develop new environmental policies, regulations, and pilot projects. Besides the multilateral organizations (China is the biggest recipient of World Bank loans and grants for the environment), bilateral aid and international NGOs have been very active in their “green” assistance to China. The government’s willingness to learn from the experience of other countries in environmental protection has helped China move quite quickly from simple command and control environmental policies to more proactive market mechanisms such as emissions trading and tax incentives for industries to lower their pollution emissions.

To help build capacity on the ground to implement new types of policies and management techniques, international organizations have undertaken innovative pilot projects and studies that have brought together local governments, researchers, and Chinese NGOs, as well as other stakeholders. Creating multi-stakeholder projects has helped establish new policymaking and implementation dynamics in China.⁴³ Initially, most projects focused on air pollution, energy, and biodiversity challenges in China, for these are environmental issues that have significant international impact. The increasing health threats and conflicts arising from water pollution and scarcity in the 1990s led the government to request more international assistance in this sector.⁴⁴

Political Space for Chinese NGOs

By the early 1990s, it became clear to China’s top leaders that, given the downsizing of the central government and growing power of the local governments, they needed help to address a broad range of emerging social and environmental ills and to keep local governments in check. Therefore, in 1994 the government passed regulations that for the first time permitted social organizations (*minjian tuanti*) to register and have legal status to operate. Environmental NGOs were the first to register and now form the largest sector of civil society groups in China.

While this permission represents a significant political opening, the registration regulations remain fairly restrictive in that they require all Chinese NGOs to obtain a government sponsor (referred to as *popo* or mother-in-law) and do not permit them to open branch offices. Another legal obstacle limiting the number of NGOs is the provision that no two groups can pursue the same kind of work within the same city or province.⁴⁵ Furthermore, groups are not permitted to have paying members.

In 1994, the first group to register under the new regulations was Friends of Nature, an environmental NGO. Other green groups who sought registration but failed often registered as businesses or operated without formal status. An increasing number of green groups have been established solely as Internet groups, thereby bypassing the registration system all together.⁴⁶ Today environmental NGOs number nearly 2,000 and have become the vanguard of civil society development. Initially, Chinese environmental NGOs tended to

pursue “safe” activities such as promoting environmental education for schools and informing the general public on issues such as recycling, water conservation, and animal protection. They have generally pursued these non-confrontational activities in order to limit government wariness, which stems in part from the role environmental NGOs played in Eastern Europe and Taiwan pushing democratization.⁴⁷

Despite registration challenges and the pressures to be non-confrontational, by the late 1990s a number of groups began increasing their area of operation and to enhance their policy influence. Some of the more innovative groups—often in partnership with international organizations—have become local government and industry watchdogs; undertaken subtle lobbying of the government; and worked to give rural communities the power to protect and manage their local resources.⁴⁸

One sign of significant growth in Chinese NGO capacity was the national campaign initiated in 2004 to push for greater transparency in the decision making surrounding dams being planned on one of China’s last wild rivers, the Nujiang. (See Box 2: Dam Debates).

International assistance has been a major catalyst for enabling the expansion in the number and capacity of Chinese environmental NGOs. Besides providing funding, international NGOs, bilateral and multilateral organizations have pulled Chinese NGOs, as well as other stakeholders into their projects, helping to create new policymaking and implementation dynamics in China. (See Box 3).

Box 2. Dam Debates

In September 2004, Chinese environmentalists learned of a plan by the Yunnan Provincial Government to build thirteen dams on Nujiang (Salween River)—one of China’s last remaining wild rivers in an area that is recognized as a World Natural Heritage Site. If built, the dams would generate more power than the Three Gorges Dam. In response to the news, the environmentalists organized a tour to the Nujiang area to investigate whether the dams were yet another project that would damage a river ecosystem and bring economic hardship to the already impoverished people of the region.⁴⁹

Soon a large number of journalists, broadcasters, and photographers visit the area and numerous news stories condemning the planned dams were published. Journalists and NGOs also sent petitions to the central leadership. The extensive public debate caught their attention, and in February 2005, Premier Wen Jiabao suspended planning pending an environmental impact assessment (EIA).⁵⁰ In August 2005, a broad coalition of Chinese groups (which included 61 NGOs, and 99 researchers and government officials) sent an open letter to the leadership urging public disclosure of the EIA before the government approves any dams on the free-flowing river.⁵¹ As of January 2006, reports have been leaked that the new EIA reviews plans for a series of four rather than thirteen dams. However, contrary to requirements in the EIA Law, the EIA report has not been made public because the MWR and the State Secrets Bureau have classified the report on the Nu dam construction a state secret.⁵²

Challenges Facing Environmental NGOs

Against the backdrop of positive trends toward openness in public disclosure regarding environment-related information, a subtle, anti-NGO campaign began brewing in the summer of 2005 as a response not simply to the Nujiang debate, but also to the growing number of protests throughout China. While the majority of protests involve angry farmers taking to the streets, increasingly urban-based labor rights activists are going to rural areas and organizing protests with farmers against corrupt officials or land grabs.⁵³ The ever-widening wealth gap and local government corruption has meant many rural citizens have been excluded from China's economic miracle. While environmental problems are not the primary driver of these protests, pollution that destroys the health and economic livelihood of farmers are often the final straw for rural citizens being pushed to the margins by land grabs, excessive fees, and a disappearing healthcare system. Although no Chinese environmental NGO has organized a violent protest, the growing number of protests—combined with the “color” revolutions taking place in Central and Eastern Europe—have made some in the Chinese government wary of any kind of social activism. In 2005, a handful of articles appeared in Chinese newspapers critical of “fake environmentalists” who are accused of taking money from foreign organizations. Although these articles have not led to the closure of any Chinese NGOs, at the local level there have been some negative repercussions.

Box 3. International Partnerships with Chinese NGOs

One example of an international organization sparking a truly multi-stakeholder process for solving an environmental problem is the partnership between Oxfam America and the Chinese NGO, Green Watershed, on promoting integrated watershed management in the Lancang-Mekong River Basin in Yunnan Province. A problem had developed when a dam was built at Lashi Lake to help divert water supplies to a local tourist city. The dam's reservoir destroyed the local wetlands and endangered the livelihood of local farmers, who were not consulted in construction of the dam or other ways the lake water was being managed. Green Watershed, founded in 2002 by a group of concerned Chinese environmental and social science researchers, helped Oxfam America bring together villagers, and township and county officials to establish the Lashi Watershed Management Committee. This committee has successfully begun to address this problem and worked to find solutions to others so all stakeholders as well as the ecosystem benefit. The central government has praised what is for China, a unique bottom-up method of addressing serious water problems and it has called for other areas to study the multi-stakeholder committee as a model.

In 2005, one Yunnan environmentalist was blacklisted by the provincial government and prevented from traveling abroad after he organized groups of villagers from the Nu River basin to meet villagers on other rivers that had suffered as a result of dam building. In October 2005, for the first time in ten years of environmental activism in China, a Chinese environmentalist in Zhejiang was arrested by the provincial government for too closely monitoring villagers protesting against polluting factories.⁵⁴

These two incidents highlight a growing trend of local governments cracking down on *any* kind of activism that is perceived as a threat to economic development. Chinese activists advocating for labor, farmer land rights, and HIV/AIDS had previously faced considerably more pressure than environmentalists.

Missed Potential of U.S. Green Work in China

While U.S. agencies such as the Department of Energy (DOE), Environmental Protection Agency, USDA, Forest Service, as well as the national energy laboratories are engaged in environmental or energy work in China, their funding is extremely limited due to continuing congressional restrictions on formal aid and assistance to China. The San Francisco-based Energy Foundation grants NGOs and research centers to promote energy efficiency are greater than the total DOE budget in China. Lack of budgets and high-level support for U.S. environmental and energy assistance has meant U.S. government projects in China are often uncoordinated, inconsistent, and not nearly as effective as similar work conducted in other countries. The lack of a strong U.S. government presence in environmental assistance has also hurt U.S. business competitiveness in energy efficiency and environmental technology sales in China (Japan and Germany's strong "green aid" programs capture 75 percent of the wastewater technology market in China).⁵⁵

In stark contrast to the U.S. government presence, many U.S.-based NGOs, professional societies, and universities have been active in helping Chinese government agencies and NGOs work on a broad range of energy and conservation issues. The Natural Resources Defense Council, WWF, Conservation International, International Crane Foundation, American Bar Association, and Environmental Defense have long-term, effective programs, but could greatly benefit from greater U.S. government support. Such assistance could help promote the growth of civil society and citizen involvement in China by strengthening nongovernmental energy and environmental contacts between the United States and the PRC.

It is in the political and environmental interests of the United States to help China bolster its use of clean energy, efficient technologies, and conservation strategies in order to help prevent intensified competition for limited global energy resources and further environmental degradation in China. Energy collaboration, for example, could decrease the likelihood of China becoming dependent on unstable oil-rich nations.

The Bush administration and Congress have an unprecedented opportunity to develop a coherent approach to energy and environmental relations with China. On the American side, the war against terrorism will continue to require the U.S. government to engage China so that it does not undercut U.S. policy efforts in central Asia, the Middle East, or the Korean Peninsula. Moreover, cooperating with China on energy and environmental issues would help strengthen U.S.-China ties, which are continually strained by friction over Taiwan, trade imbalances, and a wide range of other issues.⁵⁶ As the United States and China share concerns over energy security and confront many of the same environmental challenges, cementing cooperation in these areas might offset tensions in other parts of the relationship and may help secure broader U.S. foreign policy and domestic goals.

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China's Energy Future

By Robert E. Ebel

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Background

China burst onto the world oil market scene in 2004, catching oil exporters and importers alike by surprise,ⁱ as oil consumption rose by 900,000 barrels per day (b/d) to 6.43 million b/d, accounting for roughly one-third of the growth in world oil consumption that year. China's demand turned out to be far in excess of what most observers had anticipated. This surprise, by pressuring available supplies, was among the key factors in pushing world oil prices to \$55 per barrel, and beyond.

Should it have been a surprise? Probably not. Indeed, over the 10-year period from 1994 to 2004, China accounted for 28% of the growth in world oil consumption, with lower rates characterizing the early years of that time period and higher rates the closing years.

Yet there were other factors, of equal importance, that restricted supplies. Over the years, oil exporting countries, particularly those of the Gulf, had allowed their production capacity to be run down to a point where it basically matched demand. Remaining spare capacity was largely in the hands of Saudi Arabia, and the crude oil itself was heavy; a quality that was not especially desirable.

Second, oil-refining capacity worldwide had not kept up with growth in world oil demand. No new refinery had been built in the United States, for example, in the past quarter-century. In the absence of adequate refining capacity, exporters then ask why they should expand output. Indeed, some have sought guarantees of demand before making investments in new production capacity.

China has overtaken Japan and now stands as the second leading oil consumer in the world, trailing only the United States. But with position comes responsibility to provide the market with transparency and with current and reliable information. China has difficulty in responding to this requirement to the dissatisfaction of the oil market. Equally important, China must be reminded that they do not live in isolation, that every energy-related decision taken, or not taken, carries implications for the rest of the world.

Obstacles to Growth

China's growing dependence on imported oil to meet the fuel requirements of an expanding transportation system—especially privately owned automobilesⁱⁱ—has forced it to seek security of supply through diversity of supply. In other words, China is acting no different than any oil importing country by taking actions deemed necessary to support and protect anticipated growth rates. Yet, China does not live in isolation and an interruption in supply, anywhere, will affect importers and consumers everywhere.

There are other, equally important obstacles to growth:

Shortages of water;
Limited arable land;

Migration from rural areas to the cities;
An aging population.

Cultivated land declined by 6.5 percent between 1996 and 2004. Moreover, increasing amounts of arable land are being designated for other purposes, including construction. Rural-to-urban migration is massive, reflecting a government program to shift farmers into more productive occupations. But it is an aging population that will burden the country in the coming years. How can the government reasonably address the issues of pensions, health care, housing, and social security?

In addition, HIV/AIDS poses a threat to China. With a largely rural and unsophisticated young population, including a “floating population” of 120 million or more from the countryside with no official residence or work cards, the danger is clear. But prevention is still a low priority.

Beyond these factors, emerging over-capacity in some of the most important sectors of the economy foretells a coming slowdown in investment and new construction.

Current steel-making capacity exceeds demand
One-quarter of electrolytic aluminum capacity stands idle
Only some 40 percent of the ferroalloy industry is operational
Fully one-half the production capacity in the calcium carbide industry stands idle
Excess capacities exist in the cement, electricity, coal, and textile industries

If the growth rate of the economy slows, the burden of over-capacity becomes even more threatening.

Diversity of Oil Supply

Oil importing countries pay homage to diversity of supply as the best protection against disruption from a single source or grouping of sources. They may also seek diversity among the types of fuels consumed and how fuels make their way to the importer. Finally, some importers may seek to develop equity oil abroad, that is, oil that they actually own, reasoning that equity oil is a secure source of supply. However, equity oil does not protect the owner against domestic violence, disruption of supply routes, or high prices.

China has embraced all three options, with varying success. To illustrate, U.S. domestic politics helped turn away a bid by China to buy Unocal. An effort to acquire a share in Kashagan, a giant oil field under development in the Kazakh sector of the Caspian Sea, was turned away as well.

The scale of these losses has not been matched by successes to date, the most notable of which were the purchase of PetroKazakhstan and the acquisition, via a joint venture with India, of Petro-Canada’s non-operated mature oil and gas properties in Syria. Equally important, this was the first China-India upstream joint venture.

Chinese oil companies continue to prowl the world, often over-paying for whatever access they secure and setting precedents that international oil companies cannot meet. Where are they looking? Iran, Sudan, and Syria among others—countries of limited availability to the West because of U.S. opposition.ⁱⁱⁱ To reduce the

appearance of over-payments, brought about in part because of competition with India, these two countries have traded cooperation for competition and the early results (see above) have paid off.

Seeking diversity of supply routes has achieved some success, with the completion of a crude oil pipeline from western Kazakhstan to the Chinese border, a distance of 1,000 kilometers. Oil should flow through this pipeline by mid-2006, with an initial carrying capacity of 200,000 b/d, rising to 400,000 b/d but only after 2010. It can be presumed that both Kazakh and Russian oil will flow through the line.

Deliveries of Russian oil by rail continue to increase and will be competitive up to about 600,000 b/d, at which point pipeline delivery has the advantage. That brings into play the much-discussed crude oil pipeline from Taishet, west of Angarsk, to Nakhodka, a port on the Pacific Ocean. Current plans call for construction from Taishet to a halfway point at Skovorodina and laying a branch line to the nearby Chinese border. Yet, the general question remains, where will the oil come from to fill both a branch line to China and onward to Nakhodka?

A strategic petroleum reserve would help China offset disruptions in supply but oil is not likely to be purchased at current world price levels for a reserve. A number of questions relating to a petroleum reserve have yet to be answered, including how acquisitions will be financed, who will own and manage the stockpiles, whether they will also be used to leverage prices, and will the system include products as well as crude oil. The reserve apparently will combine government and commercial stocks and the government wants to build a reserve equal to 25 days consumption by the year 2010. But to do so at current prices would cost some \$9 billion and that makes for an expensive safety valve.

Oil in 2006...

Chinese media reporting in late 2005 carried three headlines of importance to the world oil market:

China will import less (crude) oil and petroleum products in 2006 than in previous years

China may import less crude oil (in 2006), remaining at the level of (2005)

China's crude oil demand to rise 6 percent in 2004.

Are these statements compatible? Or is the statement referring to oil imports an incorrect translation from the Chinese? That is, might the Chinese version have said that the *growth* in imports will be less in 2006 than in previous years? Can these reports be substantiated—or disproven—using Chinese statistics?

Working with Chinese oil-related data is frustrating, in part because the available data lack the transparency and accuracy demanded in the West. Chinese Crude oil production in 2006 is placed at 184 million tons (3.68 million b/d), a gain of 60,000 b/d over 2005 production of 181 million tons (3.62 million b/d). Crude oil imports averaged a bit less than 2.6 million b/d in 2005, up roughly 6 percent over 2004. Another annual gain of 6 percent would bring the 2006 crude oil import level to 138 million tons (2.76

million b/d). But these will be gross imports, and crude oil exports must be deducted to correctly define domestic demand.

Chinese sources note crude oil demand in 2006 will reach around 328 million tons (6.56 million b/d), implying an import requirement in 2006 of about 144 million tons (2.88 million b/d). Again, it is presumed that imports are gross and that exports will average about 6 million tons, or 120,000 b/d, leaving an import requirement of 138 million tons (2.76 million b/d).

Complicating all this is the understanding, at least in the West, that crude oil demand is domestic production plus net imports.

Table 1
Crude Oil Production in China, Selected Years, 1990-2015

Year	Million barrels per day
1990	2.77
1995	2.99
2000	3.25
2004	3.49
2005 est.	3.62
2006 est.	3.68
2010-2015 est.	+4.0

For a country of China's geographic size, not being able to count on much more than 4 million b/d of domestic crude oil through 2015 must be disappointing at best. Discoveries during the coming years will do little more than offset declines at existing fields.

...And Beyond

Table 1, above, reflects current Chinese thinking that oil production during the 5-year period 2010-2015 may exceed 4 million b/d, but only marginally, if that.^{iv} The U.S. Energy Information Agency forecast, for one, implies a decline in the later years, with demand reaching 12.8 million b/d by 2025 and net imports 9.4 million b/d.

This increasing dependency on imports is behind China's search for oil abroad, a search that has not yet yielded the sought-after volumes. Nonetheless, there is no reason to believe these search efforts will be reduced.

As China imports increasingly larger volumes of crude oil, the question arises as to adequate refining capacity, especially to provide petroleum products answerable to the requirements of a modern economy. China held an estimated 6.2 million b/d of refining capacity in 2004, sufficient to process those volumes available. But that is not the concern. Will new refinery construction keep pace with demand growth?

Capacity at small, independent refineries is placed in excess of 1.4 million b/d, or roughly one-quarter of the national total. Unfortunately, many are relatively unsophisticated and do not produce the quality products needed.

If refining capacity fails to keep pace with growth in oil demand, then the gap will have to be filled by increasing the imports of petroleum products. Should that happen, the country's vulnerability rises, for petroleum products of the needed specifications and variety are not always available from foreign suppliers.

Threats to Oil Supply Lines

More than 90 percent of the oil imported by China is transported by ocean-going tankers, and there is little reason to believe that any substantial shift away from tankers can be expected any time soon. It has been reported that some 80 percent of the oil imported by China passes through the Strait of Malacca. The Strait is just 1.5 miles wide at its narrowest point, creating the potential for collisions, piracy, or terrorist attack. Closure of the Strait, for whatever the reason, would immediately lead to a spike in oil prices. China recognizes this potential threat to its oil supplies and has developed a "string of pearls" strategy, involving military bases and diplomatic ties, to protect its oil and strategic interests.

China—Both a "Taker" and a "Giver"

Western media continues to focus on Chinese oil imports but overlooks China as a supplier of both crude oil and petroleum products to the world oil market. China's crude oil imports, as noted, during 2005 average about 2.6 million b/d. Petroleum product imports may average about 620,000 b/d. China thus is a major "taker" but what about exports?

In 2004, China exported 340,000 b/d of crude oil and petroleum products. Crude oil was exported under long-standing trade agreements. Petroleum product exports were driven by the higher prices available outside the country. Exports led to regional shortages during 2005, and these shortages will likely continue as long as domestic prices do not reflect the higher crude oil prices.

More Than Oil

Meaningful diversity among fuels consumed will be difficult to accomplish. Coal will remain the dominant fuel well into the foreseeable future. Mining and consuming more than 2 billion tons of coal annually allows China to boast that the country is 96% self-sufficient in terms of domestic energy supply. Nuclear power, renewable forms of energy, and natural gas each contribute only a few percentage points, if that.

Unfortunately, China's continued economic growth and expanding political influence very much depend on the adequate, timely, and diversified imports of oil. It is the measure of future imports, where they originate, and how these fuels make their way to the Chinese market that in large part will define what kind of future the rest of the world faces, at least in energy-related terms.

Coal

Despite all the media coverage that growing imports of oil may attract, it is coal that supports the industrial base and fuels the electric power stations of the country. Yet this sector has its major detractions.

First, although China leads the world in coal mining and consumption, it also leads the world in deaths caused by mining accidents. For example, the death rate in Chinese mines is 100 times that of deaths at U.S. mines. There can be no more damaging indictment of the coal industry than the loss of life attributable in large part to ignoring acceptable safety practices, compounded by corruption and mismanagement.

Nationally, mining deaths exceeded 6,000 in 2004 and the loss of life in 2005 was of a similar level. The cause can probably be traced in part to the current high price of coal and to the thousands of small mines, many illegal, currently in operation that value production levels over safety measures.^v

Second, in an attempt to reduce the number of deaths from mine accidents and to regain some degree of control, the government by the end of 2005 was to begin shutting down those coal mines that could not meet safety standards even after improvements. The program called for closure of 4,000 small mines annually for a period of three years.^{vi} However, in many instances, particularly for the smaller mines, after the inspector leaves the mine re-opens.

Table 2
Coal Production in China, Selected Years, 1990-2006

Year	Million Metric Tons
1990	1.08
1994	1.27
2000	1.19
2004	1.90
2005 (est.)	2.0
2006 (plan)	2.15

Other than trying to match coal supply and demand in volume terms, the sector faces infrastructure shortcomings that interfere with timely coal deliveries to consumers. Currently, China's coal transport capacity on railroads can only meet 35 percent of the market demand. That in turn translates into electric power shortages during the summer months when high demand overwhelms supply.

Coal also holds promise as a raw material, as the basis for coal liquefaction (i.e., coal-to-oil) projects. The first project is to come on line in 2007 to provide 20,000 b/d of liquids annually. Plans for the longer term appear overly ambitious.

Coalmines hold tremendous volumes of methane gas, with a potential placed at 22.5 trillion cubic meters. Unfortunately, this potential is not easily exploitable and the "take" from wells drilled may be no more than 2 billion cubic meters by the end of 2010.

Natural Gas

Natural gas plays a very minimal role in China's energy supply and demand, accounting for 2.6 percent. All the gas presently consumed in the country comes from

domestic sources; there are no imports. But, with the arrival of imports later this decade, Chinese officials want the contribution of natural gas to rise to 8 percent, an attainable goal if everything works perfectly.

Table 3
Natural Gas Production in China, Selected Years, 1990-2020

Year	Billion Cubic meters
1990	14.4
1995	17.0
2000	27.2
2003	34.3
2004	40.8
2005 (est.)	48
2010 (est.)	80
2020 (est.)	120

Despite the anticipated growth, domestic natural gas supply will fall well short of the demand of 120 billion cubic meters (bcm) in 2010 and 200 bcm by 2020, thus setting the stage for a natural gas import program.

China, like any other country, can import gas by pipeline and/or in liquefied form (liquefied natural gas—LNG). There is no pipeline currently under construction that would deliver natural gas to China. Sporadic discussions continue relative to a gas line from Kazakhstan, while possible deliveries from Kovykta, a huge gas field in East Siberia, have faded into the background.

Chinese companies have proposed building a total of sixteen LNG receiving terminals, of which as many as ten would be operational by 2010. However, only two terminals—Dapeng LNG and Fujian—are in advanced construction. Dapeng will be fed by LNG from Australia’s Northwest Shelf and Fujian from Indonesia’s Tangguh LNG. Dapeng is the more advanced and is to start operations in June 2006. But, Asian LNG is in short supply, prices are high and China has not accepted these high prices. An agreement to buy 100 million tons of LNG^{vii} from the Chevron-led Gorgon project in Australia has fallen through because of pricing and timing issues.

Nuclear Energy

Nuclear electric power first became available in 1991 when the Daya Bay plant came on line. By July 2004 a total of nine plants were supplying nuclear power to consumers, but offered just 2.3 percent of the country’s total electricity generating capacity.

Against that background, China has embarked on one of the most ambitious nuclear energy programs the world has ever seen. This program calls for the construction of at least twenty-seven nuclear plants, for the purpose of both satisfying the hunger for electricity and replacing coal-burning plants in an attempt to reduce air pollution.

If successful, by 2020 nuclear plants will be providing about 4 percent of total electricity generation capacity. In other words, nuclear energy is important but more on the margin.

Table 4
China's Nuclear Generating Capacity, Selected Years. 1997-2020

Year	Capacity (MW)
1997	2,200
2004	7,010
2005 plan	9,130
2020 plan	40,000

The scope of the construction program has caught the attention of vendors worldwide—American, French, and Russian. It can be expected that China will be “going to school” during the early years so that international participation can be minimized and replaced by Chinese labor, equipment, and supplies.

Alternative Forms of Energy

Alternative forms of energy include hydropower, wind, solar and biomass (ethanol and biodiesel, for example). These forms of energy presently provide 7 percent of total national energy consumption,^{viii} to be raised to 15 percent by 2020. A Law on Renewables, passed in February 2005, calls for the share of these fuels to reach 10 percent by 2020, a more realistic goal. Under any goal, the bulk will be provided by hydropower.

How China Plans to Secure its Energy Future

China has laid out a number of actions which, if successful, will give the country an energy future that provides the fuels it requires at acceptable prices while minimizing its dependence on imports and maximizing protection of the environment; all while advancing national interests. It is a program that any country could subscribe to and, perhaps not surprisingly, most if not all do.

What are the essentials of this program?

- Diversity among sources of imports and diversity among types of fuels consumed
- Particular emphasis on raising the contribution of renewable forms of energy
- Avoid wasteful consumption while improving efficiency of use
- Eliminate the consumption of oil in electric power generation
- Improve miles driven per gallon of gasoline consumed
- Introduce hybrid automobiles
- Contain and reduce the reliance on imported oil while supporting the import of natural gas

Expand hydro and nuclear power station construction
Expand domestic exploration of oil, natural gas, and uranium while accelerating the production of clean coal

How much and to what extent this grand wish list is implemented is not the decision of China alone. Rather, the shape of the world energy market, and the politics that influence that market, will define China's energy future. Nevertheless, there are no surprises in this program, a program to which any energy consuming country could subscribe.

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ⁱ China is full of surprises, not all to its detriment. In December 2005 the National Bureau of Statistics announced that it would soon reveal, based on the results of a national economic census, that the economy is significantly larger than the government's official measure. An official statement released on 20 December showed the economy to be larger by 16.7 percent.

ⁱⁱ Reportedly there were 27.4 million motor vehicles on the road in 2004. That number is predicted to grow to 56.7 million in 2020 and 130.1 million in 2020.

ⁱⁱⁱ Very small volumes also arrive by rail from Kazakhstan.

^{iv} A senior official of China National Petroleum Corporation has observed that China's oil output will peak in the years 2010-2020.

^v China now has 24,000 small coalmines each producing between 10,000 tons to 30,000 tons annually. These mines account for 70 percent of the country's coal mining ventures.

^{vi} A total of 2,411 coalmines had been shut down by mid-December 2005.

^{vii} 1 million tons of LNG converts to 1.38 billion cubic meters of natural gas.

^{viii} Coal currently supplies 67.7 percent, oil accounts for 22.7 percent, and natural gas provides 2.6 percent.

China and Southeast Asia
By Derek Mitchell & Chietigj Bajpae
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China has put significant effort in recent years into improving its relationship with Southeast Asia. After being viewed with apprehension due to its Cold War support for leftist insurgencies, China is now considered a significant political player in the region, and an engine of regional economic growth and integration. In return, Southeast Asia has emerged as a significant market and source of raw materials for China. Trade, transport and tourism links between China and Southeast Asia have continued to strengthen as have security cooperation, military-to-military exchanges and cultural links, fueled by the significant and influential community of overseas Chinese in the region. China has a substantial interest in open and secure sea-lanes, especially through the Strait of Malacca, through which passes a third of the world's trade and half of the world's oil, including 80 percent of China's petroleum imports.ⁱ China's trade with the region exceeded \$130 billion in 2005, making ASEAN China's fifth largest trading partnerⁱⁱ and China as ASEAN's second largest trade partner.ⁱⁱⁱ

As elsewhere, China has acted to reassure Southeast Asia of its benign future, and commitment to the region's values, principles and priorities. China's help to the region during the 1997-98 financial crisis established new credibility in this regard. Beijing has highlighted its interest in common economic development by promoting the establishment of a regional free trade agreement, and acceded to the ASEAN (Association of Southeast Asian Nations) Treaty of Amity and Cooperation, a pact whose content echoes the Five Principles of Peaceful Coexistence. China has demonstrated its understanding of the value of symbolism in regional affairs, paying due respect, for instance, to the "ASEAN Way" of confidence building and consensus, and to multilateral dialogues to address transnational issues. China and ASEAN signed a "Strategic Partnership for Peace and Prosperity" in 2003.

Chinese leaders often act modestly in their diplomatic outreach to the region by deferring to ASEAN's leadership in regional forums (at least in form if not entirely in substance). China has sought to use these multilateral vehicles to build a sense of community within the region. The "ASEAN + 3" (China, Japan, and South Korea) process is emerging as China's favorite vehicle in this regard, although the East Asian Summit, a larger convocation whose inaugural meeting was held in Malaysia in December 2005, is also intended to produce a similar effect. Both of these vehicles exclude the United States, raising questions within Washington whether China ultimately intends to use them to supplant or at least substantially curb U.S. influence in the region. China has also used the development of new regional multilateral vehicles to exclude and isolate Taiwan from regional affairs, consistent with its global strategy. APEC, a U.S. initiative from the 1990s, includes Taiwan; the East Asian Summit and ASEAN + 3 do not.

China has taken particular advantage of U.S. missteps in Southeast Asia over the past decade to heighten its influence. Washington's belated attention to the 1997-98 financial crisis; its view of the region almost entirely through the prism of a "war on terrorism" following September 11; and its impatience with the multilateral, confidence-

building, consensual ethic of the region has created resentment toward the United States in Southeast Asia and provided China an opportunity to contrast its approach with Washington's.

At the same time, China has sought to shelve issues of disagreement with the region, such as the South China Sea (Spratly and Paracel islands) territorial dispute, in order to focus on building confidence and economic integration. China has affirmed that the entire South China Sea is Chinese sovereign territory, however, and thus it remains an issue of potential friction with not only Southeast Asia but also the United States over the long term. China reluctantly entered into a multilateral agreement affirming peaceful resolution of the dispute, but Beijing generally prefers to handle the matter bilaterally with rival claimants, where China is at an advantage.

The relationships of individual Southeast Asian nations with Beijing vary. China maintains especially warm relations with Malaysia, Thailand, and Cambodia, for instance, while its relationship with Vietnam is cordial but remains fraught with tension, a legacy of thousands of years of checkered interaction (and periodic Chinese invasions). China's relations with Indonesia, which traditionally viewed the "enemy from the north" as its primary security concern, have warmed in recent years due to proactive Chinese political outreach and shared economic interests. Similarly, nations like Singapore and the Philippines, which remain wary of the implications of China's rise for their security, recognize the trend lines, and thus place increasing importance on maintaining positive political, economic and military ties.

The one issue of open disagreement between the United States and China in Southeast Asia concerns Burma (Myanmar). China's political and material support for Burma's brutal military junta in the form of arms, aid, trade, and infrastructure investment props up the regime, for which China receives natural resources, unique business opportunities, and strategic ports near the Indian Ocean. China's economic influence, political ties, and increasing military presence in Burma remains a source of deep suspicion in the United States, and around Southeast and South Asia. Beijing increasingly has engaged the Burmese junta about the dangers of Burma's internal instability, and of the cross-border impact on Chinese society of Burma's drug, HIV/AIDS, and other maladies. Nonetheless, China is predictably reluctant to sacrifice its economic and strategic advantage in Burma to promote international norms of democracy and human rights. China's heretofore unconditional support for the Burmese regime therefore has raised questions about China's ultimate strategic intent and status as an alternative source of support for unsavory regimes.

Despite the region's growing accommodation of China, however, few in Southeast Asia are willing to trust Beijing's good will and charm offensive entirely. The prospect of 1.3 billion new customers and competitors at their doorstep, with a military to match, gives pause to most regional states. Given this prospect, the region remains supportive of the traditional U.S. alliance structure and military presence in the region that has kept the sea-lanes open and trade flowing as a hedge against the uncertain implications of China's rise for regional security and stability. Nonetheless, China's regional power and influence is growing rapidly alongside, and often in competition with, the United States, to which the region is moving perceptibly to accommodate itself.

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ⁱ Bill Gertz, “China builds up strategic sea-lanes”, *Washington Times*, January 18, 2005
<http://www.washtimes.com/national/20050117-115550-1929r.htm>, accessed February 20, 2006.

ⁱⁱ Ministry of Commerce of the People’s Republic of China, *Top Ten Trading Partners*, March 21, 2006,
<http://english.mofcom.gov.cn/aarticle/statistic/ie/200603/20060301722237.html>, accessed March 30, 2006.

ⁱⁱⁱ Tim Shorrocks, “Why Southeast Asia is turning from US to China,” *Asia Times*, December 10, 2005,
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China and South Asia

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China's primary interests in South Asia include gaining access to markets and raw materials in the region, preventing instabilities in South Asia from spilling over into China, and preventing the region from emerging as a source of anti-China activities. China has also used its diplomatic relations with South Asia to get the region to subscribe to Beijing's One-China policy in relation to Taiwan, Tibet, and Xinjiang.

China's current trade with South Asia exceeds \$20 billion a year. China is engaged in several aid, investment and infrastructure projects in the region, in many cases prompted by the desire to balance U.S. influence. China has also assisted in the development of port facilities in the region, most notably at Gwadar in Pakistan, in order to secure overland access into China of critical resources, such as oil from the Middle East. Beijing hopes to use such access to bypass potential chokepoints, such as in the Strait of Malacca, caused by accidents or conflict along the waterways. In order to make further inroads in its relationship with the region, China has also expressed an interest in joining the South Asia Association for Regional Cooperation (SAARC), a request that all member states but India have welcomed. In 2005, China was admitted to SAARC as an observer.

India

China and India have a long history of trade and cultural exchange, dating back to the first millennium when contact along the Silk Road introduced items and ideas to South Asia and China (including Buddhism). More recently, however, the initially cordial relationship between China and India as founding "non-aligned" signatories of the Five Principles of Peaceful Coexistence in 1954 gave way to openly hostile relations following India's decision to grant asylum to the Dalai Lama and his Tibetan government-in-exile in 1959; a brief military conflict along their shared border in 1962; and China's moral and material support for Pakistan in its conflicts with India. Relations have shown considerable improvement in the last decade, fueled more recently by China's desire to balance India's growing strategic partnership with the United States. The signing of the "India-China Strategic and Cooperative Partnership for Peace and Prosperity" during Prime Minister Wen Jiabao's visit to India in April 2005 paved the way for expanded Sino-Indian ties.

Growing economic and trade cooperation has further cemented China's rapprochement with India. In 2005, Sino-India trade amounted to more than \$18 billion, as China has become India's second largest trading partner after the United States.¹ As the world's largest developing countries with rapidly growing economies and burgeoning energy consumption needs, there is significant room for cooperation between China and India. China's hardware and manufacturing industries complement India's software and service-sector expertise. In the energy sphere, China and India have cooperated increasingly in the development and acquisition of petroleum resources in questionable nations such as Iran, Syria, and Sudan. Some regional observers have suggested the formation of an Asian oil market complete with interlocking pipelines, supply networks,

etc., with China and India at its core to institutionalize regional cooperation and reduce strategic mistrust.

The two sides have also adopted a unified stance on the need for a “multi-polar world,” an “equitable” trading system, and opposition to external interference in separatist movements within their countries. China has adopted an increasingly neutral stance on the Kashmir dispute, and recognized India’s suzerainty over Sikkim as a quid pro quo for India’s recognition of Tibet as part of China.

Nevertheless, a strain of mistrust continues to permeate Sino-Indian relations. India is concerned about China’s strategic encroachment into South Asia. China’s continued close relationships with Pakistan and anti-democratic governments in Nepal and Burma have fueled mistrust. China’s growing political, economic, and military influence in Burma, which is strategically located along the eastern end of the Indian Ocean, has also caused significant concern in New Delhi, and led to greater Indian engagement of the Burmese junta to balance Chinese influence.

The Indian government’s nuclear weapons program is focused not only on Pakistan but also on a prospective “China threat.” China has expressed concern about the U.S.-India nuclear technology deal concluded in March 2006 in which the United States agreed to circumvent the Non-Proliferation Treaty to grant India assistance for its civilian nuclear program in exchange for India opening a limited number of its nuclear facilities to international inspection. Soon after the U.S.-India deal was concluded, China stated that it would provide additional assistance to Pakistan’s civilian nuclear program.

Despite closer U.S.-India strategic ties in recent years that in part are focused on the challenge of a rising China, however, New Delhi will not want to ally with Washington in any active strategy to contain or oppose China absent extraordinary provocation from Beijing. India will maintain its policy independence to pursue a multi-layered strategy combining both cooperation and competition with China that serves its own unique political, economic, and security interests.

Although tensions have declined, progress in resolving the border dispute between the two countries remains elusive given the importance of Aksai Chin to China as a link between Tibet and Xinjiang, and the importance of Arunachal Pradesh to stability in India’s restive northeast, which is plagued by insurgencies. Both sides have agreed to “shelve” their border dispute while pursuing confidence-building measures, such as direct air and road links and growing military-to-military exchanges. China’s vague stance on India’s bid for a permanent seat on the UN Security Council and reluctance to allow India to join the Shanghai Cooperation Organization also signals China’s mistrust of India.ⁱⁱ Beijing remains concerned about India’s continued grant of asylum for the Dalai Lama and his government in exile in Dharmasala, and continues to observe closely New Delhi’s increasing engagement of East Asia, including nations that have had particularly difficult relations historically with Beijing, including Japan, the United States, Vietnam, and others.

Pakistan

The basis for China and Pakistan’s close relationship is rooted in their shared concerns over India. At the heart of the relationship is close defense cooperation. Beijing has supported Pakistan’s ballistic missile, nuclear and conventional weapons

programs for decades in part to preoccupy India's military away from China. China continues to engage with joint defense research and production.

China has also used Pakistan to expand its influence and engagement of the region. Beijing has used its close relationship with Pakistan to make progress in its relationship with a range of Arab and Muslim countries, including Saudi Arabia and Central Asian states. The Karakoram highway between China and Pakistan has given Beijing direct access to energy-rich Central Asia.

Beijing's close relationship with Pakistan has allowed it to balance Washington's on-again, off-again relationship with Islamabad dating back to Pakistan's participation in the CENTO (Central Treaty Organization) and SEATO (Southeast Asia Treaty Organization) alliances during the Cold War. China has had renewed concerns about U.S. relations with Pakistan following September 11, including military base and overflight rights in support of on-going operations in Afghanistan, and U.S. designation of Pakistan as a major "non-NATO ally" in June 2004. The signing of the "Treaty of Friendship, Cooperation, and Good Neighborly Relations" between China and Pakistan in April 2005, which commits both countries to abstain from joining "any alliance or bloc which infringes upon the sovereignty, security, and territorial integrity of the other side," is aimed in part at preventing Pakistan from emerging as a base for anti-China operations, particularly by the United States. Meanwhile, Pakistan has become an important partner in China's battle against radical Islamic separatists: Beijing claims that many Uyghur insurgents in Xinjiang have received training and sanctuary in Pakistan.

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ⁱ Paranjoy Guha Thakurta, "China could overtake US's India trade", *Asia Times Online*, March 15, 2006, http://www.atimes.com/atimes/China_Business/HC15Cb06.html, accessed March 15, 2006.

ⁱⁱ China agreed to admit India as an observer at the SCO but only as a quid pro quo for Russia agreeing to admit Pakistan.

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By Derek Mitchell & Chietigj Bajpae
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China's influence is rising in Central Asia. Beijing's interests in the region are multi-fold: access to energy resources; concern about growing U.S. presence along its western frontier; desire to promote principles of its "New Security Concept"ⁱ; and urgent need to prevent instabilities emanating from the region, including terrorism and Muslim separatism, from influencing events in China's restive Xinjiang region. China's trade with Central Asia is relatively minor but holds great potential for growth. Indeed, China's huge market and the region's rich resource base will increasingly connect the development of both sides in years to come.

The foundation of China's current relationship with Central Asia rests on its border agreements with the region reached in the early 1990s. Not all disputes have been settled, and some remain the subject of controversy within individual countries, but China has generally been viewed as having handled the process sensitively and effectively to reassure countries of its good faith in managing regional affairs. China subsequently used this foundation to work with regional states to establish the Shanghai Cooperation Organization (SCO), originally dubbed the "Shanghai Five" -- including China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and later Uzbekistan -- to address the "three evils of terrorism, religious extremism, and separatism," and to promote greater economic integration and development along their border.ⁱⁱ

China has used the SCO as a convenient vehicle for demonstrating the virtues of the New Security Concept in action, and for issuing statements directed at the United States calling for the creation of a "multi-polar world." China remained silent when the United States established military bases in Uzbekistan and Kyrgyzstan soon after September 11 for fear of antagonizing the Bush Administration as it sought to expel al Qaeda from Afghanistan. Over time, however, Beijing began quietly to express its discomfort over the prospect of long-term U.S. military presence on its western periphery. While China may not have initiated the SCO statement in July 2005 calling on the United States to set a timetable to withdraw its military presence from Central Asia, Beijing (and Moscow) clearly did not object, suggesting China may have deemed the threat of a long-term U.S. military presence on its western periphery of far greater strategic importance than U.S. counterterrorism efforts in South Asia.

Indeed, China has taken advantage of rifts in U.S. relations with the region. In May 2005, for example, Beijing hosted Uzbek President Islam Karimov only two weeks after the United States condemned him for violently suppressing unrest in the Uzbek city of Andijan. Shortly thereafter, President Karimov ordered the United States to withdraw its military presence from the Karshi-Khanabad (K2) base within six months. In this way, China offered leverage to a relatively small state to defy the United States and the international community on a matter of human rights.

China's interest in supporting President Karimov may also have been related to concerns about the potential cross-border impact of the so-called "color revolutions" that gripped former Soviet states in 2004-5. Some Chinese officials alleged a U.S. hand behind the movements, and suspected that the United States had a strategy to induce

democratic change through support for domestic social movements. They feared the United States may have a similar strategy for China, and worried in particular that movements such as those in Uzbekistan and later in Kyrgyzstan, which share borders with China, could influence social stability in China.

Beyond preventing the region from emerging as a source of instability, China's other major interest in the region is gaining access to its energy resources in order to diversify sources of oil and gas imports. In 2005, construction was completed on an oil pipeline linking Atasu in central Kazakhstan to Alashanku in western China, which will become operational in mid-2006. There are plans to eventually extend the pipeline to other energy-rich Central Asian states and to the Caspian Sea.

In the end, the United States and Russia remain Central Asia's most important and influential political and economic relationships. However, China's role in the region is rising, and both nations will need to deal with growing Chinese regional involvement and influence in years to come. China continues to put priority attention on its economic interchange but will continue to promote both its bilateral relationships and the SCO to address transnational threats, prevent U.S. (and Russian) dominance on its periphery, and offer reassurance of China's good faith and partnership in an era of rising Chinese power.

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ⁱ China unveiled its "New Security Concept" in 1997 to reflect its aspiration for a new post-Cold War international security order. It marks a new proactive Chinese approach to international affairs and an alternative vision of international order, particularly in relation to the U.S. alliance-based security structure in East Asia. It calls for:

- Adherence to the Five Principles of Peaceful Coexistence;
- Emphasis on mutually beneficial economic cooperation among states;
- Pursuit of confidence-building measures amongst states;
- Establishment of bilateral "strategic partnerships" that are not directed at any third country.

See: *China's National Defense in 1998*: <http://www.china.org.cn/e-white/5/index.htm>

ⁱⁱ For a description of the Shanghai Cooperation Organization: China's Ministry of Foreign Affairs, *Shanghai Cooperation Organization*, July 1, 2004, <http://www.fmprc.gov.cn/eng/topics/sco/t57970.htm>, accessed January 5, 2006.

China and Russia

By Derek Mitchell & Chietigj Bajpae

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China's relationship with its neighbor to the north has been fraught historically with tension, mistrust, and competition. Even in the early years of communist China, fraternal assistance and cooperation between Moscow and Beijing masked suspicion and nationalist pride that eventually led within a decade to an extended period of ideological competition between the two countries for influence and leadership in the communist world, and eventually military hostility along their common border.

Although an underlying sense of mistrust has not disappeared, the demise of the Soviet Union has enabled Russia and China to display a new commitment to cooperation that is facilitated by an increasing array of common strategic interests and challenges. Russia has Chechnya; China has Taiwan and Xinjiang separatism. Russia bristles at NATO and Partnership for Peace nations extending around its periphery; China is likewise sensitive to the U.S. military presence and alliance partnerships on its doorstep. Moscow is suspicious of U.S. meddling in its internal affairs, charging that the United States, through non-governmental and governmental agents, have fomented "color revolutions" in former Soviet states to increase U.S. influence in the region and potentially induce similar changes in Russia; China has similar concerns. Both countries favor the creation of a multipolar world.

China has used its relationship with Russia as the prototype for its "new security concept" in which alliances are replaced by "constructive strategic partnerships" among states and, in Chinese parlance, are "not directed at any third country." In practical terms, China and Russia have resolved their long-standing border dispute, and agreed to complete the delimitation of their 4,300-kilometer border by 2007. China and Russia have also worked together through the Shanghai Cooperation Organization (SCO) to promote their respective economic and security interests in Central Asia, although Russia remains wary about growing Chinese (and U.S.) influence in these former Soviet states.

The two countries have also found common cause as partners in the UN Security Council to protect shared interests. For instance, China and Russia, both of which have economic and political interests to protect in Iran, have stood together to oppose UN action to sanction Iran over its defiance of the international community concerning its nuclear program. Russia has taken the lead in this effort, which has allowed China to remain relatively quiet on the matter.

China and Russia have developed substantially closer economic and military ties in recent years that have cemented the relationship in practical terms. In 2005, Sino-Russian trade grew by 37.1 percent on the previous year to \$29.1 billion. Russia is now ranked as China's eighth largest trading partner.¹ Much of Russia's exports to China come in the form of oil, natural resources, and military hardware sales; about half of the increase in Russian export value to China in 2005 came from the oil trade. Russia currently provides 8 percent of China's energy needs. China, meanwhile, exports an increasing number of high-tech products to Russia. The two countries announced a goal of increasing total bilateral trade to \$60-\$80 billion by 2010, although implementation may prove difficult if commodity prices decline.

Even as the energy trade remains a point of convergence for China and Russia, energy-related matters also serve as points of contention in the relationship. China has been frustrated, for instance, with Russia's reluctance to allow Chinese investment in Russia's energy sector. Russia has also resisted making a final decision on whether to run at least a spur from its planned cross-border oil pipeline – running from East Siberia to the Pacific Ocean -- to Daqing in northeastern China. Despite several statements of seeming commitment to China (and Japan) by the Russian leadership over the past several years, no final decision on the matter has yet been made, deeply frustrating Beijing with Russia's apparent gamesmanship.

Because China has a limited capacity for indigenous military development, Russia continues to be China's primary source of advanced defense items, which in recent years have included, *inter alia*, Kilo-class diesel submarines equipped with long-range anti-ship cruise missiles; advanced destroyers with anti-carrier missiles; 3rd and 4th generation fighter aircraft; AWACS and tanker aircraft; advanced radars; short-range missiles; and anti-aircraft batteries. Russia has been careful not to sell China its most advanced items due to lingering fears among many Russian strategists about contributing too readily to the military development of a major power along Russia's border. However, weapons sales to China have continued for economic reasons to keep Russia's defense industry afloat in an era of decline since the end of the Cold War.

In August 2005, the two sides engaged in their first joint/combined military exercise. Held under the aegis of the SCO, "Peace Mission 2005" involved about 10,000 troops and was framed as an exercise to combat "terrorism, extremism, and separatism" (although it included an amphibious operation with echoes of a Taiwan scenario). Some viewed the exercise as a vehicle for Russia to sell China more weapons; nonetheless, questions have arisen about the implications of growing China-Russia political and military cooperation for future strategic relations, particularly given an increasingly convergent commitment to constrain U.S. power and influence.

Nonetheless, the China-Russia relationship has inherent limitations. Both states still have stronger trade and investment relations with the United States than with each other. Sino-Russian trade in 2005 was one-tenth of China's trade with the United States, and 2 percent of China's total trade volume.ⁱⁱ Russia is also wary of the demographic imbalances created by the encroachment of China's population into its sparsely populated Russian Far East. This area requires an influx of labor, but Chinese immigrants have engendered resentment and security concerns due to problems of assimilation and growing Chinese economic domination of the region. The massive benzene spill at a factory in China's Jilin province in November 2005 led to cross-border effects downstream that generated ill will, and demonstrated Russia's susceptibility to poor governance, lax regulations, and other vulnerabilities from the rising power to its east.

In the end, the nature of future bilateral relations between China and Russia will depend greatly on their respective relationships with the United States. The relationship today remains a marriage of convenience in which Russia's economic interests coincide neatly with China's desire to modernize its military quickly and meet its energy/natural resource needs. Both sides also see continued political and strategic advantage to demonstrate closer collaboration as a point of leverage against any suspected or real U.S. efforts to influence or impose its will on the two governments.

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ⁱ Ministry of Commerce of the People's Republic of China, *Top Ten Trading Partners*, March 21, 2006, <http://english.mofcom.gov.cn/aarticle/statistic/ie/200603/20060301722237.html>, accessed March 30, 2006.

ⁱⁱ Patrick G. Moore, "China gets its pound of Russian flesh", *Asia Times Online*, March 24, 2006, http://www.atimes.com/atimes/Central_Asia/HC24Ag01.html, accessed March 30, 2006.