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“TECHNOLOGY AND CULTURAL RELATIVISM”
Social Credit System, Human Rights, and the Rule of Law in
China

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Abstract

By the end of 2020, in China, every action done by its 1.4 billion citizens will be recorded in a score that can be looked up by everyone online. This project is called Social Credit System and, it represents an expansion of the credit systems which already exist around the world. Depending on their score, citizens can be awarded or punished. Awards include fast-tracked visa application, preferential treatment at hospitals, fewer taxes or priority during bureaucratic paperwork for instance, while punishments involve lower internet speed, denial of job application, loans and visas. Although the system has received significant support from Chinese citizens, it has received many criticisms from the Western world. According to Chinese officials, the system is understood as a tool for improving internal security and the market economy. However, it is not clear to what extent the system protects human rights and the rule of law. Moreover, since it entered the United Nations, the People's Republic of China has drastically changed its attitude. Therefore, the research analyses whether the Social Credit System is compatible with international human rights standards and with the principle of the rule of law. The essay will address the question surrounding the universality of human rights and regarding the understanding of the principle of the rule of law.

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List of Abbreviations

PRC: People's Republic of China

USA: United States of America

UN: United Nations

UNSC: United Nations Security Council

ROC: Republic of China

UNGA: United Nations General Assembly

UNHRC: United Nations Human Rights Council

UDHR: Universal Declaration of Human Rights

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social, and Cultural Rights

CPC: Communist Party of China

SCS: Social Credit System

HRC: Human Rights Council

UPR: Universal Periodic Review

NPC: National People's Congress

PLA: People's Liberation Army

1 Introduction

The current COVID-19 pandemic, which is causing deaths and economic uncertainties in almost every country of the world, is also bringing to the surface the geopolitical tensions of the 21st century. The second half of the 20th century has been commemorated as the triumph of Democracy which was seen as an aspiration for a system of governance and as the best model of what a good society should look like. However, the 21st century is facing a decrease of democracy to such an extent that democracy is considered to be under serious threat. According to the Democracy Index from The Economist Intelligence Unit, 89 countries regressed in 2017 (Democracy Index, 2017). Moreover, the latest Transformation Index from the Bertelsmann Foundation, a think-tank, which focuses on emerging economies concluded in their report that: “The quality of democracy [...] has fallen to its lowest level in 12 years” (BTI, 2018). The reasons why people started to be sceptical about the efficacy of democracy, concern the social as well as economic aspect and can be caused by internal and external factors. On the one hand, countries in which Democracy, and democratic values, are well established, such as the United States of America (USA) and some European Countries, are shifting towards non-inclusive and even discriminatory social policies. On the other hand, the rise of China in the international arena is offering other Governance template and thus an alternative governance structure. Indeed, following its economic success, some countries became more attracted and closer to Beijing to such an extent that is clear that the People’s Republic of China (PRC) is undoubtedly challenging the hegemonic power exercised globally until the 21st century by the USA.

With the advent of new technologies, while prioritising economic development, the PRC is moving towards being a surveillance state at the expenses of human rights. In the latest Chinese Universal Periodic Review, Human Rights Watch expressed concern about the Chinese Government’s drive to employ the latest technologies, including biometric collection, artificial intelligence, and big data, in strengthening mass surveillance across the country without oversight, transparency, or privacy protections (OHCHR, 2018). Of particular relevance is the Social Credit System (SCS) a national reputation system which combines credit and social scores. The project was presented in 2014 with the “*Plan of Implementation*” and, it will be fully implemented by the end of 2020. In this way, 1.4 Billion people will be judged, and given a score, by an algorithm which combines credit scores, surveillance cameras, artificial intelligence, and big data. Thus, it is in an expansion of the already existing scores system in countries like The United Kingdom, USA, or Australia. Awards include fast-tracked visa application, preferential treatment at hospitals, fewer taxes

or priority during bureaucratic paperwork for instance, while punishments involve lower internet speed, denial of job application, loans and visas. Whilst in China the system had been praised, with the justification of security and regulation of social behaviour, it has undoubtedly raised many controversies and criticisms, especially coming from the Western World. Amongst those criticisms, the fact that it oversteps the rule of law, and some fundamental freedoms and rights. Furthermore, they argue that the SCS is the epitome of the disastrous consequences for human rights with an uncontrolled technological development. As stated by Kostka, “We can find tons of articles and news that relate the Social Credit System to Nosedive (Black Mirror episode), expecting that what has been happening in China as a real upcoming dystopia. But surprisingly, most Chinese are approving and supporting this idea” (Kostka, 2019).

The purpose of the thesis is to analyse the role of China in the International arena and how the concept of human rights and the rule of law, as understood by the Communist Party of China (CPC), are in line with the international standards. Particularly, as the thesis focuses on the SCS as the main case study, the research question has been defined as follow: in what ways is the SCS consistent with international human rights law and with the principle of the rule of law? Accordingly, the sub-questions have been structured as follow: What is the historical understanding of human rights and of the rule of law of the PRC? How are human rights and the role of law perceived in China? How is China trying to reshape the United Nations (UN)? What is the role of the so-called “Asian Values” in the discussion? Before explaining the structure and the methodology of the research, the paper will clarify the background of the research.

According to Eric Li, an American political scientist and venture capitalist, “Xi Jinping’s transformative vision for China and the Communist Party, along with his concepts of globalisation and Marxism with Chinese characteristics, are the perfect combination for leading the country into a new era of prosperity” (Li, 2019). The role that the PRC has played in the UN has drastically changed. First, it is essential to note that, despite China is one of the charter members of the UN and has a seat in the United Nations Security Council (UNSC), due to internal complications the Government has always adopted for a defensive strategy. Moreover, as one of the victorious Allies of the Second World War, it was the Republic of China (ROC) that joined the UN upon its founding in 1945. However, after the Chinese Communist Revolution, led by the CPC with Mao Zedong, the country remained under its control. It was not until 1971 when the United Nations General Assembly (UNGA) adopted Resolution 2758 in which the PRC acquired international recognition. Nevertheless,

following the aftermath of the Tiananmen massacre and the rumble of the Berlin's wall fall, on top of the internal social and economic difficulties in the country, the PRC's voice in the UN remained almost silent.

When Xi Jinping came into power in 2012, China was ready to expand its geopolitical influence and to impose its vision of globalism. In one of his first speech after being elected, Xi spoke for the first time about the "China Dream" which he described as "realising the great renewal of the Chinese nation" (Muhlhahn, 2019). The PRC has conducted numerous economic and social reforms which eventually brought five hundred million citizens out of poverty (Wu, 2016). The Party is investing in infrastructure within the country as well as in foreign nations. Amongst those, Chinese investments and contracts in sub-Saharan Africa total \$299 billion from 2005 to 2018, according to Investment Global Tracker, and in 2018, Chinese president Xi Jinping vowed to invest a further \$60 billion into African nations (United Nations, 2017). Furthermore, the aggressive approach of the USA towards the UN is paving the way to a new global order in the UN. President Trump has withdrawn from the Trans-Pacific Partnership trade agreement, the Paris Climate Accords, the Iran Nuclear Deal and, in June 2018, from the United Nations Human Rights Council (UNHRC). This has heightened the USA unilateralism, and China sees this opportunity to fill the leadership vacuum that Washington has left. At the World Economic Forum Annual Meeting in January 2017, Xi Jinping offered a staunch defence of free trade and globalization and encouraged others to look to Beijing for leadership (Lagon and Lou, 2018, p. 241). It is not surprising that the speech was titled: "Jointly Shoulder Responsibility of Our Times".

The Charter of the UN is based on ten pillars. Together with peace and security, and development, those pillars include the respect of human rights and the principle of sovereignty, along with non-interference in the internal affairs of a state. China is also emerging as a pivotal player in the international human rights system to such an extent that Western diplomats are concerned that the universality of human rights can be undermined in favour of an orthodox interpretation of national sovereignty and non-interference in internal affairs. Most recently, in April 2020, Jiang Duan, a Chinese official in Geneva, was nominated for the first time to hold a seat on the consultative Group of the UNHRC. In this role, he will be responsible for the selection of at least 17 UN human rights mandate-holders, commonly known as Special Procedures, until March 2021. Considering, the high level of human rights violations and abuses in China, the appointment of Mr Duan raised several criticisms. Particularly, Mr Neuer, a Canadian lawyer and executive director of UN Watch, stated that: "This is absurd, and China's appointment threatens to undermine the credibility of

the UN's highest human rights body—which already counts Venezuela, Pakistan, Eritrea and Qatar among its elected members—and is liable to cast a shadow upon the United Nations as a whole” (United Nations Watch, 2020). The issue concerning international human rights standards is not new and has always been subjected of debates, in which the Eastern approach opposes to the Western one. Whilst, the UN Charter has some reference to human rights, the first instrument which aimed at protecting human rights and fundamental freedoms inherent to all human beings is the Universal Declaration of Human Rights (UDHR). Since the UNGA adopted Resolution 217A (1948), in which the UDHR was adopted, the ideological differences were evident. Therefore, we can say that the UDHR is a compromise between two competing ideologies. The core principles of human rights first set out in the UDHR, such as universality, interdependence and indivisibility, equality and non-discrimination, and that human rights simultaneously entail both rights and obligations from duty bearers and rights owners, have been reiterated in numerous international human rights Conventions, Declarations, and Resolutions (United Nations General Assembly, 1948). Despite the UDHR has no legal values, since it is a Resolution and not a Treaty, it is commonly perceived as customary law, and it is generally agreed to be the foundation of international human rights law. Over the years, in 1976, two Covenants were adopted which became legally binding; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) which respectively were supported by the Western and by the Eastern bloc. Together with the UDHR, they constitute the International Bill of Rights.

For the purpose of this research, it is necessary to analyse how China is trying to reshape the UN and how human rights are interpreted, and translated in national law, by the PRC. Indeed, China is emerging as a normative power in the field of human rights, prioritising national sovereignty and economic development. As stated by Alvaro Gomez: “The CPC has a strong sense of exceptionalism on the field of human rights, which motivates their aim of undermining the whole system. Their willingness to do so, disregarding all claims to the universality of human rights, in order to advance their interests grates against the core of the liberal tradition of human rights” (Gomez, 2019). In almost every research conducted by NGOs, such as Amnesty International or Human Rights Watch, there is evidence of human rights violations in China, particularly regarding freedom of speech, movement and religion.

Moreover, China has been highly criticised for the interpretation of the principle of the rule of law. There is not a single definition of what the rule of law is, but usually, it is

considered to be a value of democratic societies. It is defined by the Oxford English Dictionary as “The authority and influence of law in society, especially when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in Government) are considered equally subject to publicly disclosed legal codes and processes” (Oxford English Dictionary, nd). Thus, it means that everyone is subject to the law, including the ones who make the laws. Most of the times, the rule of law implies a division between the legislative, executive, and judiciary power. The existence and application of the rule of law in China have been highly disputed. In China, it is translated with the word *fǎzhi*, which is better interpreted in English with the phrase “strengthening the law”. Considering that, de facto, the judiciary is not independent of the CPC, due to the political pressure that the judges face, it seems more appropriate to refer to it as the rule by law. Rule by law in this case refers to the use that the CPC does of the law in order to facilitate social control. The question that remains is whether in China is more important the law or the Party.

As the following thesis aims at analysing the perception of the rule of law and human rights in China, under the light of the SCS, it is essential to understand the concept of “Asian Values”. At the core of the narrative of “Asian Values” is the denial of the universality of human rights in favour of cultural relativism. Following the economic success of the Asian “dragons” or “tigers” (Singapore, South Korea, Hong Kong and Taiwan), and the Bandung Conference of non-aligned states that played a pivotal role in strengthening an assertive third-world identity and raised criticisms towards behaviour of Western countries, scholars started to debate the universality of human rights. Despite the Vienna Declaration reaffirmed the indivisibility and interdependence between civil and political rights and social economic and cultural rights, the Chinese Government place emphasis on the social, economic, and cultural rights. One of the reasons why the cultural relativity argument is stressed by the Chinese Government lies on the historical roots of its society, i.e. the Confucianism and Legalism, which also influence the idea of law in China. On the one hand, Confucianism poses the emphasis on human beings and on their capacity to act with virtue. While rejecting formal laws it calls for the participation of every citizen in order to find cooperative solutions, the concept is known as *li*. It is important to note that *li* can change according to the historical period and norms of a society. Confucianism is similar to the Western school of thought of the Relativist. On the other hand, Legalism stresses the importance of adhering to the law. Thus, Legalism advocates the utilisation of codified laws and harsh punishment to achieve

social order. The following thesis will analyse and understand the SCS under the light of the two schools of thoughts.

Consequently, the thesis will be structured in four main chapters. The first chapter will discuss the foundation of modern China from the Communist Revolution until the advent of Xi Jinping. Particularly, it will shed light on the human rights records and on the development of the rule of law. The second chapter will be dedicated to the explanation of the Asian Values, which have been already presented in the introduction. Subsequently, the thesis will explain how China is trying to reshape the UN and how domestic norms and legislation conflict or conciliate to international standards. In doing so, the research analyses if the Chinese's Constitution lacks or not provisions on the relationship between treaties and domestic law. Lastly, the fourth chapter will be dedicated to the SCS to answer the research question and thus provide an assessment of the SCS in relation to potential human rights and rule of law violations.

It follows that the most suited approach to take is a comparative analysis of legal sources in addition to document analysis. Comparative analysis of legal sources aims at analysing the primary sources, such as the UN Charter, the Chinese Constitution, and the Plan for Implementation of the SCS in order to compare the definitions of human rights and the rule of law as they stand in the respective legal texts. Document analysis is the form of qualitative research in which documents are interpreted by the researcher to give voice and meaning around an assessment topic (Bowen, 2009, p.31). Since documents can be biased for political and ideological reasons, they have to be analysed critically. Indeed, while talking about China from a Western perspective, there might be complications. The first one refers to what Edward Said (1979) described as Orientalism, i.e. cultural barriers that cannot let the reader understand with an objective eye the situation in China. Consequently, the second risk is ethnocentrism. In this way, the external observer is tempted to assess behaviours, values or cultural traits on the basis of criteria established by his or her own culture (Berna, 2015). The last risk is applying an evolutionist approach and assuming that one society could serve as a reference for other societies (Ibid.). There might also be another risk, coming from the other side, against those who write with sympathy or attempts to understand Chinese politics too much on its terms.

2 Origins, Reforms and Human Rights Record; Past and Future of the People's Republic of China

The following chapter aims at analysing the development of the PRC since its proclamation on October 1st, 1949. The chapter will be divided into three subchapters which symbolises the pivotal historical periods. The first one concern the period between 1949 until the Tiananmen massacre or incident (as referred by the Communist Party). The second period refers to the aftermath of the Tiananmen massacre until 2012, when Xi Jinping was elected Secretary of the CPC. The third one discusses his advent into power. The chapter will particularly explain how human rights developed in China, and it will serve a historical basis for the understanding of the research.

2.1 Historical Facts

The 20th century signalled one of the most crucial, as well as bloody, periods for China. At the beginning of the 20th century, China was still under the control of the Qing Dynasty since 1644. However, following the European occupation of the 19th century (after the Opium War) and the consequent economic crisis, people started to ask for reforms. Thus, as a consequence of internal unrest and international pressure, after 2000 years of imperial rule, the ROC, with its modernised army officers which supported the Xinhai revolution, managed to gain power. Whilst the new Government tried to reform the country, the state completely fell apart, a situation in which localism reasserted itself with large-scale landlords and small-scale armies were ruling all across China. In this scenario, which follows the end of the First World War and the October Revolution in Russia, the Communist Party was created by Mao Zedong on May 4th, 1921. The ROC allied with the CPC in order to unify the country, but the alliance broke down, and the Communist felt victim in 1927 and in 1934 with the latter escaping to the mountains in the north, where they built secret bases, with a miraculous escape known as the “Long March”. Nevertheless, while the ROC was busy fighting against the CPC, the Japanese began to invade and occupy a significant portion of China. When the Japanese left China in 1945, another civil war was in the air. The USA and its international allies supported the ROC, which officially controlled a larger territory and population while the Soviet Union provided aid to the CPC. Eventually, the war, called War of Liberation, was won by the CPC and, on October 1st, 1949, Mao Zedong proclaimed the founding of the People's Democratic Republic of China at Tiananmen Square. The ROC retired to Taiwan

proclaiming Taipei the temporary capital of the Republic and Chiang continued to assert his Government as the sole legitimate authority of all China.

Once Mao assumed power, he had to establish new institutions to transform China into a socialist country (Muhlhahn, 2019). The Party was focused on promoting the rights of the masses and thus, collective rights over individual human rights. Initially, the PRC promised equal rights for women, rent reduction, land distribution and several individual freedoms as well such as freedom of thoughts, speech, movement, belief, and assembly, to name a few. However, the CPC was not able and even willing to protect those rights. For instance, land redistribution and reform implied the violent destruction of the power of the landlords. Moreover, fearing the comeback of the nationalists supported by the USA, and the involvement in the Korean War against the Americans, the Party started massive propaganda and, every person sympathising the opponents was publicly humiliated or executed. Even the media and the publishing sector was brought under Party control (Ibid.). Moreover, in 1953 Mao adopted the five years plan (already adopted by Russia). At first, the plan worked well, with an industry increase of 121%, even if, people were working under inhumane circumstances (Smil, 1999). Consequently, inflation rose, and between 1952 and 1962, around 20 million Chinese died due to famine (Ibid). The economic reforms brought legal reforms as well. The CPC created the legal criminal justice system from scratch. According to Sida Liu, “These new courts were envisioned not as independent arbiters but as the knife handle of the proletarian dictatorship” (Palmer, 2017). Thus, defence lawyers were treated as criminals; imprisoned or publicly harassed.

When Mao died in 1976, Hua Guofeng became the Secretary of the CPC but, due to internal troubles within the Party, in 1981, he retreated from the political scene, without substantial changes in the economic and social sphere. While his successor was Hu Yaobang, de facto the power was exercised by Deng Xiaoping, also known as “the architect of modern China” (Gomez, 2019). He managed to decentralise power, to introduce fixed terms of office, a mandatory retirement age, and to draft a Constitution. All those measures were taken in order to prevent the rise of another dictator. Despite the achievement that he managed to obtain; Deng Xiaoping had a line he would not cross: “No Western-style separation of powers” (Shirk, 2018). Moreover, Deng did not hesitate to crack down on human rights and any sign of civil resistance, from the Democracy Wall protests in the late '70s that led to the 1989 massacre of Tiananmen, an inflexion point for human rights in China. After all, his concept of human rights is based on state sovereignty. As he stated, “The right of a nation, or

sovereignty is more important than human rights, and right of subsistence is more fundamental than political freedom” (Chunde and Hangsheng, 1999, p. 300).

2.2 June Fourth; A Turning Point for Human Rights in China

The protest that occurred in Beijing from April 1989 to June 1989 must be seen in a broader context which started already with the Chinese Cultural Revolution of the 70s. Furthermore, 1989 was a year of enormous change in Eastern Europe and the rest of the world. Some scholars argue that the events in China anticipated the demonstrations elsewhere (Muhlhahn, 2019). Thus, by the end of 1978, before all this unfolded, word leaked out about the proposed reforms, which generated enormous excitement and electrified many intellectuals and grass-root citizens (Gomez, 2019). The country was opening up to the world and coming back from the devastating shadow of the cultural revolution. Deng Xiaoping’s call for openness, innovation, and undogmatic thinking blazed the path to economic reform and artistic experimentation, but, at the same time, it caused some Chinese (especially students and intellectuals) to anticipate more freedoms and rights (Muhlhahn, 2019). Hoping for extensive political reform, the so-called petitioners started to glue to the walls of key buildings in central Beijing big-character posters, “many focused on political freedoms and ‘democratization’, although those ideas often remained sketchy and superficial” (Gomez, 2019). These groups began to agitate the more conservative within the CPC. Amongst the group have been formed in those years, the “Democracy Wall”, also referred as “Democracy Movement” created in 1979 by a group of activists in Beijing, particularly caught the national and international attention. Since its formation, the movement was evocating a Beijing Spring, seeking to evoke the Prague Spring. They were already involved in the Third Plenum in 1979 when they were calling the CPC to learn honestly from the mistakes of the past. Notably, all the suggestions were related to the lack of democratic mechanisms. Wei Jingsheng, a Chinese activist, wrote on a poster: *“We want to be the masters of our own destiny. We need no gods or emperors. We want the modernization of people’s lives. Democracy, freedom, and happiness for all are our sole objectives in carrying out modernization. Without this fifth modernization, all others are nothing more than a new promise. Comrades, I appeal to you: Let us rally under the banner of democracy. Do not be fooled again by dictators who talk of “stability and unity.” Fascist totalitarianism can bring us nothing but disaster* (Muhlhahn, 2019).

The movement always became bulkier for the CPC. Everyone was scrambling, especially after the reforms in the monetary sector in 1988 which led to a severe loss of macroeconomic control, triggering an inflationary crisis that affected the entire society and that could not be brought under control. Following austerity policies caused by inflation, dissatisfaction spread in urban areas, and the protests were at the gates. The situation escalated when the pro-reform Communist General Secretary Hu Yaobang, which was loved by people and seen as a liberal, died in April 1989. People were afraid that, with his death, the hopes for a more open and liberal China were dying as well. Thus, they gathered in Tiananmen Square, where the People's Democratic Republic of China was founded and thus the symbol of sovereignty, to express their dissent. While the protesters were asking for a dialogue with members of the CPC in order to participate in the process of decision-making, the Governments saw them as enemies and traitors that needed to be purged. By May 4th, civilians and workers from Beijing joined the protest. On May 13th, some students started a hunger strike until, eventually, they met Li Peng, then Prime Minister of China. Unfortunately, the dialogue did not lead to any conclusion, and tension arose to such an extent that, on May 20th, the Government declared martial law. At first, the army went unarmed to Tiananmen Square but, on the night between May 3rd and 4th, 300000 soldiers moved to the square from different directions (Antony, 2006). Armed with assault rifles and tanks they shoot at students and residents along their way during the whole night. The next morning, they drag down the statue of the goodness of democracy which had come to represent the protest movement.

The attack brought an end to the political reforms that gave people too much hope concerning the improvement of economic and social policies in China. With this massacre on the world stage, the Government eventually stifled the democracy movement, calling it a counterrevolutionary political turmoil (Muhlhahn, 2019). Despite censorship since, the events caused a series of butterfly effects. First of all, it proved the rift within the CPC. General Secretary Zhao Ziyang was silenced and replaced by Jiang Zemin and consequently by Zhu Rongji. According to Muhlhahn, they had been major leaders of the reform in big cities during the 1980s, and they prioritised stability when facing popular protest (Ibid.). But more importantly, while the protests were demanding for more freedoms, the Party strengthened its control over universities, media, student organisations, press, arts, and literature.

2.3 A Global Economic Powerhouse?

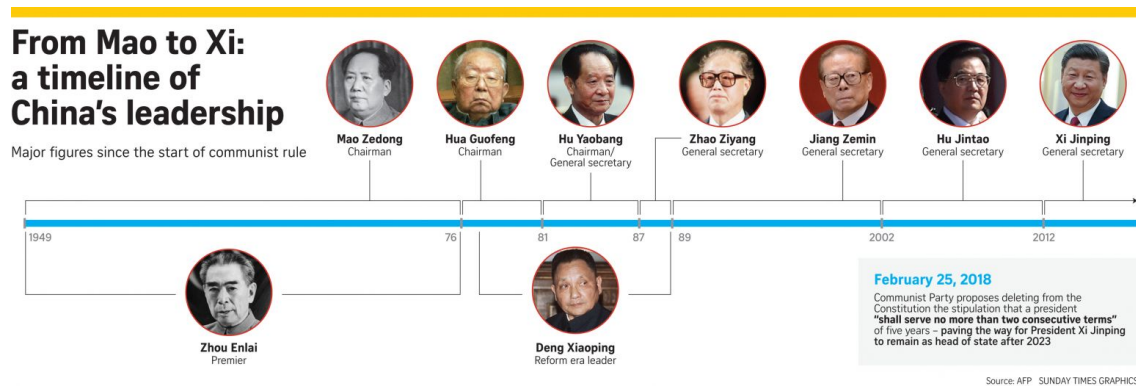
After the massacre or incident in Tiananmen Square, and the harsh international response, no one would have ever expected that China would have experienced the fastest economic growth in history. Deng Xiaoping retired, and the power moved in the hands of Jiang Zemin. Under the Jiang's administration, the PRC's economic performance pulled an estimated 150 million peasants out of poverty and sustained an average annual gross domestic product growth rate of 11.2% (China Daily, 2003). At the same time, China had to regain the international trust that had been lost after the several human rights violations of 1989. Eventually, China found itself under pressure, and a new channel of dialogue with the international community was necessary.

The first step was adopted in 1991, when the Chinese Government published a White Book on Human Rights, declaring its commitment to the lofty goal of human rights, as well as its guarantee to support and respect the UN's treaty framework. Thus, China accepted that human rights were compatible with Chinese socialism. According to Piccone China's 1991 "White Paper," was an effort to mitigate the negative media it faced after Tiananmen Square, emphasised that "Chinese citizens are allowed to exercise their individual rights and freedoms only to the extent that they do not violate state interests, the interests of society at large or of the collective, and the rights of other citizens." (Piccone, 2018). In November 1991, China joined the Asia-Pacific Economic Cooperation, which aims at promoting economic cooperation. Moreover, in 1993 the Government created the China Society for Human Rights Studies, technically a non-governmental organisation which has presented for the first time to the world, the Chinese perspective on human rights (or human rights with Chinese characteristics). In addition, Jiang expanded the legal system introducing for the first time the concept of "socialist country under the rule of law" in 1997 and it was also enshrined in the Chinese Constitution in 1999 (Gomez, 2019). In 2001 China formally joined the World Trade Organization.

However, in the 90s, the Chinese position has been mainly defensive towards human rights, and they were seen as a source of regime threat and instability. For instance, between 1997 and 2001, at least 143 lawyers were detained or arrested for working on criminal cases, many refused to take a case, and others simply accommodated the whims of the authorities (Palmer, 2017). At the beginning of the 21st century, an alternative argument regarding human rights developed in China. While, as previously explained, they were seen as a threat, they became to be seen as the governing capacity of the Party-state, hence deserving reception and acclamation. In 2002, for the first time, a Communist ruler (Jiang) retired from

the position as General Secretary of the CPC without dying or without a coup. The peaceful transition had been seen as an improvement and as a form of authoritarian resistance. The power was assumed by Hu Jintao which remained in power for ten years until the advent of Xi Jinping in 2012. Figure 1 shows a timeline of Chinese leaders.

Figure 1: From Mao to Xi: a timeline of China's leadership (The Straits Times, 2018)



Hu's approach towards human rights did not differ too much from the previous leaders; Hu's pragmatic, non-ideological agenda had two core values; maintaining social stability to further economic development and sustaining Chinese culture to enrich national sovereignty. One of the most crucial stages concerning human rights during the period of Hu Jintao was represented by the establishment of the Human Rights Council (HRC), in 2005, and by the adoption of the Universal Periodic Review. On the one hand, the HRC replaced the former Human Rights Commission, a weaker system. Initially, China opposed to the formation of the Council but, realising that the creation would have been inevitable, Chinese diplomats fought to avoid membership criteria for the Council, remove its authority to consider country-specific resolutions, and otherwise weaken mechanisms to monitor and scrutinise specific violations (Lagon and Lou, 2018). However, after a complicated process of negotiations, it was decided that the HRC would have addressed country-specific resolutions. On the other hand, the Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. It is based on objective and reliable information of the fulfilment by each state of its human rights obligations and commitments.

2.4 The Challenge of Expansion: China between Xi's Ambitions and Human Rights

According to the latest *Forbes* list of the World's most powerful people, Xi Jinping is on top of the leaderboard (Forbes, 2018). Indeed, the Secretary-General of the CPC has gained

absolute powers in the past eight years, and he does not seem keen to give up. His plan can be broken down in four main points; economic development, sustainability, expansion, and identity. Before going into details, it is crucial to elucidate who Xi Jinping is and how he managed to gain power.

Xi was born in Beijing in 1953 and was the son of a Communist revolutionary leader who was the chief of China's propaganda and subsequently, before being purged by Mao Zedong, vice president of China. Affected by the disastrous consequences of the Cultural Revolution, Xi moved to the countryside to work. It is here that he started reading books related to politics, sociology, and literature. Nowadays, Xi is still praised, by the Chinese population, for his courage, strength, and resilience. In fact, there are several articles and videos named "*From Feeding Pigs to Ruling China*" or related to Xi's resilience. Once returned to Beijing he studied chemical engineering, but it was clear that his life was going into the direction of pursuing the political career. Xi worked in local governments, in the province of Fujian, as a governor, and in Zhejiang where he held the same role. The turning point of his political career is represented by the promotion, in 2007, after a scandal surrounding the upper leadership of Shanghai, to become the city's Party secretary. This promotion allowed Xi to be put on a shortlist of likely successors to Hu Jintao. Consequently, starting from 2008, Xi served as vice president of the PRC (position held until 2013), and in 2010 he was elected as vice-chairman of the Central Military Commission. His rise to power was finally accomplished when, in 2012, during the 18th Communist Party Congress, Xi was elected General Secretary of the CPC, and in 2013 he became President of China after being elected by the National People's Congress (NPC) which is the China's legislature.

After assuming power, Xi assumed a series of both new economic and social reforms which reflected his political ideology. First of all, Xi began a nationwide anti-corruption campaign that soon saw the removal of thousands of high and low officials (Albert, 2019). He has demonstrated his flair for hands-on management and strict Communist Party discipline. He has launched a Mao-style campaign to tighten up controls on ideology, media, and dissent by arresting journalists and activists. Despite Xi, openly criticised the Government's actions of 1989, during the Tiananmen Square incident, Human Rights Watch said that repression in China is "at the worst level since the Tiananmen Square Massacre" (Withnall, 2019). Since 2013, the CPC has decided to ban every discussion in schools related to seven topics which are associated with the Western values and thus, are considered subversive. Amongst those, the concept of universalism, press freedom, judicial independence, civil society, citizens' right, historical mistakes of the Party, and cronyism

within the elite financial and political circles (Shirk, 2018). According to Xi's view, media, internet, and the arts have to strengthen and support the Communist Party. This has been accomplished by promoting CPC propaganda. In what is the harshest crack down on activism and human rights groups in history, the Party has imprisoned Xia Lin, a human rights lawyer, Xu Zhiyong, an important Chinese activist and, according to Shirk, in July 2005, about three-hundred lawyers whose only crime was helping citizens to defend their rights under existing Chinese law were detained on charges of "subverting state power" (2018). Furthermore, in 2017, in the province of Jiangxi, Christians were forced to replace pictures of Christ with pictures of Xi, as part of an antireligious campaign promoted by the CPC.

Another core point of Xi's ideology is based on centralisation of power which has to be achieved through law. The Party has the authority to appoint judges, and it is sweeping new laws to reinforce the Party's power over domestic and foreign NGOs, national security, and cybersecurity. In addition, the retirement age has been lowered as a convenient tactic to replace those who are inconvenient. Xi also emphasised the importance of the "rule of law," calling for adherence to the Chinese Constitution and greater professionalisation of the judiciary as a means of developing "socialism with Chinese characteristics." (Albert, 2019). As the third chapter will explain, it is not clear whether, in China, the rule of law is instead understood as "rule by law".

Xi's plan is based on three main ideologies which strongly influenced his thought. Indeed, it could be referred as a mix between Communism, Nationalism, and Leninism. First of all, Communism plays a pivotal role in Xi's idea of how a society should work. By banning Western ideals, as previously stated, Xi is trying to reshape the mindset of the intellectuals in order to strengthen political stability. As a staunch nationalist, Xi promotes the interests of China, as well as he is using the ideology to obtain people's loyalty and to avoid criticisms. Lastly, Leninism with its core idea of democratic centralism offers a way to keep a handle on things; as stated by Zhao, "It tells CPC members and ordinary citizens alike that compliance with Party discipline and Party policy is to be valued above all else" (Zhao, 2016). In 2018, Xi's ideology was enshrined in the Chinese Constitution with an amendment of the NPC, and it is referred as "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era" (China, 1983).

In addition, Xi has pledged a blizzard of economic reforms and ordered the most significant military overhaul since the 1950s. While on the one hand he believes that China deserves to restore its place in the world, on the other hand, by controlling security directly, Xi drastically reduce the chances of a coup. On top of the National Security Commission, Xi

is the chair of eight of the leading small groups. Particularly, Xi's hold on the People's Liberation Army (PLA) is even more complete than his hold on the CPC and the Government. As Tai Ming Cheung has observed, "No other Chinese Communist Party leader, not even Mao Zedong, has controlled the military to the same extent as Xi does today (Shirk, 2018). Xi coined the term "Chinese Dream" to describe its ambitions; making China the new global power. Regarding international affairs, under Xi's leadership, China is insisting upon its claim of territorial sovereignty over nearly all of the South China Sea, despite an adverse ruling by the Permanent Court of Arbitration in The Hague, by promoting its "One Belt, One Road" initiative for joint trade, infrastructure, and development projects with East Asian, Central Asian, and European countries (Albert, 2019).

Scholars argue that Xi is taking change back to a personalistic dictatorship, after a period of political progress. While Hu Jintao seemed to be more open towards improving human rights and democracy in the country, with Xi, China is taking a step back. In fact, he has clearly expressed his intention to remain in power after the standard two years terms which end in 2022. In this regard, on March 2018, the NPC, by changing the Constitution, abolished the two-term limit for the president, a clear move on the fact that Xi is planning to keep power beyond 2023. While Amnesty International is continuously reporting human rights violations and abuses in the country, the CPC is drafting and enacting a series of new national security laws which pose a severe threat to the objectives of the UDHR. Following the rapid economic growth of the second decade of the 21st century, the Government is even strengthening control over universities, academia and, the military, to name a few. While the "new China" that emerged in 1949 was based on the idea of "people's sovereignty", in reality, it seems more a "CPC sovereignty". However, the Communist Party has managed to hide its continuous human rights abuses (including the millions of death that it has caused), with the justification of economic expansion and by supporting collective rights to such an extent that the risks of democracy as expressed by Plato in *The Republic* (Tyranny of the majority) are well tangible (Jowett, 2008). The country seems to be the most concrete example of utilitarianism by supporting collective rights, referred as "Asian Values" or as "Chinese Values", which provide a different narrative than the Western approach.

3 Human Rights and the East-West Dichotomy

As it has been already explained in the introduction of the thesis, the UDHR is a compromise between the two compelling ideologies originated after the Second World War. As the

chapter will explain, doubts concerning the universality of human rights arose in the late '60s and '70s, but the debate gained traction after the end of the Cold War. Indeed, the USA aggressive foreign policy based on promoting democracy and human rights globally provoked Asian resistance and reaction against Western triumphalism. Particularly, they disagree on the way the West was imposing its values. The East was fearing of becoming clones, and, at the same time, they were criticising how the West was imposing its values since they were stepping on rights and sovereignty on other countries. Amongst those criticisms, the East accused the West of the atrocities committed, directly or indirectly, in Rwanda and Yugoslavia. The East was seeing the promotion of human rights as a new form of Western Domination. According to Alvaro Gomez, it can be said that resistance to the notion of the universality of human rights, was born in Asia (Gomez, 2019). For this reason, the different values discussed are called "Asian Values".

Initially, the first one to talk about different values is the former Prime Minister of Singapore, Mr Lee Kuan Yew, followed by the Prime Minister of Malaysia, Dr Mahathir and by other leaders in Asia, including the ones from Japan, Korea, and Hong Kong. For these leaders, the term was representing a system of values which places economic development above everything. It follows that Civil and Political Rights could be postponed until economic development has been reached, thus, that the denial of Civil and Political Rights was a necessary measure to ensure financial progress and the benefits that flow from it. Thanks to the economic development achieved in the '70s, Mr Lee argued that the Asian valued have made possible the Asian miracle. It can be argued that the economic advancement they obtained, gave them power, and it can be seen as a (late) response by east Asia to West's orientalism of the colonial and imperial era. Accordingly, they argue that Asian values have produced law and order prevalent in Singapore, and they helped to avoid chaos, violence, and anarchy, which is well established in some urban areas in Western societies. As he stated, "In the East, the main objective is to have a well-ordered society so that everybody can have maximum enjoyment of his freedoms. This freedom can only exist in an ordered state and not in a natural state of contention and anarchy" (Gomez, 2019). The statements of those leaders find origins in the 1955 Bandung Conference of non-aligned states, which undoubtedly played a pivotal role in the crystallisation of Asian values and strengthen a different concept of identity.

The denial of the universality of human rights is based on the idea of moral (cultural) relativism, i.e. the view that what is right in one culture may be wrong in another. Indeed, some scholars, especially coming from the Singapore School, argue that it is ethnocentric to

impose your own set of values elsewhere as if you know best. As a consequence, human rights are not seen as universal, and neither can they be globalised. Cultural relativists claim that human rights emerge differently in unique social, economic, cultural and political conditions. At the root of the idea of Asian values, there is the notion that in the East, what is valuable is consensus or agreement, unity, harmony and balance, and community. Asian societies are not centred on the individual but on the family and on the benefits of the larger collective. They criticise the values of the West such as individualism, individual rights and freedoms (described as selfish), pluralism, and disunity. Since everything is built around individuality, instability will prevail. The obsession with the individual, from an (east) Asian perspective, has not to be celebrated. As summarised by Berna, Asian values include the respect for authorities and elders, family and community values, work and discipline, consensus and harmony, and the primacy of economic development over individual freedoms (Berna, 2015).

Despite, the Vienna Conference (1993), which resulted in the Vienna Declaration and Programme of Action, and the creation of the Office of the United Nations High Commissioner for Human Rights, reaffirmed the indivisibility and interdependence between civil and political rights and social economic and cultural rights, the divergence between the East and the West were clear. During the Conference, Mr Liu Huaqui argued that: “The concept of human rights is a product of historical development. It is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Different historical development stages have different human rights requirements. Thus, one should not and cannot think the human rights standard and model of certain countries as the only proper ones and demand all other countries to comply with them. For the vast number of developing countries, to respect and protect human rights is first and foremost to ensure the full realisation of the rights to subsistence and development” (Huaqui, 1993). The “Easter bloc” presented itself as a close-knit and cohesive group at the Vienna Conference, as the universality of human rights had been previously discussed months earlier at the Asian regional meeting that took place in Bangkok which led to the adoption of the Bangkok Declaration (1993). Their position can be seen clearly in paragraph 8 of the Final Declaration: “Recognise that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds” (Bangkok Declaration, 1993). Apart from the regional divergencies, the Declaration also emphasises national sovereignty and the principle of non-

interference in domestic affairs and rejects attempts to link development aid to human rights (see paragraph 5 of the Declaration) as well as the use of selectivity (double standards) and the political manipulation of human rights.

The argument of Asian Values has not lost traction in the 21st century; at the end of the first South-South Human Rights Forum, in December 2017, the Beijing Declaration was adopted. In Article 1 of the document, the cultural relativity argument is clearly stated: “In order to ensure universal acceptance and observance of human rights, the realization of human rights must take into account regional and national contexts, and political, economic, social, cultural, historical and religious backgrounds” (Beijing Declaration, 2017). It has been more than 50 years since Asian values were discussed for the first time, and still, they influence and justify political decisions. Their origins lie from the works of Confucius and will be discussed in the following sub-chapter. Notwithstanding they originated more than 2000 years ago, it is paradoxical that they are also based on Western philosophical theories. Amongst those, postmodernism, i.e. the idea that everything is relative because everything is a social construct. Furthermore, as elucidated by Xi himself, China has also borrowed and expanded the concept of Westphalia sovereignty which emphasises state sovereignty and non-interference in the domestic affairs of another country (Xi, 2017).

3.1 Roots of the Asian Values

Since the term Asian Values is too generic, some people tend to associate their values in the broader context of the Sinic culture or Confucianism. Indeed, the roots of the Asian Values can be found from the school of thought originated more than 2000 years ago from the so-called “Hundred Schools of Thought” created by Confucius. Classifying Confucianism just as a religion is incorrect. In fact, it can also be referred to a social and political philosophy, a way of living, or simply as a tradition. Confucianism is based on three central values: filial piety, humaneness, and ritual.

Undoubtedly, filial piety is the core values of Confucianism and the root of the others since it is the starting point of virtue. It implies mutual respect, cooperation, and most importantly, respect for one’s parents. According to Confucius, we should treat our parents with reverence. He had a strict idea on how we should behave towards our parents; indeed, we should obey them when we are young, care for them when they are old, mourn at length when they die, and make considerable sacrifices in their memory thereafter. Confucius even said that we should not travel far away from them unless until they are alive. Filial piety is

based on the idea that moral life begins in the family and that we cannot truly be caring, wise, grateful, and conscientious unless we respect them. The second essential value of Confucianism is humaneness which implies the care, respect, and concern for other human beings. The second leg of the tripod is based on the golden rule, which will be copied years later by Christianity. The golden rule means that no one should treat others as they would not like to be treated. Moreover, with humaneness, Confucius focused on the relationship and roles of people. According to Confucius, everyone has a designated role in society, and each person should act ethically while fulfilling that role to achieve social order. He believed that the upper classes of society should act as role models for the public. In short, his philosophy was that under the guidance of a virtuous and honest king, the public would develop a self-motivation to act ethically and to fulfil their responsibilities. His idea is well illustrated in the following quote: "Let the ruler be a ruler, the subject a subject, a father a father, and a son a son." (Confucius, 2011). Thus, we should be obedient to honourable people. Despite it seems in contrast with the claim that "Every human being is born equal and free" (United Nations General Assembly, 1948) Confucius exemplified the relationship between superiors and inferiors as the one between the wind and the grass; the grass must bend when the wind blows across it. Bending is not seen as a sign of weakness but a gesture of humility and respect. Lastly, ritual consciousness means respecting rituals and traditions. For Confucius, ceremonies are essential because rituals make us understand how to behave correctly. Rituals also make people behave in the most profound sense. Confucius believed that every human being has to cultivate knowledge rather than being creative. Indeed, while modern culture places much emphasis on creativity, Confucius was adamant about the importance of the universal wisdom that comes from years of hard work and reflection. He listed: benevolence, ritual propriety, righteousness, wisdom, and integrity as the five constant virtues. Ren is the virtue of benevolence, charity, and humanity; Yi, of honesty and uprightness; Zhi, knowledge; Xin, the virtue of faithfulness and integrity; Li, correct behaviour, or propriety, good manners, politeness, ceremony, worship. While Confucius believed that people were inherently good, he also saw that those virtues must be cultivated continuously as a work of a lifetime.

As argued by Alice Erh-Soon Tay (2005), the current assertion of "Asian values" see them as encompassing various alleged core virtues of Confucianism which has been described such as the primacy of collective interests over individual social harmony and community; respect for elders, concern for order and stability, to the interest of family and kin, nation and community; of frugality and saving, and hard work; the willingness to

sacrifice oneself and one's desires for the family, postponement of present gratification for long term benefits; of commitment to education. Therefore, the nation is seen as a big family and states are seen as “parent-states” since the (East) Asian culture allow the interests of the family and of the nation to go before the interests of each individual.

4 China and the United Nations; a New World Order?

The third chapter of the research aims at discussing the role played by China at the UN. Drawing upon the National historical events, presented in the first chapter, the thesis will elaborate on the international response and on the recognition by the UN of the CPC as the sole legitimate authority of the Country. Moreover, it will analyse the international definition of the concept of the rule of law, and it will look at the international human rights standard. Therefore, the following chapter will thus serve as a theoretical framework. Indeed, it will elucidate the cultural relativist argument used by Chinese intellectuals and diplomats to highlight the differences in the interpretation of human rights law and of the concept of the rule of law. Lastly, it will shed light on how China is trying to reshape the UN.

4.1 ROC and CPC; Too Many Cooks in the Kitchen

China is one of the founding members of the UN and, as one of the victorious Allies of the Second World War, together with the USA, France, the UK, and Russia, has one of the five permanent seats in the UNSC, in accordance with Article 23 of the Charter of the UN.

However, since the creation of the UN in 1945, China has been represented by two different governments; the ROC and the PRC. Despite both the Nationalist Party and the Communist Party have enthusiastically supported the creation of the UN, (Chai, 1970), initially, it was the ROC the official authority that was representing China at the UN.

However, things started to change after the ROC lost the civil war in 1949 at the expense of the PRC. As the previous chapter has explained, after losing the civil war, the ROC retreated to Taiwan, and the PRC took control of the mainland. The problem of representation of China in the UN began on November 18, 1949, when the newly established Central People's Government of the PRC requested that the UN immediately deprived the Nationalist China delegation “Of all rights to further represent the Chinese People in the UN” (Ibid.).

Both administrations were claiming to be the sole legitimate Government of China. On the one hand, ROC was supported by the USA and by some European countries while the Soviet bloc supported the PRC. Since 1949, the Government of the PRC have annually applied to be seated instead of the Government of the ROC as the representative of China at the UN. It is

also important to note that, the requirements for admission of a state to the UN, and the relative admission procedure are regulated by Article 4 of the Charter. According to paragraph 1 of Article 4, membership in the UN is open to all peace-loving states which accept the obligations contained in the Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. According to the Charter's Article 4, the admission of new member states has to be voted by a two-thirds majority, by a decision of the General Assembly upon the recommendation of the Security Council. In this dichotomy, that resembled the different ideologies during the cold war and the geopolitical influence of some countries over others, every Resolution for admitting and recognising the PRC at the UN was blocked, and the ROC kept its seat until the end of the 1960s. Table 1 illustrates the proposed Resolutions until 1969.

Year	Total UN Membership	To consider	Not to Consider	Abstention	Absent	Sponsor
1951	60	11(18.7%)	37 (61%)	4	no roll call	Soviet Union
1952	60	7 (11.7%)	42 (70%)	11	0	Soviet Union
1953	60	10 (16.7%)	44 (73.3%)	2	4	Soviet Union
1954	60	11(18.3%)	43 (71.7%)	6	0	Soviet Union
1955	60	12 (20%)	42 (70%)	6	0	Soviet Union
1956	79	24 (30.4%)	47 (59.4%)	8	0	India
1957	82	27(32.9%)	48 (58.6%)	6	1	India
1958	81	28 (32.6%)	44 (54.3%)	9	0	India
1959	82	29 (35.4%)	44 (53.7%)	9	0	India
1960	98	34 (34.7%)	42 (42.9%)	22	0	Soviet Union

1961	104	36 (34.6%)	48 (46.1%)	20	1	Soviet Union
1962	110	42 (38.7%)	56 (50.4%)	12	0	Soviet Union
1963	111	41 (36.9%)	57 (51.4%)	12	1	Albania
1964	General Assembly session Postponed					
1965	117	47 (40.2%)	47 (40.2%)	20	3	Cambodia, Albania, Algeria, Congo (Brazzaville), Cuba, Ghana, Guinea, Mali, Pakistan, Romania, Somalia, Syria
1966	121	46 (38%)	57 (47.1%)	17	1	(same as 1965 minus Ghana and Somalia plus Mauritania)
1967	121	45 (37.1%)	58 (47.9%)	17	1	(same as 1966 plus Sudan)
1968	125	44 (36%)	58 (46.4%)	23	0	(same as 1967 plus Southern Yemen, Tanzania,

						Yemin and Zambia)
1969	126	48 (38.9%)	56 (44.4%)	21	1	(same as 1968 plus Iraq)

Table 1: Voting Records of the Question of Chinese Representation in the United Nations 1951-1969 (adapted from Chai, 1970)

The turning point was signalled by some facts that occurred in the 1960s. Amongst those, the war in Vietnam, that damaged the US economy and its international image, the economic success of the Asian “dragons” or “tigers” (Singapore, South Korea, Hong Kong and Taiwan), and the Bandung Conference of non-aligned states that played an undeniable role in strengthening an assertive third-world identity and criticism of the behaviour of Western countries. Moreover, during the period of decolonisation, many countries, close to Beijing, were gaining independence and joined the UN. In addition, after the Ussuri River incident in 1969, the PRC and the Soviet Union become enemies, and the USA saw an opportunity to contact the Government of the PRC. Having an ally in the period of the cold war was pivotal for the USA. Eventually, after a visit to Beijing, President Nixon agrees to admit the PRC to the UN. There was just an issue, concerning the ROC, that needed to be solved. After several proposals, including having the ROC excluded by the UNSC but represented in the UNGA, on September 17, 1969, the UNGA agreed to consider the Albanian Resolution, sponsored by 13 other nations as well as Albania, entitled “Restoration of the lawful rights of the People’s Republic of China” (UN General Assembly, 1971). Consequently, on October 25, 1971, the UNGA with the support of 26 African UN Member States and some Western States (such as Sweden and France for instance), adopted Resolution 2758 which formally recognised the PRC as the only legitimate representative of China at the UN. The ROC not only lost its seat at the UNSC but remained without representation at the UNGA as well.

4.2 International Human Rights Law

Despite the UN Charter, adopted in 1945, contains some references to human rights, it is not considered to serve as a reference for international human rights law. Indeed, between 1942 and 1948, the four main powers thought about a new system for the promotion and protection

of human rights. At the San Francisco Conference, in 1945, Panama, with other Latin American States, proposed the Declaration of human rights to be included as an annex to the UN Charter. While Mexico, Chile, Cuba, and Panama were in favour of the proposal, the four Great Powers rejected it, because the principle of sovereignty was already an obstacle. They were afraid of limitations, especially considering the fact that every State was having internal problems. For instance, European States were dealing with colonisation (and decolonisation), in the USA there was the problem of internal discriminations as well as the URSS was having internal difficulties. Therefore, three years later, in 1948, the UNGA adopted with Resolution 217A, the UDHR, a non-legally binding instrument concerning the protection of human dignity.

The UDHR is generally agreed to be the foundation of international human rights law. Human rights law lays down rights, and sometimes duties, for individuals as well as positive and negative obligations for governments. While technically, the UDHR is a recommendation, there are three ways to defend that it has become legally binding. The first argument is that it has become customary law (*opinion juris*). The second argument is that the UDHR has to be considered as an authorised interpretation of the UN Charter and thus that the UN Charter was invented to develop the UDHR. Last but not least, the UDHR, as every UN provision, has become a general principle of International law. As it has been explained in the United Nations website, a number of provisions of the UDHR are recognised as having achieved the status of customary international law. The prohibition on torture, genocide and slavery, as well as the principle of non-discrimination, for example, may safely be considered to constitute customary international law.

As the research has been briefly explained in the introduction, the UDHR is a compromise between two compelling ideologies. In fact, the first two Articles must be seen as the ideological basis of the Declaration. Then, it can be divided into two main categories; civil and political rights (Articles from 3 to 21) and economic, social, and cultural rights (Articles from 22 to 28). These articles have been translated into two legally binding instruments adopted by the UNGA in 1966 (and entered in force in 1976): the ICCPR and the ICESCR. The former protects individual freedoms such one's entitlement to participate in the civil and political life of the society. It also guarantees people's physical and mental integrity, life, safety, and protection against discrimination on the basis of race, religion, sex, disability, political affiliation, ethnicity, and age. The latter guarantees the rights to education, shelter, health, and culture, to name a few. In addition, other legally binding treaties have been adopted. Amongst those, the Optional Protocol to the International Covenant on Civil and

Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Core International Human Rights Treaties Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Legally, through the process of ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law. However, it is important to elucidate the difference between monist and dualist States. First of all, no matter whether a State is a dualist or monist, usually human rights are protected by domestic courts. On the one hand, monist States international treaties do not necessarily have to be translated into national legislation. Therefore, national law and international treaties have the same legal value. Thus, the act of ratifying an international treaty immediately incorporates the law into national law, and judges can directly apply it. On the other hand, dualist States require the translation of international treaties into the national legislation otherwise, they do not have any legal value. In a dualist State, as expressed by Atkin and Atkin, “International law as such can confer no rights cognisable in the municipal courts. It is only insofar as the rules of international law are recognised as included in the rules of municipal law that they are allowed in municipal courts to give rise to rights and obligations” (Atkin and Atkin, 2011). Chinese scholars reject both views. Indeed, the monist theory is criticised as denying state sovereignty and as reflecting an imperialist policy to control the world through world law. The dualist theory is regarded as overemphasising the formal antagonistic aspect of international law and national law (Ahl, 2009). Thus, China prefers a dialectical model which claims that international law and national law are separate systems that infiltrate and

supplement each other. Zhang Weiwei, dean of the China Institute at Fudan University, lays out that argument in the Chinese Communist Party political journal *Qiushi*, writing:

“The biggest difference between the institutional arrangements of China and Western countries is that the former has a political force representing the people’s collective interest and the latter do not. In the West, different political parties represent the interest of different social groups. As a result, national policies are constantly wavering, political parties and interest groups are frequently engaged in bigger conflict with each other, and national development easily loses direction. In contrast, the CPC is a political party dedicated to serving the people wholeheartedly, and one that has played the role of leader, regulator, and coordinator throughout China’s modernization drive” (Hart and Johnson, 2019).

The following section of the chapter will elucidate which International treaties have the PRC ratified and how those treaties are interpreted and translated in the national legislation.

4.2.1 Cultural Relativism; Human Rights in China

As it has been previously explained, from the UDHR, a series of international human rights treaties have been created for the promotion and protection of human rights. China has ratified six of the nine core human rights treaties (excluding the optional protocols). Table 2 illustrates which human rights treaties have been signed and ratified by China.

Country	Treaty description	Treaty Name	Signature Date	Ratification Date, accession(a), succession(d) date
China	Convention against Torture and Other Cruel Inhuman or Degradation Treatment or Punishment	CAT	12 December 1986	04 October 1988

China	Optional protocol of the Convention against Torture	CAT-OP		
China	International Covenant on Civil and Political Rights	CCPR	05 October 1998	
China	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	CCPR-OP2-DP		
China	Convention for the Protection of All Persons from Enforced Disappearance	CED		
China	Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	17 July 1980	04 November 1980
China	International Convention on the Elimination All Forms of Racial Discrimination	CERD		29 December 1981 (a)

China	International Covenant on Economic, Social and Cultural Rights	CESCR	27 October 1997	27 March 2001
China	International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families	CMW		
China	Convention on the Rights of the Child	CRC	29 August 1990	02 March 1992
China	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC-OP-AC	15 March 2001	20 February 2008
China	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	CRC-OP-SC	06 September 2000	05 December 2002

China	Convention on the Rights of Persons with Disabilities	CRPD	20 March 2007	01 August 2008
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Table 2: International Human Rights Treaties (Created by the author)

Of particular relevance is the fact that the PRC has ratified the ICESCR but has only signed the ICCPR. Moreover, there are serious concerns that, despite China has ratified most of the international human rights treaties, it still does not follow these standards. The applicability of treaties in China is not mentioned in the Constitution, which leaves the status of treaties unclear in Chinese courts and different from area to area (Guo, 2009). The Chinese Constitution was adopted in 1982 by the NPC, and it represents the supreme law of the PRC. Despite further revisions in 1988, 1993, 1999, 2004 and 2018, it is divided into five main sections: preamble, general principles, fundamental rights and duties of citizens, structure of the State, and National Anthem, Flag, Emblem, and Capital. The Constitution provides leadership through the working class, led by the CPC. The Constitution stipulates that the NPC is the supreme organ of state power over a structure of other people's congresses at various levels. It is important to note that, despite it includes rights, such as equality before the law, political rights, religious freedoms, economic rights as well as personal rights, for instance, those rights are strongly connected to social duties. Since China rejected both the monist and dualist approach, it is difficult to find a relationship between international human rights treaties and domestic courts. Therefore, the primary human rights provisions are in the Constitution, and some scholars have argued that China's Constitution lacks provisions on the relationship between treaties and domestic law (Guo, 2009). Article 142 of the General Principles of Civil Law is often referred to in this regard. It provides that "If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations" (China, 1983). It is well recognised at both international and domestic levels that there is a big gap between *de jure* and *de facto* implementation, or legal implementation and practical implementation, of human rights treaties (Guo, 2009).

While, on the one hand, there are still concerns about the applicability of international human rights standards in China, there is also another argument concerning the interpretation, by Chinese intellectuals and officials, of human rights. The Chinese point of view on human rights is visible from the latest Universal Periodic Review (a unique process which involves a review of the human rights records of all UN Member States) of 2018. The Chinese National report empathised the fact that the country upholds the principle of people's sovereignty, and that it is perfecting the democratic systems. Moreover, it explained that the PRC is developing human rights with Chinese characteristics and attaches importance to development as the starting point and end result for the well-being of people. China emphasises the importance of Economic, Social, and Cultural rights, arguing that human rights are dependent on a process of development which might be long term and that the fundamental right to subsistence supersedes other, less essential rights (OHCHR, 2018). The PRC believes that too much freedom, as in the Western countries, is dangerous and leads to chaos. China's conception of human rights can thus be summarised into four main points. First, prioritisation of socio-economic rights. As it has also been explained before, in the 1991 White Paper, the CPC asserted that "The right to subsistence is the most important of all human rights, without which the other rights are out of the question" (State Council Information Office of the People's Republic of China, 1991). Second, a development paradigm which means that human rights must be achieved globally but the modalities can differ from country to country based on different conditions and according to the level of development of a nation. Thus, they stress the cultural relativist approach. Third, the focus on collective rights. Lastly, stability as a precondition for the enjoyment of rights. China views the maintenance of public order as a paramount obligation of the state even at the expense of the most fundamental rights of dissidents (Sceats and Breslin, 2012). Chinese intellectuals believe that the dichotomy between the East and the West is based on historical differences even if they do not deny that human rights are universal. According to Yunhu Dong (2008) "In the West, the enemy was feudal tyranny; but in China there were two enemies: Imperial rule and feudal tyranny. After the founding of the PRC, China had to improve living standards. We will be humiliated if we are weak – we must be strong, and so the collective is stressed. As China grows, individual rights will become more important". Therefore, they claim that the universality of human rights should be a process rather than an imposition, and for this reason, the international definition of human rights cannot be applied to China.

In 2017, at the First South-South Human Rights Forum, the Beijing Declaration was adopted. According to Xi, the goal of the meeting was to create a community of shared future

for human beings. In the Declaration are visible the position that China has concerning human rights. The cultural relativist philosophy is expressed in Article 1: “In order to ensure universal acceptance and observance of human rights, the realization of human rights must take into account regional and national contexts, and political, economic, social, cultural, historical and religious backgrounds. The cause of human rights must and can only be advanced in accordance with the national conditions and the needs of the peoples. Each State should adhere to the principle of combining the universality and specificity of human rights and choose a human rights development path or guarantee model that suits its specific conditions” (Beijing Declaration, 2017). Moreover, Article 3 explains that the right to subsistence and the right to development are the primary basic human rights (Ibid.). Lastly, Article 8 reiterates that “All countries should adhere to the principle of sovereign equality, and all countries, big or small, have the right to determine their political systems, control and freely use their resources, and independently pursue their own economic, social and cultural development” (Ibid.).

4.3 Rule of Law and Rule by Law

The second main divergence between the East and the West is represented by the interpretation of the rule of law. There is not a single definition about the rule of law, reason why its interpretation has been highly discussed and different interpretations serve to justify power or to raise criticisms. Particularly, the concept has gained traction in the already discussed dichotomy between the Eastern world and the Western one.

Its origins can be dated back to the works of Montesquieu and Locke in the 18th and 19th century when they discussed the division between the judiciary, legislative, and executive power as well as the relation between State and citizens. The term rule of law was coined in the 1880s by A. V. Dicey which explained that it has three main elements: equality before the law, primacy of rights over Constitutions, and presumption of innocence unless proven guilty (Daniel, 2014). The current general definition given by Tamanaha is the following: “A country with the rule of law is governed by a constitution that guarantees individual rights and sets out the rules for democratic elections. Its political institutions are defined by a separation of powers, including an independent judiciary that adjudicates disputes impartially, without political interference, and with the power to review legislation to ensure its compliance with the constitution. Finally, all individuals must be equal before the law” (Li, 2019). Therefore, it regulates and reduces corruption, it protects people from

injustices, it respects fundamental rights, it promotes social and economic development, and it supports peace within and outside a country. In the international arena, the rule of law is defined as a system of governance where everyone, citizens, governments, and public or private institutions are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated. Furthermore, those laws have to be consistent with international human rights standards and norms. The Secretary-General of the UN continued saying that “It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (Li, 2019).

However, the definition seems to be open to interpretations. Before going into details on how the PRC interprets the rule of law, it is crucial to understand how the role of the law evolved in China since 1949. Originally, in the 1950s, the law served as an instrument to protect citizens and to assist class and anti-Gang of Four struggles between 1960s and 1970s (Wang and Liu, 2019). In fact, in 1956, at the 8th Party Congress, Liu Shaoqui explained why the law was important and why the primary scope was the protection of citizens as a consequence of the aftermath of the civil war in addition to internal turmoil. This interpretation of law radically changed 13 years later during the 9th Party Congress in 1969, when Lin Biao stated that law was to help punish those “Active counter-revolutionaries against whom there is conclusive evidence of crimes such as murder, arson or poisoning” (Ibid.). During the course of the 1980s, the primary scope of the law was to facilitate and regulate market activities. In the same years, precisely in 1982, at the 12th Party Congress, a new Constitution was adopted, and the concept of the rule of law was for the first time mentioned. Since 1982, the role of the law was finalised at promoting economic development as expressed at the 14th and 15th Party Congress respectively in 1992 and 1997 and still nowadays it is its main scope.

The new Constitution states its own supremacy. Indeed, it says that “no organization or individual may enjoy the privilege of being above the Constitution and the law” (China, 1983). However, it remains unclear the relationship between the Constitution and the Party. Indeed, although the division of powers is one of the key points of the Constitution, the CPC insist that its authority supersedes that of the law. In 1997, the Party declared at its 15th Party Congress that China’s “basic strategy” was “Governing the country according to law and making it a socialist country of rule of law” (Li, 2019). Therefore, while the Constitution enshrines the rule of law, simultaneously, it stresses the principle that the leadership of the

Communist Party holds primacy over the law. According to some Western scholars, across every sphere of government activity, the rule of law has become the phrase *du jour*. But in practice, “rule of law” has simply meant “rule of the party” (Palmer, 2017). This interpretation can be a direct consequence of the Marxist view of law as well as it can be linked to the values of Confucianism. While, as explained above, the ruler (and the Party), should act in the interest of the people, the Constitution should check on sovereign rule even if it does not stand above the power of the Party.

The main criticism raised by Western scholars is that the rule of law does not exist in China, but it is rather conceptualised as “rule by law”. According to political science professor Li Shuguang: "The difference [...] is that, under the rule of law, the law is preeminent and can serve as a check against the abuse of power. Under rule by law, the law is a mere tool for a government, that suppresses in a legalistic fashion” (Tamanaha, 2004). Rule by law is ruling as per the law. This implies executive actions should be confined within the four walls of law drawn by the legislature. It is also said that in China, the judiciary is conditioned by the Party, and thus it is not independent. As a consequence, under the Party’s political supervision, the judiciary cannot apply the law equally to all without political interference (Li, 2019). It remains unclear whether the rule of law is present in China but what is clear is that it is understood differently and that the CPC has much more powers than the ones of any political party in the Western world.

4.4 The Power Vacuum to Be Filled

Fifty years have passed from its acceptance to the UN, and China has drastically changed in terms of economic power and international geopolitical influence. Some scholars are arguing that the Chinese Government is trying to reshape the UN. The Chinese approach towards the UN can be summarised in three different periods: the first one, up to the Tiananmen massacre where China has played the role of observer, the second one, until 2013, in which China remained defensive, and lastly, from 2013 onwards an active role. The Chinese growing international power can be seen in the speech given by Xi, at the 19th Congress of the CPC, where he stated that: “The Chinese nation has stood up, grown rich, and become strong—and it now embraces the brilliant prospects of rejuvenation. It will be an era that sees China moving closer to centre stage and making greater contributions to mankind let us get behind the strong leadership of the Party and engage in a tenacious struggle” (Solinger, 2018). Xi’s goal is to push for a new vision of global governance in which the ultimate authority is not

the individual but the state. As it has been explained, according to China, development should be the priority of every country and, in international relation, countries should cooperate through exchanges and mutual learning. China's proposition is to build a "Community of Shared Future for Mankind" and achieve shared win-win cooperation. This assumption is based on the principles of equality and sovereignty (established with the *Peace of Westphalia* and of the core pillar of the UN). As enshrined in the Beijing Declaration, the essence of sovereign equality between countries, big or small, rich or poor, must be respected (Beijing Declaration, 2017)

The following research highlights three main areas on the Chinese approach towards the UN: peacekeeping operations and contribution, the role of the PRC at the UNSC, and third, the work of the UN on human rights and the role of China. First, in recent years, the Chinese financial support of the PRC to the UN has grown considerably. The PRC is the world's second-largest funder of UN peacekeeping costs (around 10% of the total amount) as well as it is the second-largest contributor to the UN's regular budget. Indeed, China has made a contribution of US\$335 million to the core UN general budget, about half of the US\$674 million provided by the USA, also because of the President Trump's "America First" policy (Bloomberg, 2019). With the UN increasingly vulnerable to budget cuts, China also sees an opportunity to use its growing contributions as leverage (Ibid.). The PRC has also contributed significantly to the realisation of the Millennium Development Goals, and it presents itself as a potent partner of the UN in fighting for peace and stability. Moreover, Xi has also promised \$2 billion for the South-South Cooperation in support of developing countries and promised to increase its support for the least developed countries to \$12 billion by 2030 (Oertel, 2015). The Chinese commitment to the UN can also be seen in the contribution to the UN peacekeeping operations despite decades of opposition. One of the main reasons for the Chinese involvement is its effort to consolidate its international images. Although China has deployed observers to most UN-recognized peacekeeping operations since the 1990s, it has been selective about where it deploys troops. Between 1990 and 2008, China sent troops to Cambodia, the Democratic Republic of Congo (DRC), Liberia, Sudan, and Lebanon (China Power Team, 2020). But the turning point is signalled by the advent of Xi to power. Recently, China has become the largest troops contributor with 8000 people deployed in addition to more than 3,000 Chinese men and women already engaged in blue helmet operations (Oertel, 2015).

The second point that the research discusses is the role of the PRC at the UNSC. Because of its increase in the international sphere, the emphasis on national sovereignty is

reflected in the Chinese's attitude at the UNSC. As of July 2020, the PRC has used its Security Council Veto 15 times, fewer than any other P5 (five Permanent UNSC) Members. Indeed, while China was once seen as a reticent member of the UNSC, using its veto power in very limited situations, Beijing has recently thrown its weight around more aggressively (Bloomberg, 2019). Particularly, China has vetoed 12 UNSC Resolutions since 2007 as proof that it is increasing its international power. Working with Russia, China recently blocked a Syria briefing by Zeid Ra'ad al- Hussein, the UN High Commissioner for Human Rights, even though China does not have major national interests in the war-torn country (Bloomberg, 2019). The main reason reflects the Chinese concern over territorial integrity even if some scholars believe that China wants to hide possible human rights violations that could occur in its territory as well. Controversy, the PRC has changed approach towards the use of sanctions. On the other hand, China viewed sanctions against some countries, such as North Korea, Libya, Iran and Sudan, to name a few, as destabilising already-fragile countries and continued to empathise non-intervention in internal affairs of other countries. On the other hand, since 2000, the PRC has adopted a more flexible approach. China supported 182 of 190 sanctions-related Resolutions passed by the UNSC between 2000 and 2018. Of the remaining eight, China abstained from four votes and vetoed arms embargoes against Zimbabwe, once, and Syria, three times (China Power Team, 2020).

The third point concern the PRC work on human rights. According to some scholars, China is trying to block criticism of its domestic human rights violations and promote its interpretation of human rights. According to Alvaro Gomez, China is emerging as a normative power also in the field of human rights, prioritising national sovereignty and economic development over notions of universalism and civil and political rights and a growing number of political leaders have started to see the unique brand of Chinese authoritarianism and "human rights with Chinese characteristics" as models to emulate. (Gomez, 2019). Those scholars believe that China wants to eliminate criticism of their human rights record and to reshape the UNHRC.

The UNHRC is a subsidiary organ of the UNGA, established in 2006, that replacing the UN Commission on Human Rights. The council's 47 members are elected for three-year terms and are distributed on the basis of equitable geographic rotation according to the UN's regional grouping system. China returned to the UNHRC in 2013, and, following Xi's election is becoming aggressive and confident in pushing its agenda in Geneva. For instance, it has increased the number of interventions at the UNHRC Sessions year by year. The Chinese conception of human rights is summarised in the concept of the Community with

Shared Future for Mankind, in which sovereignty is paramount, and notions of universality are frowned upon (Ibid.). As it has been proved, the Beijing Declaration (2017), expresses the Chinese willingness to play a central role in the human rights arena by saying that “the cause of socialist human rights with Chinese characteristics has moved up to a new level (Ibid.). Moreover, in March 2018, China has introduced at the UNHRC a Resolution entitled “Promoting the International Human Rights Cause through Win-Win Cooperation.” The title might sound innocuous, but the resolution gutted procedures to hold countries accountable for human rights violations, suggesting “dialogue” instead (Richardson, 2018). The expected outcome by the PRC is that the focus shifts from monitoring activities on human rights record to mutually beneficial cooperation. This could potentially represent a major shift in the human rights discourse. Despite China has already a seat at the Office of the High Commissioner of Human Rights and at the HRC, in March 2020, Mr Jian Duan, minister at the Chinese Mission in Geneva, was appointed to the UN Human Rights Council’s Consultative Group as the representative of the Asia-Pacific states. The Consultative Group is charged with recommending candidates to fill positions according to the mandates of the Special Procedures, the Mechanism on the Rights of Indigenous Peoples, and the Expert Mechanism on the Right of Development (Albert, 2020). The appointment of Duan created several controversies for the already mentioned human rights abuses as well as for the potential accuses received by the USA for the COVID-19 pandemic. According to Neuer, executive director of UN Watch, “It’s absurd and immoral for the UN to allow China’s oppressive government a key role in selecting officials who shape international human rights standards and report on violations worldwide” (United Nations Watch, 2020). For the reasons presented, it is clear that China, as it has been done by other states before, is learning how to use the UN system to its advantage.

5 Case Study: The Social Credit System

The following section of the thesis will analyse in-depth the SCS. Firstly, it will present the origins of the system by looking at the internal policies adopted since 1949. Whilst the idea behind the SCS finds its roots in the Confucian and Communist values, the chapter will explain how those ideals have been translated into the system. Secondly, the essay will analyse how the SCS works and the role that cameras, big data, and artificial intelligence have in strengthening the system. Consequently, the chapter will present two different perceptions of the SCS, the first one, which is negative and comes from the Western world while the second one, which is positive, coming from the Chinese population. In the analysis,

the research question of the thesis will be answered in order to understand whether or not the SCS is compatible with international human rights law and with the principle of the rule of law. Therefore, the main criticisms, as well as the Chinese justifications, will be presented.

5.1 Nothing Comes from Nothing

Before going into details about the functionalities of the SCS, it is crucial to explain how the system was created and what was the philosophical and economical idea that originated the system. Historically, the SCS evolved from the financial institutions' rating systems. Since the establishment of the reform (started under the leadership of Deng Xiaoping) and opening-up policy in 1978, the Chinese economy has made considerable progress. Still, some problems have also been exposed. The surprising quick economic development that China faced led to the demand for a credit system. It was during the 1990s that the Chinese Government started to adopt reforms in the attempt to modernise the country. The so-called "Triangle Debt", in 1990, represents the initial support for a credit system which could have solved problems in the commercial and financial sectors. As explained by Liang, the concept for a SCS emerged as early as 1991 as a strategy of "addressing problems in commercial and financial sectors" (Liang et al., 2018). However, it was not until the beginning of the 21st century that some state-owned enterprises began to assess consumer credit.

Another fact that needs to be taken into account is "the internet", since it has increased and accelerated economic development in China, even if it is seen as a double-edged sword by Chinese leaders. In fact, on the one hand, it connects China with the international community, but, on the other hand, it is risky for the stability of the CPC. Beijing has addressed these challenges with a sophisticated online censorship system known as the "Great Firewall," and a concerted strategy of replacing foreign websites like Google, Facebook, and Twitter with heavily censored Chinese websites that serve similar functions. Thus, the Great Firewall allows the Chinese Government to regulate the internet in order to be "sovereign of the internet". The concept is a reprise of an idea first outlined in a June 2010 white paper titled "The Internet in China," which explains "within Chinese territory the Internet is under the jurisdiction of Chinese sovereignty" (Lagon and Lou, 2018, p. 241). President Xi has enforced this idea by taking charge of the Central Leading Group for Cyberspace Affairs in 2014.

Moreover, in 2001, the *People's Daily*, one of the main Chinese newspaper, owned by the CPC, called for the creation of credit dossier arguing that sincerity, which is the root of

morality, was indispensable in developing Chinese market economy. One of the problems that China has carried out concern the lack of trust in both individuals and institutions. As Hamrin (2006) observed: “there is a widespread sense in the urban public that Chinese society lacks a public morality of honesty and trust”. Starting from 2003, the CPC, which acknowledged the problem, called for a shift to a more people-oriented society where trust and honesty would be the guiding principles. Therefore, China’s 11th five-years plan, asserts that major social issues are hampering the further development of the economy and society in general (Grote and Bonomi, 2018). There has been a widespread consensus within the Party that sustaining human and economic development requires social capital, i.e., human connections based on a shared sense of community (Hamrin, 2006). During the 16th Party Congress, in 2002, Jiang Zemin explained that “China must establish a social credit system compatible with a modern market economy” (Liang et al., 2018). As a direct consequence of the Party Congress, the People’s Bank of China began to create a Personal Credit Information Database following the Western model. The model called a “Credit Reference Centre”, which was the only national credit-scoring bureau, was built upon the “Bank Credit Registry and Consulting System”, established in 1997. As explained by Creemers (2018), banks and other financial entities were forced to report on their client’s creditworthiness, with supplementary, non-financial information being transmitted from courts, government departments, telecommunications companies and fiscal authorities. However, at that time, comparatively few Chinese citizens held bank accounts, and the majority of transactions were settled in cash (Ibid.). In 2007, the State Council issued the *Guiding Opinions Concerning the Construction of a Social Credit System*, resulting in 18 central government departments initiating a SCS (Liang et al., 2018). Amongst those, the National Development and Reform Commission, the People’s Bank of China, the Ministry of Commerce, as well as the local government of Shanghai, Jiangsu, and Zhejiang were initiated in the system. These guidelines conceptualised the SCS as “an important structural arrangement in the market economic system” (State Council General Office, 2007). It was not until 2011 that the Government decided to expand the SCS to other areas in order to build a powerful, effective, accountable, and prosperous state. As explained by Liang et al., in 2011, China further proposed the construction of a SCS in four areas: government affairs, commercial behaviours, social activities, and judicial affairs and in 2012, the Ministerial-Joint Meeting System extended its membership to 35 central departments, including the Publicity Department, Ministry of Finance, and Ministry of Justice (Liang et al., 2018). It was not until 2014 that the SCS gained attention because originally it was only focused on the financial aspect rather than on

the behavioural sphere. Indeed, with the adoption and publication of the *Planning Outline for the Construction of an SCS* by the State Council (2014), several local governments started to design pilot programs. The *Planning Outline* maps a specific SCS implementation strategy, stating that a framework for implementing a SCS should be in place by 2020 (State Council, 2014).

5.2 The Social Credit System; Goals and Objectives

Building upon the premises explained in the previous section, the rationale of the SCS emerges quite clearly from the Planning Outline for the Construction of a Social Credit System (2014-2020), issued by the State Council on 14 June 2014. The document, which is the most authoritative blueprint for the construction and implementation of the SCS, represented a significant advance in political thought on social credit at the national level. It reflects the outcomes of the 18th Communist Party Congress, which aimed at broadening and deepening the Chinese internal market reforms. The system was initially presented as “an important component part of the Socialist market economy system and the Social governance system” (State Council, 2014). It is clear that the social aspect, as well as the credit one, is included in the SCS’s construction in order to enhance social harmony and discipline. The central point of the Government’s analysis highlights how “The modern market economy is a credit economy, establishing and completing a social credit system is an important step in rectifying and standardizing the market economy order, improving the market’s credit environment, reducing transaction costs and preventing economic risk, and is an urgent requirement to reduce administrative governmental interference in the economy and perfecting the Socialist market economy system” (Ibid.). The SCS can thus be seen, in the words of Botsman (2017), as a marriage between communism and capitalism, and it represents the most prominent social experiment of the 21st century. Different scholars tend to categorise the goals of the SCS in three, four, and five categories. This analysis identified three main categories regarding its scope, which reflect the Communist, Confucian, and Capitalist values. The first concern the development of the market economy. The second one stresses economic pluralism by going beyond commercial purposes. The third one concern economic growth internally and undelights international cooperation.

According to Chinese authorities, the SCS will help in reducing government interference in economic affairs, foster competition and efficient allocation of resources. As stated in the Planning Outline for the Construction of a Social Credit System: “The

construction of an SCS is an important precondition for stimulating optimized resource allocation, broadening internal demand and stimulating the structural optimization and improvement of industrial structures” (Chinese State Council, 2014). The expected outcome is to advance honesty of the government units and enterprises. This represents the values of capitalism which the Chinese Government is trying to incorporate in the Chinese Communist society. The SCS would increase transparency, accountability, and it will improve lawful administration. It will thus display the Government as a model of sincere conduct.

The second, and as the research will explain, the more controversial point, concern the fact that the system aims at obtaining more reliable data on the creditworthiness of businesses and individuals. The SCS will allow greater social and economic pluralism. As stated in the Planning Outline for the Construction of a Social Credit System: “Our country is in a crucial period of economic and social transformation. Interest subjects are becoming more pluralised” (ibid.). Moving forward the construction of an SCS “is an effective method to strengthen social sincerity, stimulate mutual trust in society, and reducing social contradictions, and is an urgent requirement for building a Socialist harmonious society” (Ibid). The idea of living in a harmonious society reflects the Confucian and Communist values. As stated in the official document, its intent is to “encourage business associations and chambers of commerce to perfect credit evaluation mechanisms for member enterprises [...] to issue comprehensive credit commitments or special commitments concerning product and service quality [...] to develop preferential treatment for attracting investment and raising funds [...] to reduce costs for market trading [...] guide financial bodies, commercial sales bodies, and other such market bodies to consult and use market subjects’ credit information, credit scores and credit evaluation reports, to grant preferences and conveniences to market subjects, ensuring that promise-keepers obtain ever more opportunities and tangible benefits in the market [...] and to give priority to recommending sincere enterprises during activities such as trade fairs, bank-enterprise linking [...] to let credit become an important reference factor in the market allocation of resources” (Ibid.). However, it will go beyond commercial purposes. The final outline of the SCS will expand the use of credit ratings far beyond economical purposes to the social, environmental, and political realms. It will penetrate everyday life by obtaining more reliable data on creditworthiness individuals. Grote and Bonomi argue that, although the system is primarily designed for economic reasons as an instrument for shaping tailored business regulation and industrial policies, it will monitor and assess a much larger spectrum of criteria than any other existing financial and credit scoring

system (2018). The SCS is thought in a way that it will help increasing trust and trustworthiness among potential competitors and, to punish deviant behaviours.

Third, the SCS aims at promoting market openness and international cooperation. As the official document stated: “Economic globalization has enabled an incessant increase of our country’s openness towards the world, and economic and social interaction with other countries and regions is becoming ever closer. Perfecting the social credit system is a necessary condition to deepen international cooperation and exchange, establishing international brands and reputations, reducing foreign-related transaction costs, and improving the country’s soft power and international influence” (State Council, 2014). The system will serve as a reference in order to trust, or not, a particular company or individual, both at the local and international sphere. Therefore, in the market economy, the SCS would enhance efficiency, trust, and transparency in every sector.

5.3 An Orwellian Nightmare or a Digital Utopia?

While the research has explained the goals and objectives of the SCS, it remains unclear how the system will work. As the essay stated, the SCS will create a “Citizen Score” and a “Business Score”. Essentially, the government's SCS is a big data gamified version of the Communist Party's surveillance methods; the disquieting *dang'an*. In the past, the regime kept a dossier on every individual that tracked political and personal transgressions. A citizen’s *dang'an* followed them for life.

The SCS is considered a form of mass surveillance which uses big data analysis technology. It will draw upon an unprecedented amount of data, using an individual’s government financial and criminal records, shopping habits, use of media and so on in order to give a score. In addition, China installed 20 Million of the world’s best AI security cameras in 2015 as part of their Operation Sky Net to “initially” hunt for corrupt fugitive officials (Teoh, 2015). China now has 200 million CCTV cameras everywhere, watching their people (Ibid.). Every action is recorded in a score that can be looked up by everyone online; thus, the score of an individual or of a company reflects how everyone else sees you in the real-world game. Those behaviours will be monitored, online and offline, continuously and in real-time. The system will affect the daily life of everyone in China since, later this year, everyone is expected to have a credit score to see if they are socially beneficial or socially harmful. Once downloaded, the system uses unique organization ID numbers. This national ID number will be used for registration, tax payments and record other activities.

When an individual, an organization, or a company goes to a Chinese credit website, by typing code/ID number of another individual, organization, or company and the website will show the credit records (State Council, 2014). Registered users must release their identity numbers or indirectly identifies to the service provider for government verification (Fu, 2013). Chinses Government claimed that every organization in China, NGOs and government bodies would be given a unique identification number to monitor their activities (Hodson, 2015).

The primary programme that the system would support is a scheme of rewards and punishments. The principle behind sanctions is summarised by the phrase “if trust is broken in one place, restrictions are imposed everywhere” (Botsman, 2017). According to Chinese law, the Social Credit system will improve public safety and market safety, and influence China’s governance (China Law Translate, 2017). The system of punishments was not expressly created for the SCS. Indeed, it was already part of Chinese Litigation law. The former stipulated that where individuals did comply with the legal obligations arising from a court judgment, courts could prohibit them from issuing visas, create an entry in their credit file and announce their names in news media (Creemers, 2018). However, the system was vague, and in 2013 it was changed by the Supreme People’s Court as follows: “Anyone who is obliged and capable of carrying out a valid legal document, such as a court order or administrative decision, and fails to do so, will be entered on a blacklist” (Ibid.). The period might be extended or reduced in certain circumstances. Eventually, in 2016, 45 party bodies concluded a memorandum of understanding, known as the Joint Punishment system, which provides detailed procedural standards for the blacklisting system. Later that year, the State Council General Office updated its policy entitled "Warning and Punishment Mechanisms for Persons Subject to Enforcement for Trust-Breaking" (Botsman, 2017).

Yet, there is not a single comprehensive system or algorithm which gives or subtract points. These pilot systems differ depending from region to region and even from city to city. After the release of the 2014 Planning Outline for the Construction of a Social Credit System pilots programs began to take place. As stated by Botsman, “In this marriage between communist oversight and capitalist can-do, the government has given a licence to eight private companies to come up with systems and algorithms for social credit scores” (2017). Among them are Hangzhou, Nanjing, Xiamen, Chengdu, Suzhou, Suqian, Huizhou, Wenzhou, Weihai, Weifang, Yiwu, and Rongcheng. Formerly, the systems were managed by Sesame Credit, owned by Alibaba Group, Tencent, as well as China's biggest ride-sharing and online-dating service, Didi Chuxing and Baihe.com. However, seeing the high

possibilities that the system could have achieved, the Government decided not to give licenses to private companies anymore, starting from 2017, and took control of the SCS. These pilot projects can provide a more accurate idea of how the system could potentially run in the future. On the one hand, jumping a red traffic light, the involvement in a fight, cheating at exams, plagiarism, unpaid tuition fees, downloading private software, fare dodging, living in a flat exceeding one's personal needs, driving to work using a big imported vehicle, participation in demonstrations, false accusations on the web, littering, jaywalking, and evasion of queuing at supermarket checkouts are all examples of bad behaviour that led to losing points. On the other hand, donating blood, visiting parents, engaging in charity work, helping the poor, return money found on the street, praising the government on social media, and public commendation, are examples of how to gain points. Friends and relationships matter, too; indeed, they can influence another person's score. Consequently, there are awards and punishments. The rewards could include a reduction of tax payments, priority lines, quicker health assistance, and hotel discounts, to name a few. Punishments have been issued directly – for example, through the imposition of restrictions on eligibility for particular jobs – and indirectly, by the setting-up systems of “naming and shaming” (Grote and Bonomi, 2018). For instance, people with low ratings will have slower internet speeds; restricted access to restaurants, clubs or sport courses; and the removal of the right to travel freely abroad and may have restricted access to fast trains and flights abroad (Botsman, 2017). Moreover, citizens with low scores will not be hired by certain employers and will be forbidden from being hired for some jobs, including in the civil service, journalism and legal fields, where of course, being trustworthy is a requirement. However, the score of a citizen affects the rights of its children as well. As stated by Botsman, low-rating citizens will also be restricted when it comes to enrolling themselves or their children in high-paying private schools (2017). Finally, to achieve the SCS goals as envisioned by 2020, the Chinese Government is doing two major things; the first one is connecting data and the second one is defining appropriate and inappropriate behaviours, systemizing the enforcement measures and the consequences, both reward and punishment (Dawson, 2018).

In recent months, the COVID-19 pandemic led the Chinese Government to change some parameters in the algorithm that regulates the SCS. These special provisions are tailored to the circumstances of the coronavirus outbreak. Alexander Chipman has argued that the Chinese Government has instituted some accommodations for individuals and businesses who have been affected by the coronavirus (2020). For instance, some companies, as well as individuals, are exempted from paying taxes without losing points, due to the

economic crisis that followed the outbreak of the pandemic. However, the Government has also introduced new obligations and restrictions. For instance, those who do not wear the masks properly, or those who do not respect the curfew will be punished and will lose points. Moreover, in Beijing and Shanghai, governments require enterprises to refrain from price gouging in the sale of medical products. Firms that overcharge for such products will be punished within the social credit system (Ibid.). Thus, the SCS has been integrated into the strategy of monitoring the spread of the virus.

As the SCS will be finalised by the end of the year, scholars and journalist have already discussed the perception of the system in the West and in the East. On the one hand, most of the articles available on the Western media, academic journals, and websites portray the SCS as an Orwellian nightmare. Indeed, in the titles there are usually the words: “*China’s Networked Authoritarianism*”, “*big brother*”, and “*Black Mirror*”. According to Creemers, the absence of strong constitutional protections for individual citizens, and the turn towards stricter Party control under the Xi Jinping administration, have led numerous observers to portray the SCS as an Orwellian nightmare (2017). On the other hand, according to a recent survey conducted by *Free University Berlin*, about 80% of Chinese internet users take a positive view of the governmental and commercial social credit systems in their country. According to the results, the older and more educated the respondents are and the higher their income, the higher their approval (Kostka, 2019).

5.4 Is the Social Credit System compatible with Chinese Human Rights Obligations?

The previous chapters of the thesis have briefly explained the principles of international human rights law, the Chinese interpretation of human rights, and the SCS. Scholars disagree on whether the SCS violates those standards or not. The following analysis will elucidate how the SCS potentially could violate the ICCPR and the ICESCR and thus, how the system cannot be compatible with international human rights standards. Controversy, it will present the justification given by the Chinese authorities. The analysis will be divided into four main arguments: right to privacy, freedom of movement, freedom of speech, and it will analyse the principle of non-discrimination as enriched in the ICCPR and in the ICESCR. In doing so, it will explain the concept of securitisation and surveillance to see how these problems come along and are condemned or justified.

The SCS is a full-fledged surveillance system. According to some scholars: “By conducting automatic and real-time monitoring, the government is integrating previously

separated surveillance platforms into “internet of surveillance” and building “an all-encompassing system penetrating, controlling and shaping society” (Liang et al., 2018). Mass surveillance represents one of the tools used in cases of extreme security issues. It is usually mentioned in fighting terrorism, prevent crimes, for the protection of national security, and to control the population even if, it is criticised for violating privacy rights, limiting civil and political rights and freedoms, and being illegal under some legal or constitutional systems. Securitisation theory helps us understanding that national security policies are designated and decided by politicians or decision-makers rather than being natural given. Therefore, securitisation means transforming subjects into matters of security in order to justify specific measures taken. Dencik and Cable (2017) argue that contemporary surveillance practices incorporate a lack of transparency, knowledge and control over what happens; it inculcates feelings of widespread resignation leading to a condition they identify as “surveillance realism”. Surveillance realism is a concept developed from Fisher’s (2009) notion of “capitalist realism”. It refers to attitudes towards surveillance practices as being coloured by a lack of imagined alternative possibilities because of their hegemony and normalisation (Fisher, 2009). In this way, civil liberties would be infringed by using the so-called politics of fear. In his cycle of lectures on Security, Territory, Population (1977–1978) and The Birth of Biopolitics (1978–1979), Foucault says that modern state obtains its power by collecting information about people’s life (Gutting, 2018). Following this reasoning, with the SCS, the Chinese Government uses up-to-date technology to gain knowledge about citizens, thus putting them in a situation of power/knowledge disbalance. While having collected data about individuals, it does not allow individuals to collect data about the state. In doing so, it highly affects their free will and thus their behaviour in every aspect of life, from shopping habits to sexual life and so on. People will consequently act “normally” because they feel like being constantly watched. China does not see the credit score as being negative but rather as a status symbol; the more trustworthy a person, or a company, is the more privileges she, he, or it enjoys. However, this argument is contradicted by Western scholars. Following Foucault’s reasoning, they claim that the Chinese Government is creating obedient subjects as never before: they do not only reproduce specific behaviour but motivate each other (Ibid.). Thus, the country’s main function does not lie in torture or punishment, but normalization. In sum, China’s surveillance society has transformed from the previous “Panoptic model” to a “Panspectric model” because “information is now actively generated by multiple sensors scattered across the lives of its subjects” (Creemers, 2018).

On the one hand, the Chinese Government claims that the collection of data is not a Chinese invention, but rather it comes from the Western world. In fact, in many countries, both public and private sectors access, store, and use personal data of citizens. As stated by Ellis, a variety of agencies has ingrained techno-security so widely into everyday cultural practices that it has become a normal and unnoticed part of many people's everyday life (Ellis, 2019). This discourse is known as the double standard argument, which means that the West, in this scenario, applies different sets of principles for situations that are, in principle, the same. Therefore, accusing China is discriminatory, and the accuses are just a political discourse. Moreover, Chinese officials claim that the word "credit" has a different meaning in Chinese, and it has been mistranslated. According to Shi, it is usually used to indicate various ideas like Chengxin (integrity), Xinyong (credit), Xinyu (reputation), or Xinren (credence) (Liang et al., 2018). As a consequence, it indicates moral principles, necessary for the well-functioning of the Chinese society. On the other hand, it is clear that the system goes far beyond the traditional financial credit system present in Western countries. Moreover, the amount of information and data collected is disproportionately higher than the ones collected in the West. This is because the Chinese Government is purportedly collecting digital records on the social and financial behaviours of private citizens and organizations with the support of IT firms including Alibaba and Baidu (Ibid.). As a consequence, the power of the system is much higher and, by being controlled by the CPC which regulates the algorithms, it can be used in favour of the Party's agenda.

When talking about surveillance, it is natural to take into consideration the right to privacy. Article 12 of the UDHR cites: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks" (United Nations General Assembly, 1948). The article is similarly expressed in Article 17 (1) and Article 17 (2) of the ICCPR. The right to privacy is thus considered to be essential for restraining governmental intervention on individuals and on private companies. It is not clear whether the right to privacy is part of the social contract between individuals and governments. As discussed, big data technologies enable the accumulation of detailed personal information without informing individuals, and these data can be used for security or political purposes (Liang et al., 2018). With the aggregation of various data, personal information and privacy might be divulged and undermined (Ibid.). Considering the structure of the SCS, it can be argued that it is not compatible with the right to privacy. Despite China's Constitution preserves "privacy of correspondence" (Art.40), and despite it can be

argued that the right to privacy has acquired the status of customary international law (since the PRC has not ratified the ICCPR), the SCS has been thought and design without considering individuals' privacy. Controversy, the PRC rejects this criticism saying that specific measures guarantee national security and development. In addition, they claim that "If you have nothing to hide, you have nothing to worry". The nothing to hide argument, in relation to government surveillance, states that these programs do not threaten the right to privacy unless they require illegal activities, and that if they do uncover illegal activities, the person committing these activities does not have the right to keep them private for matters of national or international security. Opposed to this thought is Edward Snowden which claimed that: "Arguing that you don't care about the right to privacy because you have nothing to hide is no different than saying you don't care about free speech because you have nothing to say" (Snowden, 2014). Furthermore, since those accuses comes from the Western world, the PRC talks about double standards. Following the attacks on 9/11, the West has adopted strict measures in favour of security. Moreover, the recent Cambridge Analytica scandal which has exploited social media by dishonestly purchasing and tapping into consumer datasets from Facebook to undertake psychographic profiling and micro-targeting of voters from marginal constituencies led to criticisms coming from the East (Sampson, Ellis and Maddison, 2018). Particularly, China does not accuse the West for violating the right to privacy, but instead, it claims that the accuses from the West are hypocritical because the same happens in Europe or in the USA. Indeed, governmental and intergovernmental organizations such as the NSA, CIA, and GCHQ for instance, are based on mass surveillance systems throughout the world. Programs such as PRISM, MYSTIC, and other operations performed by NATO-member states are able of collecting a vast quantity of metadata, internet history, and even actual recordings of phone calls from various countries (Snowden, 2014). Therefore, it is clear that the SCS is against the right to privacy, but Western systems are too. It is difficult to trace a line between privacy and security, especially when it is a matter of national security but by constantly surveilling every action of every citizen, the SCS goes far beyond any other system.

The second point that this research analyses concern freedom of movement. Paragraph 1 and Paragraph 2 of the UDHR claim that: "Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country" (United Nations General Assembly, 1948). As of May 2018, 11.14 million people are banned from flying, 4.25 million were banned from using a high-speed train and 3 million people were banned from buying

business class train tickets (Teoh, 2015). With the implementation of the SCS at the national level, the numbers are increasing. According to Vinayak, freedom of movement is not constitutionally guaranteed, and the social credit system has led to widespread imposition of travel bans on blacklisted individuals (Vinayak, 2019). However, as it has been explained, in Chinese society, rights come with social duties. Therefore, the Chinese Government claims that it does respect freedom of movement only if citizens behave accordingly. It is clear that the judgment is arbitrary, and thus, it is not compatible with international human rights standard.

A similar argument can be done for freedom of opinion and expression. Article 19 of the UDHR claims that: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” (United Nations General Assembly, 1948). As it has been claimed, writing post against the government on social media lead to losing points. As the system will be mandatory for all citizens, there is no opt-in or consent for data collection and end-use. Freedom of speech embodied in the Chinese Constitution (Art.35) is also being flouted, with financial and travel restrictions being placed on dissidents. Thus, as censorship is widespread in China, the SCS has simply aggravated the human rights violation toward freedom of opinion and expression. In support of the theory, some scholars have argued that the SCS has empowered the Chinese government to conduct censorship, manipulate public opinion, and reduce political risks (Liang et al., 2018).

Lastly, as it has been widely explained, the Chinese Government prioritises Economic, Social, and Cultural rights. In this regard, the SCS is considered a vital tool to steer China’s economy. Moreover, the Government has continually empathised each state’s right to implement its own social system and development path. For this reason, China has not ratified the ICCPR. However, the SCS can also be criticised in relation to the ICESCR. Article 2 of the ICESCR states that: “ The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status” (United Nations General Assembly, 1966a). As a consequence, it can be argued that the SCS creates divisions between healthy and sick, sane and insane, trustworthy and unreliable, and thus, it is discriminatory. In addition, tests and experiments, again and again, confirm that data and algorithms are just as biased as society is and inevitably reproduce real-life segmentation and inequality. Cathy

O’Neil, the author of *Weapons of Math Destruction*, for instance, warns that we need algorithmic audits (O’Neil, 2017). After all, algorithms are not some naturally occurring phenomena, but are the reflections of the people (and societies) that create them. As China has ratified the ICESCR, the SCS violates the indiscriminatory nature of the Treaty. In this regard, the Committee on Economic, Social, and Cultural Rights claimed that: “Despite the incorporation of the principle of non-discrimination in the State Party’s Constitution and in other laws, the Committee regrets that the State Party does not have a comprehensive anti-discrimination law that protects all marginalized and disadvantaged individuals and groups in their enjoyment of economic, social and cultural rights” (United Nations General Assembly, 1966b).

5.5 The Social Credit System; a Tool to Enforce the Law?

The concept of the rule of law creates several criticisms in the dichotomy between the East and the West. Internationally, it has been explained that the concept refers to the supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural judicial transparency. Therefore, to understand if the SCS is compatible with the principle of the rule of law, it is necessary to understand the relation between the SCS and the law itself.

The role of the law was presented in the 4th Plenum in which “governing the country by virtue” was represented as equal to “governing the country by the law”. Law thus is a tool to cultivate subjects’ moral sentiments and transform their worldview in order to achieve social and cosmic harmony (Creemers, 2018). In this context, the SCS fits perfectly; in fact, from its creation, the compliance problem that the SCS is intended to solve has been framed in moralistic terms. With the advent of technologies and big data, the CPC has managed to penetrate society in every aspect. As stated by Creemers, the SCS embodies this logic as made possible by information technology. Its core function is to create a system whereby the compliance of individuals and businesses with laws and regulations is increasingly monitored, and the consequences of non-compliance subject to swift and efficient sanction (2018). On the one hand, it seems that the SCS is not compatible with the rule of law in this scenario because the CPC is above the law. In June 2019, Samantha Hoffman of Australian Strategic Policy Institute argued that “There are no genuine protections for the people and entities subject to the system [...] In China there is no such thing as the rule of law.

Regulations that can be largely apolitical on the surface can be political when the CPC decides to use them for political purposes” (Kobie, 2019). As a matter of fact, the arbitrary nature in which punishments can be meted out, represent a real threat for people and for well-functioning the rule of law. The ambiguity of the algorithm of the SCS gives Party officials a great deal of unilateral power in deciding who has behaved in an undesirable way and then punishing them for it. So, as it is clear, some arbitrary decisions have already been made, serving as a canary in the coal mine, warning of the initial abuse within the SCS. For example, Li Xiaolin, a lawyer, was blacklisted in 2016; despite he had submitted to a court a written apology but the court found it insincere. It has also been demonstrated that the CPC sees the rule of law as the rule by law and thus as a tool that they can use to enforce the rule itself in order to achieve social harmony.

On the other hand, the PRC justify it by saying that, according to its long historical and political tradition, they conceive society as an organic whole. In August 2019, assistant researcher Zhengjie Fan of China Institute of International Studies published an article, claiming that the current punishment policies such as the blacklist do not overstep the limits of the law. He argued that since 2014, China's SCS and the credit system of the market had grown to complement each other, forming a mutually beneficial interaction (Fan, 2019). Therefore, every member has to act accordingly because collective rights are more important than the rights of individuals. Moreover, the Chinese Government claims that as a public power in the SCS, it mainly plays the role of organising, guiding, promoting, and demonstrating. According to this vision, the SCS increase the transparency of government affairs and the exposure of corruption, it guides and standardise the construction of business integrity in various fields such as production, distribution, and finance, and urged private enterprise credit scoring companies to protect User information reduces the risk of information asymmetry and the cost of information collection. Considering, as it has also been explained in Chapter 4.3, the Chinese interpretation of the rule of law is not in line with the international one, and thus, it can be argued that the SCS is not in line with the international definition of the rule of law. Although it consolidates the laws of the market, it is also realistic to hypostatise that the SCS could get out of control, or rather evolve into full state control under the power of the CPC. Another argument of criticisms towards the relation between the SCS and the rule of law concern the division of powers, i.e. between the judiciary, executive, and legislative. Since, in practice, the law and the Constitution is not seen as an autonomous sphere, but it is connected with politics and governance, the SCS can be used by the CPC to bypass the judiciary in its favour. In conclusion, the SCS itself, as

studied by Chinese authorities and experts is not in line with the international understanding of the rule of law.

6 Conclusion

The following thesis aimed at analysing the SCS and its relationship with the international definition of human rights and with the international principle of the rule of law. In doing so, it has firstly analysed the foundation of modern China from the Communist Revolution until the advent of Xi Jinping by shedding light on the human rights record of the country and of the progressive understanding of the role of the law. The list of Chinese human rights violations is long. Those violations include torture and other abuses in the criminal justice system, the lack of media and internet freedom; land rights, labour rights, ‘birth planning’ policies; and various kinds of discrimination, including against the physically or mentally disabled, the persecution of dissidents, communities of faith and minorities (Pils, 2018). However, the Chinese understanding of human rights differs from the Western one. Notably, the PRC places much more emphasis on collective rights rather than on individual freedoms by saying that too many freedoms lead to chaos. For this reason, the second chapter of the thesis explained the origins of the Chinese point of view, i.e. it explained the concept of Asian values. Amongst those, the respect for authorities and elders, family and community values. Following this premise, chapter 3 has elaborated on the international definition of human rights and on the Chinese one (cultural relativity argument). On the one hand, China has improved the living standards of its citizens and has improved on a series of human rights violations, particularly regarding Economic, Social, and Cultural Rights. On the other hand, it has demonstrated that the PRC is far from achieving Civil and Political Rights as well as other freedoms and rights. The thesis has also argued that China emphasises the principles of national sovereignty and on the principle of non-interference in the domestic affairs of a country.

Drawing upon these two premises, the thesis analysed the role of the PRC in international relations. The PRC role in the international arena can be marked by three different periods: prior to the Tiananmen Square protests of 1989, when China played a marginal role; from 1989-2013, when China became more active; and post-2013, when China has become progressively more assertive in promoting its own interpretation of international norms and mechanisms (Piccone, 2018). In fact, in the last years, China is trying to fill the vacuum power that has been left by Donald Trump. In doing so, China aspires to play a more influential role in global governance. Moreover, China also became the biggest trading

partner for many countries; in Africa, for instance. Under Xi Jinping, China set out on a new ambitious program known as “One Belt, One Road”. The second chapter has indeed analysed the geopolitical influence that China is aiming at, in order to reshape the international understanding of human rights and of the rule of law, on top of the economic interests. Regarding the rule of law, the thesis has analysed how problematic defining what the rule of law is. Despite the fact that the term has been clarified by UN officials and by several International Organisation, it seems that there is no universal consensus. However, while the Chinese Constitution states its own supremacy, it is clear that the CPC is much more important. Consequently, equality before the law and the principle of division of power are not effective in China.

Once the thesis has outlined those definitions, the research has explained in detail what the SCS is, as well as the goals and objectives. The system aims at giving a social and credit score to approximately 1.4 billion Chinese citizens by 2020. The idea itself is not a Chinese phenomenon since credit scores existed in Western countries already. However, the SCS surpasses the Western ones in three ways. Firstly, the broader scope of which criteria are evaluated for credit rating purposes. Secondly, the spectrum and efficient enforcement of punishments and restrictions imposed as a result of non-compliant behaviour. Thirdly, the growing use of digital sensors and devices that can continually collect and assess behavioural data in real-time. As the thesis explained, the SCS can be seen as a realisation of three ideologies that play an essential role in China: Communism, Capitalism, and Leninism. The system has received many criticisms, especially from the Western world. Indeed, according to Western scholars, the system will lead to a suppression of fundamental freedoms and rights, such as the right to privacy, freedom of expression, and freedom of movement. Moreover, it will undermine the principle of non-discrimination enshrined in the ICCPR and in the ICESCR. The research has proved that the SCS can indeed lead to human rights violations because the algorithm can always be modified according to the CPC’s will. Even if the Chinese Government justifies the system as a way to improve security and to boost its economy, the power of the SCS goes much beyond this scope. Moreover, the thesis has proved that the SCS is not compatible with the rule of law as it is understood internationally because the power remains in the hands of the CPC. As explained by Síthigh and Siems (2019), it can be said that the SCS would be problematic in the “rule of law societies” of the West as it lacks transparency, as it disrespects the divide between law and politics, and as it is not needed due to more effective law enforcement anyway. In the words of George Orwell,

“The Party seeks power entirely for its own sake. We are not interested in the good of others; we are interested solely in power, pure power” (Lange, 1982).

Although it would have been interesting to analyse more deeply the role that China is, or is not, playing in promoting peace and human rights, and the clash with the “Western world”, due to the design of this paper, this was not possible. Nevertheless, any additional research on the SCS, particularly by focusing on its relationship with international human rights standards and with the principle of the rule of law, is necessary to achieve a more comprehensive understanding of this field.

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