
Exploring Public International Law and the Rights of Individuals with Chinese Scholars – Part 2

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In collaboration with China University of Political Science and Law



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In November 2014 Chatham House and China University of Political Science and Law (CUPL) held a two-day roundtable meeting in Beijing on public international law and the rights of individuals.

This was the second in a series of roundtable meetings forming part of a wider Chatham House project exploring China's impact on the international human rights system. The first roundtable was held at Chatham House in April 2014, and a summary is available on the institute's website.¹

Both roundtable meetings were held in English under the Chatham House Rule.² The specific objectives of the meetings were to:

- Create a platform for Chinese international law academics working on international human rights law issues to present their thinking and exchange ideas with counterparts from outside China;
- Build stronger understanding within the wider international law community of intellectual debates taking place in China about the international human rights system and China's role within it; and
- Support networking between Chinese and non-Chinese academics working on international human rights and related areas of international law.

The meeting in Beijing was hosted by CUPL and involved 20 participants, 10 Chinese (from universities and other academic institutions in Beijing) and 10 non-Chinese (from Australia, the Netherlands, South Africa, Switzerland, the United Kingdom and the United States). To ensure continuity while also expanding the experts network being built, the second meeting included a mix of participants from the first meeting and some new participants.

Background: China's plans to exert more influence in international law

At the first roundtable meeting, in April 2014, Chinese participants communicated a collective view that China should make a stronger contribution to the field of international law. A number of recent policy announcements suggest that these ambitions are shared by the Chinese government.

This second roundtable took place three weeks after the fourth plenary session of the 18th Central Committee of the Chinese Communist Party, held on 20–23 October 2014 on the topic of the rule of law. While the plenary session focused primarily on ways of strengthening China's domestic legal system, there was also discussion about China's role within the international legal order.

In an important passage of the outcome document, the Committee pledged to '*[v]igorously participate in the formulation of international norms, promote the handling of foreign-related economic and social affairs according to the law, strengthen our country's discourse power and influence in international legal affairs, use legal methods to safeguard our country's sovereignty, security and development interests*'.³ It called for the creation of '*foreign-oriented rule of law talent teams who thoroughly understand international legal rules and are good at dealing with foreign-oriented legal affairs*'.

A day after the plenary session ended, China's Minister of Foreign Affairs, Wang Yi, issued a signed article on the international rule of law to mark United Nations Day. In addition to affirming the official pillars of

¹ 'Exploring Public International Law on the Rights of Individuals with Chinese Scholars',

http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140414PublicInternationalLawChina.pdf.

² 'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.'

³ An English-language translation of the outcome document from the plenum is available at <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>.

China's foreign policy, including the Five Principles of Peaceful Coexistence, he indicated that '*As China grows stronger, it will make greater contribution to the maintenance and promotion of international rule of law, as it works with other countries to build a fairer and more reasonable international political and economic order.*'⁴

At the roundtable meeting in November, it was pointed out that this recent focus on securing a stronger role for China in shaping the international legal order is new compared with a 2008 government white paper on the rule of law. The white paper referred to international law as a source of law within the domestic Chinese legal system, and acknowledged China's participation in various transnational legal regimes and international dialogues on the rule of law, but made no reference to China's influence on international law.⁵

The roundtable provided an opportunity to explore with Chinese international law academics the significance of the more recent pronouncements.

How does China understand the rule of law in the domestic and international realms?

There was discussion about whether the Chinese government is really promoting the rule of law in the sense of government accountable under law, or whether it means instead rule *by* law through the leadership of the Chinese Communist Party. This debate has been taking place inside and outside China since the beginning of the reform era in 1978, and the discussion at the roundtable reflected this.

'In international relations jargon, terms like the rule of law and pluralism are fashionable, but it is not always clear we are talking about the same things. That is the benefit of forums like this.'

– non-Chinese roundtable participant

On the one hand, the plenary outcome document presents the Party's leadership of China as the *sine qua non* of '*Socialist rule of law with Chinese characteristics*' and rejects the indiscriminate application of '*foreign rule of law concepts and models*'. On the other hand, it emphasizes that all organizations and individuals '*must respect the authority of the Constitution and the laws, and must act within the scope of the Constitution and the laws*', calls for judicial authority to be exercised fairly and independently, and announces reforms aimed at strengthening the judiciary against interference, including from the Party and leading cadres.

Thus, as one Chinese participant observed, although the issue of whether the recent plenary represents a commitment to the rule of law or rule by law is apparently a simple question, '*no one can give a definite answer*'. The matter is being debated actively among Chinese lawyers. While most commentary of the plenum outside China was highly sceptical, we heard that many Chinese legal academics regard the plenum as a progressive development. Chinese lawyers regard strong statements about the authority of the constitution as particularly significant.

Participants also discussed China's conception of the international rule of law. It was suggested that, like most states, China probably favours a minimalist theory emphasizing the importance of conducting

⁴ The full text of the signed article is available at http://news.xinhuanet.com/english/china/2014-10/24/c_133740723.htm.

⁵ Information Office of the State Council of the People's Republic of China, 'White Paper: China's Efforts and Achievements in Promoting the Rule of Law' (February 2008); available at http://news.xinhuanet.com/english/2008-02/28/content_7687418.htm.

international relations according to rules and is unlikely to support theories privileging international law over domestic law or advocating a global normative regime affecting individuals directly without mediation by national institutions.⁶ Some support for this is found in the foreign minister's signed article referred to above, in which he indicates that the international rule of law will be served '*so long as countries properly handle their respective relations of interests in accordance with international law and rules guiding international relations*'.

Roundtable participants identified other relevant themes in China's discourse about the international rule of law, including the importance of upholding the authority of the UN Charter, avoiding double standards by applying international rules consistently, promoting democracy and pluralism in international relations, and international cooperation on matters such as transnational crime and terrorism.

Cooperation with the international human rights system

Cooperation by China and other states with international institutions, as an aspect of the international rule of law, was a recurring theme at the roundtable.

As at the April meeting, China's changing relationship with the UN human rights mechanisms was a particular focus for discussion. A Chinese participant described the evolution of this relationship, starting with misunderstandings during the period when China was still represented at the UN by the Republic of China,⁷ followed by tentative engagement in the 1980s before the crackdown on the student movement in 1989, which triggered a well-known '*quarrel*' between the UN Commission on Human Rights and China. At this time, human rights came to be regarded in China as '*a Western weapon to destroy the Chinese system*'. China was actively engaged in negotiations leading to the establishment of the Human Rights Council as a replacement for the Commission, and despite ongoing '*political struggles*' in the new Council, '*Chinese delegations realize that pressure is getting lower because all countries are evaluated through the Universal Periodic Review process*'.

A number of Chinese participants described their experiences of observing examinations of China by different UN human rights mechanisms. One explained that '*China feels mistreated by Western governments and by Western-sponsored NGOs. I was in some of the meetings and had similar feelings*'. Another described a human rights treaty body review of China as '*feeling politicized*', even if the treaty body members were impartial and independent compared with political forums such as the Human Rights Council.

'Human rights mechanisms exist for protection of human rights. It is not a fight between countries. How to break that is what I am thinking about ... a cooperative position is very important.'

– Chinese roundtable participant

A Chinese participant underlined the importance of taking cultural differences into account when considering '*how to make people listen to you*', and the importance in China of '*ensuring people do not lose face*'. A non-Chinese participant described the dilemmas this created within the former Commission on Human Rights when '*addressing one state in a way to save face made it difficult to treat states equally*'.

⁶ This follows a typology suggested by Simon Chesterman, 'An International Rule of Law?' 56(2) *American Journal of Comparative Law* (2008), pp. 331–61.

⁷ The People's Republic of China was admitted to the UN in 1971. Between 1945 and 1971 the Chinese seat was held by the Republic of China (confined to Taiwan from 1949).

Chinese delegations tend to assume a defensive position within the human rights machinery in Geneva, and rarely engage with representatives of genuine Chinese NGOs. It was also acknowledged, however, that the Ministry of Foreign Affairs *'prepares UN reports very seriously – there is massive participation of different state institutions and quite a lot of participation of NGOs and large delegations of experts who can bring back suggestions'*.

Participants heard that the idea, prevalent in China during the 1970s and 1980s, that individual interests need to be sacrificed to those of the collective is less pronounced in Chinese textbooks now, and that the Chinese Communist Party has a genuine commitment to human rights so long as its leadership and the socialist system of China are not challenged. Nevertheless, there is still a mindset according to which human rights are not yet understood as 'universal'. One Chinese participant described a recent questionnaire with small groups of prosecutors and law students asking if international human rights standards reflect the values of Western states, the non-Western world or neither, and which group of states play the most important role in international human rights rule-setting: 90 per cent of both groups answered that the standards are mostly shaped by Western states and reflect the values of these states.

Human rights treaties are commonly regarded in China as reflecting Western concepts of human rights, and UN human rights treaty bodies are seen as representing Western positions on human rights, overlooking the fact that China has ratified several core human rights treaties and that the human rights treaties bodies consist of independent experts representing different political, economic, cultural and legal traditions.

Echoing themes from the first roundtable meeting, a number of Chinese participants emphasized the importance of expanding human rights education in China, and the particular need to ensure that Chinese studies include a stronger focus on the relationship between human rights and public international law.

Attention was drawn by a Chinese participant to the importance of cooperation as a foundational principle of the UN Human Rights Council,⁸ and the emphasis laid on this in public statements not only by China but also many other states from all continents. It was pointed out that state cooperation is the lynchpin of the Universal Periodic Review process. There was discussion of Israel's boycott of its second Universal Periodic Review, in January 2013, in response to a Council resolution authorizing a fact-finding mission to investigate Israeli settlements, and the decision subsequently adopted by the Council on non-cooperation by a state with the Universal Periodic Review;⁹ this was welcomed by the Chinese participant who led this discussion as filling a lacuna in the institution-building package for the Council.

Influence in China of the human rights treaty bodies

There was an interesting discussion about the domestic impact of China's engagement with the international human rights system. One Chinese participant asserted that a number of criminal procedure reforms were triggered by recommendations made by the UN Committee Against Torture.

Another Chinese participant explained that international pressure *'is part of the impetus'* for death penalty reforms: *'we do not want to be so isolated in the international community so we have to decrease the crimes punishable by the death penalty to improve our image'*. Another suggested that there is *'no single driving force'* for human rights reforms, although international pressure plays a role: *'within China groups of like-minded lawyers and scholars have taken the sprig from international standards and incorporated this in our arguments for less death penalty – we work on the margins to*

⁸ A/RES/60/251.

⁹ A/HRC/OM/7/1.

make suggestions compatible with international standards and that can be accepted by the Chinese authorities’.

‘The treaty bodies are not that famous in China but they have made a great contribution to human rights development in China because they provide concrete suggestions in recommendations in terms of legislation, administrative practice and judicial reform.’

– Chinese roundtable participant

‘News that treaty body observations could have led to substantive reforms in China is seriously encouraging.’

– non-Chinese roundtable participant

The example of South Africa: from rule by law to rule of law

There was reflection on the example of South Africa, which transformed itself through a ‘constitutional revolution’ from a ‘rule by law’ state under the apartheid regime to a state characterized by the rule of law. In this context, South Africa also provides an interesting case study of the possibilities and challenges of using domestic legal systems to promote the international rule of law.

In a landmark recent case on universal jurisdiction, the Constitutional Court of South Africa unanimously held that the South African police service had a duty to investigate allegations of torture amounting to crimes against humanity committed in Zimbabwe by high-ranking Zimbabwean officials against Zimbabwean nationals.¹⁰

This duty arose from South Africa’s domestic legislation incorporating crimes covered by the Statute of the International Criminal Court (ICC) and various constitutional provisions relating to the role of the police. The Constitutional Court held that neither international nor domestic law required the presence of the accused in South Africa for an investigation (as opposed to a prosecution) so long as the state with jurisdiction is unwilling or unable to prosecute, the investigation is confined to the investigating state, and an investigation is reasonable and practicable in the circumstances. Each of these conditions was satisfied in the case. The roundtable heard that the police service had indicated that it respected the judgment, although implementation had been complicated by the lapse of time since the dossier setting out the allegations was assembled.

‘The South African experience of international criminal justice vividly illustrates how a state can successfully incorporate international standards for the benefit of victims... Constitutions can play an important role in recognizing and protecting human rights... I was lucky to have the chance to read the South African Constitution and when I read it, I was deeply impressed by the articles on human rights.’

– Chinese roundtable participant

A non-Chinese participant noted the paradox that this universal jurisdiction success story is also an illustration of how hard it is to implement international law in domestic settings. All three branches of the South African government had to act: the legislature had to pass the relevant laws; the judiciary was required to interpret these; and the executive, through the police, was required to investigate the alleged violations.

¹⁰ *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another* [2014] ZACC 30.

What would greater Chinese influence on international law mean in substantive terms?

Beyond indicating a general concern to safeguard China's '*sovereignty, security and development*' interests, the plenary outcome document says little about what China would seek to achieve in concrete terms by contributing more actively to the development of international law.

A Chinese participant suggested that the cyber domain is one area in which China will actively seek to shape international law. The roundtable heard that, in the context of confrontations with the United States over cyber attacks, there are active debates between different Chinese government ministries and in the academic community about the extent to which cyber warfare is covered by the existing framework of international humanitarian law, including in relation to the vexed issue of attribution to states of cyber attacks emanating from IP (internet protocol) addresses in their territories.

The prevailing view in China is that new international norms governing many of these issues are required, and China should play a leading role in their evolution. Together with Russia and a number of Central Asian states, China has seized the initiative by proposing within the UN General Assembly a new International Code of Conduct for Information Security.¹¹

It was also noted that on 12 September 2014 China used a UN Human Rights Council panel debate on the right to privacy in the digital age to denounce mass surveillance in violation of state sovereignty, citing the right to privacy in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (which China has signed but not ratified) to justify its arguments.

Ever since the Arab Spring, China has generally been active on a range of cyber issues in the UN Human Rights Council, with a view to securing an expansive scope for state action to protect national security or public order through restrictions on individual rights. In a departure from its usual practice of seeking a low profile in this forum, China often leads a coalition of states towards these ends. The continuation of this trend in 2014 was discussed at the meeting. For example, at the 26th regular session of the Council in June 2014, China spoke on behalf of eight states in seeking to amend a resolution on digital rights to make it '*more balanced*' by emphasizing how the internet is used to promote hatred and extremist views.

A non-Chinese participant suggested that links can be drawn between these activities and China's efforts to bolster state control over the internet in the context of global deliberations about the future of internet governance and international action on cyber terrorism at the UN Security Council and elsewhere.

Otherwise, China's specific objectives in seeking a more influential role in international law remain unclear, and warrant further discussion and study.

The important question was posed whether China's ambitions to contribute more to the evolution of international law will lead to its more active engagement in public international law dispute resolution mechanisms. China has generally eschewed participation in such mechanisms, with the notable exception of the World Trade Organization (WTO) dispute settlement system.

¹¹ A/56/359 'Letter dated 12 September 2011 from the Permanent Representatives of China, the Russian Federation, Tajikistan and Uzbekistan to the United Nations addressed to the Secretary-General'; available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/496/56/PDF/N1149656.pdf?OpenElement>.

Responsibilities in international law

The treatment of ‘responsibilities’ in various areas of public international law relating to individual rights was addressed throughout the roundtable.

International human rights law

Traditionally, the focus of public international law has been on the responsibilities of states, initially *vis-à-vis* other states but increasingly towards other actors. International human rights law is the principal branch of public international law that elaborates the responsibilities of states to individuals, who are thereby accorded status as ‘beneficiaries’ of human rights. The growth of international human rights law in the post-Second World War era is a hallmark of what has come to be known as the ‘humanization’ of international law. It was noted at the meeting that this development has given rise to debate about the extent to which international law confers responsibilities, and not just benefits, on individuals.

A Chinese participant surveyed provisions referring to individual responsibilities in various international and regional human rights standards (including Article 29(1) of the Universal Declaration of Human Rights) and asked a series of questions about how these should be understood. Does international human rights law have any horizontal effect between individuals, or do legal obligations to protect individuals from violations caused by other individuals rest on states? Is it better to see international human rights law as implying, rather than conferring, obligations on individuals (as in the case of the prohibition of torture)? Even if in China there is a preference for theories in which individuals take on responsibilities when assuming rights, the question of the legal relationship between individual obligations and rights remains very unclear.

A Chinese participant asked if the English terms ‘responsibility’, ‘obligation’ and ‘duty’ are interchangeable, especially in the context of international human rights law. A non-Chinese participant explained that when the UN Declaration on Human Rights Defenders was being negotiated, the term ‘duty’ was used to connote legal duties and the term ‘responsibility’ was used when the drafters ‘*weren’t necessarily referring to legal but perhaps political responsibilities*’.

There was discussion of criticisms that international human rights discourse reflects a liberal ideology in failing to balance individual rights and responsibilities, and of the preference of many non-Western cultures for greater emphasis on individual responsibilities. A non-Chinese participant noted that there has been a shift in focus towards individual responsibilities in the West, especially in the context of austerity policies that challenge the social provision of resources to disadvantaged groups. In Australia, for example, the government has adopted the notion of mutual responsibilities to suggest that the enjoyment by Aboriginal communities of certain human rights is conditional on these communities meeting certain responsibilities. Concerns were also expressed about the so-called ‘Asian values debate’, which was used by leaders to subordinate individual rights to a ‘*nebulous collective public interest*’.

‘Many countries you are from are in a post-modern stage, moving back a bit from rights to responsibilities... In China we still need to focus on the concept of rights... The state is under an obligation to respect, protect and fulfil human rights.’

– Chinese roundtable participant

Many feminist international human rights lawyers have critiqued assumptions that the private realm, as the setting for domestic violence and other forms of abuse, falls outside the responsibility of states in

international law. A non-Chinese participant explained that this does not mean that private/public distinction are illegitimate – the right to privacy and the notion of state sovereignty are both important protections against unnecessary interference by powerful actors – but the question is how we think about these distinctions and where the line is drawn for the purposes of regulation.

International criminal law

International criminal law, which has also developed rapidly since the Second World War, deals with individual responsibilities in much more direct and certain terms. Various issues relating to individual criminal liability under international law were explored at the roundtable meeting.

A defining feature of international crimes is the systemic or organizational context in which they are committed, and there was discussion of the tension this creates with the principle of individual criminal responsibility. In order to ensure political superiors bear responsibility for international crimes committed through the instrumentality of their subordinates, a range of theories of individual liability have been developed. We heard that the ‘command’ theory of responsibility used in many international cases following the Second World War has generally given way to other theories of individual liability, including ‘joint criminal enterprise’ and control theories. Some participants expressed concerns about judgments – including those against Radoslav Brđanin, by the International Criminal Tribunal for the former Yugoslavia, and Germain Katanga, by the ICC – that arguably overstepped the mark when applying ‘top down’ theories of imputed liability to military leaders such that the core principle of individual criminal responsibility was violated.

The ICC’s early sentencing practice was scrutinized. A Chinese participant made the case for a framework limiting judicial discretion as a step towards clarifying sentencing baselines and the proper approach to assessing the gravity of specific crimes committed by perpetrators.

The appropriate division of labour between states and the ICC when it comes to prosecuting individuals in the context of international crimes was also debated.

There was consideration of a test developed by the ICC requiring a state to demonstrate it is pursuing the ‘same person’ in relation to the ‘same conduct’ in order to successfully challenge the admissibility of a case before the ICC, under the principle of complementarity (according to which primary responsibility for addressing international crimes rests with national jurisdictions and the ICC is a court of last resort).

Concerns were expressed about findings of admissibility before the ICC in circumstances where a state is genuinely pursuing a prosecution relating to the same factual matrix but for which different charges – e.g. another international crime or an ordinary domestic crime – were laid. A non-Chinese participant argued that such outcomes are ‘*a waste of court resources*’ and ‘*inconsistent with state sovereignty*’. The merits of an alternative ‘sentence-based’ approach, according to which the case would be inadmissible before the ICC if the domestic prosecution would result in an equal or greater sentence, were debated, and some participants indicated that this was a compelling alternative. Others queried the loss of ‘*stigmatizing power*’ when an international crime such as genocide is prosecuted at the domestic level as murder, and suggested that the ‘sentence-based’ approach might undermine the enterprise of encouraging states to adopt universal jurisdiction provisions to satisfy the complementarity principle.

There were differences of view between participants about the extent to which the fairness of a domestic prosecution should be taken into account when assessing whether a state is ‘unwilling or unable genuinely’ to carry out an investigation or prosecution for the purposes of determining admissibility of a

case before the ICC under Article 17 of the Statute of the ICC. In a recent judgment in the case against Abdullah Al-Senussi,¹² the Appeals Chamber of the ICC rejected the argument that a state should be deemed ‘unwilling’ to prosecute if it fails to respect the fair trial rights of the accused *per se*, stating that the ICC ‘*was not established to be an international court of human rights*’. The Appeals Chamber did accept, however, that admissibility before the ICC may be possible where violations of fair trial rights are ‘*so egregious that the proceedings can no longer be regarded as being capable of providing any genuine form of justice to the suspect*’. One participant considered this to be the correct position given the text and drafting history of Article 17, while other participants suggested that too much weight had been given to the *travaux préparatoires* and that an unduly narrow approach would undermine the legitimacy of the ICC.

A Chinese participant presented a stocktake of referrals to the ICC, with a particular focus on self-referrals. Doubts were expressed about the Office of the Prosecutor’s decision in 2012 to reject an attempted self-referral by the Palestinian Authority in relation to alleged international crimes committed in Gaza. The Office of the Prosecutor reasoned that, at the time, the Palestinian Authority had only been recognized by the UN General Assembly as an ‘observer entity’, and was therefore unable to sign up to the ICC and make a self-referral. A Chinese participant suggested that other objective factors of state recognition by more than 130 governments and some international organizations should have been taken into account. The ‘effective control’ test used to reject an attempted self-referral on behalf of the Morsi regime ousted from government in Egypt through a *coup d’état* was also questioned, on the basis that an earlier successful self-referral of the situation in Côte d’Ivoire may not have passed this test. Given the political context of these decisions, a Chinese participant warned that ‘*the Office of the Prosecutor must be very careful when it sets up such tests; once set up they must be applied equally*’.¹³

Other topics of discussion

In addition to topics covered in more detail above, participants explored a range of other important issues and recent developments including:

- The recent practice of the UN Security Council relating to individual rights, including the value of a proposed code of conduct governing the veto power of permanent members in the context of atrocities and concerns shared by many participants about the human rights implications of Resolution 2178 calling on states to legislate to prevent travel and support for foreign terrorist fighters;
- Increasing convergence of international human rights law and the law of armed conflict and the rise of ‘*contextual*’ approaches seeking an accommodation of these two areas of law rather than displacement of general rules by more specific rules (per the principle of *lex specialis*);
- The implications in this regard of the recent acceptance by the United States that the operation of the UN Convention Against Torture is not suspended in times of war, and a recent European Court of Human Rights ruling that, in the context of an international armed conflict, derogation from Article 5 (right to liberty) of the European Convention on Human Rights was not required

¹² *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Judgment on appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled ‘Decision on the admissibility of the case against Abdullah Al-Senussi’, No. ICC-01/11-01/11 OA6, 24 July 2014.

¹³ Subsequent to the meeting, Palestine acceded to the ICC Statute in January 2015, and lodged a declaration under Article 12(3) accepting ICC jurisdiction over alleged crimes committed ‘in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014’. On the basis of UN General Assembly Resolution 67/19 of 29 November 2012, which granted Palestine the status of a non-member observer State in the UN, the ICC Prosecutor considered Palestine a ‘State’ for the purposes of accession to the Statute and has opened a preliminary examination into the situation in Palestine; see ICC press release http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1083.aspx.

before a state's compliance with detention rules in the Third and Fourth Geneva Conventions could be considered as part of an assessment of that state's compliance with Article 5;¹⁴

- A new General Comment of the UN Human Rights Committee on Article 9 (the right to liberty and security of person) of the International Covenant on Civil and Political Rights, including stronger guidance on the safeguards required to prevent security detention from constituting an arbitrary deprivation of liberty contrary to the Covenant and emphasizing that arrest or detention as punishment for the legitimate exercise of rights amounts to an arbitrary deprivation of liberty;
- Unresolved issues and complications in the jurisprudence (particularly from the European Court of Human Rights) relating to the extraterritorial operation of human rights treaties, which is becoming one of the most significant evolving areas of international human rights law;
- The balancing of individual rights and public interest considerations in the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, and the significance of a public health amendment that will enter into force when two-thirds of WTO member states have accepted the change (there is a deadline of 31 December 2015); and
- Developments relating to the crime of aggression, including questions about the theory of individual liability that would be applied and likely judicial practice with respect to sentencing.

Looking ahead

Chinese and non-Chinese participants expressed strong interest in continuing and strengthening this network as a means of fostering dialogue between Chinese international lawyers and their peers outside China. A number of topics for future discussion were identified, including China's efforts to increase its influence on international law, and the operation and development of international law on a range of security-related issues including counterterrorism and digital surveillance.

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¹⁴ *Hassan v United Kingdom* (Application No. 29750/09) [2014] ECHR 29750/09.