Will Charter 08 Follow the Same Trajectory as Charter 77?

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Abstract

Charter 77 is viewed as a if not the predominant impetus for the dramatic shift from a communist authoritarian system to a democratic society in Czechoslovakia. With explicit reference to Charter 77 and the obvious namesake parallel, Charter 08 was published by a group of Chinese intellectuals and political leaders in December 2008, calling for reform of essential features of the Chinese political and legal system.

The question now is whether Charter 08 can and will set China on a similar trajectory as the path set for Czechoslovakia by Charter 77. Part I of this article will describe the history of Charter 77 and Charter 08 and touch on key differences and similarities in the political, social and practical realities of Czechoslovakia in 1977 and China today. Part II will describe four prevailing opinions on the current and future impact of Charter 08. Part III will conclude with the author’s conclusion and thoughts on the question posed in the title.
INTRODUCTION.

Charter 77 is viewed as *a* if not *the* predominant impetus for the dramatic shift from a communist authoritarian system to a democratic society in Czechoslovakia.\(^1\) With explicit reference to Charter 77 and the obvious namesake parallel\(^2\), Charter 08 was published by a group of Chinese intellectuals and political leaders\(^3\) in December 2008, calling for reform of essential features of the Chinese political and legal system.\(^4\)

The question now is whether Charter 08 can and will set China on a similar trajectory as the path set for Czechoslovakia by Charter 77. Part I of this article will describe the history of Charter 77 and Charter 08 and touch on key differences and similarities in the political, social and practical realities of Czechoslovakia in 1977 and China today. Part II will describe four prevailing opinions on the current and future impact of Charter 08. Part III will conclude with the author’s conclusion and thoughts on the question posed in the title.

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3 *Id.* “The prominent citizens who have signed the document are from both outside and inside the government, and include not only well-known dissidents and intellectuals, but also middle-level officials and rural leaders.”
4 *Id.* “The Chinese document calls not for ameliorative reform of the current political system but for an end to some of its essential features, including one-party rule, and their replacement with a system based on human rights and democracy.”
As a forewarning, this article will not be satisfying. China is a complex nation whose political system is carefully veiled behind much ambiguity, and whose position in the international world is unlike any other. It stands as an economic giant and is breaking the mold of any other communist regime by integrating a market economy within its base planned economy. It is creating a property system that gives precedence to public property, but allows for and protects private property. Consequently, the conclusions reached in this article do not answer with any definiteness the question posed in the title. The goals of this article are purposefully narrow in scope: to consolidate the facts surrounding Charter 77 and Charter 08, to synthesize and summarize the predominant views of scholars and experts on Charter 08, and to draw some simple conclusions from this exposition of fact and opinion. The ultimate intention is to provide a framework to stimulate further discussion on the question posed in the title.

**Part I.**

A.) **Background on the Charters.**

Charter 77, named after the year of its creation, was born from odd bedfellows: a rock band and a group of respected politicians and intellectuals. The Plastic People of the Universe was a Czech outlawed rock band that played underground concerts centered on themes of political unrest and need for reform during the late 60’s and 70’s.5 Vaclav Havel, a well-respected politician and playwright who would later

5 “Formed shortly after the Warsaw Pact invasion of 1968, The Plastic People of the Universe is the most important rock band in Czech history. The Plastics’ non-conformity and artistic experimentation led to the loss of their professional status in
become president of Czechoslovakia, was introduced to this avant guard band when the government arrested, tried and found guilty some of the band’s members for the crime of inciting disorder. Following the trials, Havel and other well-known and respected philosophers, educators and cultural leaders rallied in solidarity around the Plastic People of the Universe and developed a consensus that reform was necessary and that the time was right for citizens to start living in the truth of individual freedom. Armed with this philosophy, the Charter 77 movement did not call for a violent coup d’etat, but rather inspired individuals to take small daily steps

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January of 1970, forcing them underground and signaling the beginning of the Czech underground music scene. Six years later, the trial of two of the band’s members, along with two other underground musicians, sparked the dissident discussions that led to the formation of Charter 77.” Havel at Columbia, http://havel.columbia.edu/the_plastic_people_of_the_univ.html (last visited June 29, 2009).

6 Later named the Czech Republic

7 “Four musicians including Vratislav Brabenec and Ivan Jirous from the Plastics, as well as Pavel Zajicek from the Plastics’ sister band DG 307, and singer Svatopluk Karasek, were held for disturbing the peace. On that day, September 21, 1976, as the four defendants sat handcuffed in the dock, rock and roll went on trial. It was the hippies versus the Communist state. The prosecutors cited vulgar lyrics in some songs and described their music as an ‘anti-social phenomenon’ that was corrupting the Czech youth. The defendants responded with dignity, defending their right to write and sing the songs they wanted. Two days later, all four were found guilty of ‘organized disturbance of the peace.’ Jirous was sentenced to 18 months, Zajicek to 12 months, and both Karasek and Brabenec to 8 months in Prague’s Ruzne Prison.” Joseph Yanosik, The Plastic People of the Universe, PERFECT SOUND FOREVER, March, 1996, http://www.furious.com/perfect/pulnoci.html.

8 “That trial reawakened civic activism in a country that had been demoralized following the Warsaw Pact invasion of 1968. It brought together numerous people who previously had nothing in common and no means of communicating with one another.” Anna Sabatova, From 1960 to Charter 77 To 1989 and Beyond, RADIO FREE EUROPE RADIO LIBERTY, Aug. 19, 2008, http://www.rferl.org/content/From_1968_To_Charter_77_To_1989_And_Beyond/19233.html.

9 Id.
to live honest lives, not controlled by constant fear of government reaction, even if this meant negative government consequences.

Before the Charter document could be successfully presented to the Czechoslovakian government and published in local press, the signors were detained and imprisoned on January 6, 1977. However, the Chartists had prearranged to publish the Charter in western media, and on January 7, 1977, Charter 77 was made available to the public in four daily newspapers: Frankfurter Allgemeine Zeitung, The Times, Le Monde, and Corriere della Sera. One day later, the New York Times and the Washington Post came out with their first of many reports on Charter 77.

The Czech government reacted quickly, viscerally and adamantly. The official legal opinion promulgated by the Czechoslovak Communist authorities found Charter 77 to be “untrue and grossly slanderous... clearly pursuing the aim of evoking hatred and hostility towards, or at least distrust of, the socialist social and state system of the republic.” The Communist Party newspaper, Rodé právo, warned Charter 77 supporters that “those who lie on the rails to stop the train of history” must expect to get their legs cut off. Many of the Charter’s authors were interrogated and imprisoned, and the Charter movement was summarily dismissed by the

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10 Prečan, Savranskaya & Blanton, supra note 1.
11 Id.
12 Id.
13 Id.
14 Id.
government as an anarchist attempt by power hungry disreputes, interested only in disrupting the peace and taking control of the government.\textsuperscript{15} Interestingly, the government decided not to prosecute the authors directly on the grounds of publishing the Charter, but rather on other claims of subversive behavior.\textsuperscript{16}

The international community validated the goals and peaceful methods of the Charter movement and events were held internationally to show solidarity and draw support for the Charter 77 movement.\textsuperscript{17} Although only circa 1900 signatories found their way to the Charter,\textsuperscript{18} the ideas and momentum of the Charter signaled the beginning of the end of the Communist regime. The bravery of the Charter authors and the harsh government response, inspired others, from all sectors of society to find courage and voice and live out their right to freedom of expression and belief. The Charter took on a snowball effect and within twelve years of the Charter’s publication, the Communist government was peacefully ousted and Vaclav Havel was voted in as president of Czechoslovakia.\textsuperscript{19}

Charter 08 was the brain child of a fairly small group of elite intellectuals, former and current political leaders and well-known human rights activists.\textsuperscript{20} However, as

\begin{flushleft}
\textsuperscript{15} Id.
\textsuperscript{16} Id.
\textsuperscript{17} Orange Tree Theatre, http://www.orangetreetheatre.co.uk/Archive/index.asp (follow “2007” hyperlink; then follow “Charter 77” hyperlink).
\textsuperscript{19} Prečan, Savranskaya & Blanton, supra note 1.
\textsuperscript{20} “When the document first appeared online in mid-December, its impact was limited. Many of the original signers were lawyers, writers and other intellectuals
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the Charter circulated the internet, its signatory membership has diversified, attracting students, peasants, and citizens from many sectors of society\textsuperscript{21}. The Chinese government’s reaction was similar to the 1977 Czechoslovakian government in substance – it condemned the Charter as illegitimate and the authors as unpatriotic citizens\textsuperscript{22}, and interrogated and arrested a number of the most predominant authors. However, the approach and intensity of China’s response was slightly different from its Czechoslovakian counterpart. Instead of giving a general wholesale rejection of the Charter, it articulated its rejection of the Charter under the theory that the Charter was predominantly a copy of western ideals and

\textsuperscript{21} “Then something unusual happened. Ordinary people... with no history of challenging the government began to circulate the document and declare themselves supporters. The list now includes scholars, journalists, computer technicians, businessmen, teachers and students whose names had not been associated with such movements before, as well as some on the lower rungs of China’s social hierarchy – factory and construction workers and farmers.” \textit{Id.}

\textsuperscript{22} “On December 18th, President Hu Jintao delivered the CCP’s first rebuttal to Charter 08 and its call for multi-party democracy. He insisted that China will never copy Western political institutions, and echoed Deng Xiaoping’s assertion that "only development makes hard sense." His point was that only the economic pragmatism and political stability brought by the Communist Party’s rule would enable the Chinese people to achieve prosperity and fulfill their dreams. On Sunday the party’s second rebuttal to Charter 08 (full Chinese text here) came from China’s number-four leader Jia Qinglin, in the form of a long essay in the Communist Party’s main ideological journal, Qiushi ["Seeking Truth"]. The essay takes Hu’s speech a step further. Hu said that China won’t copy Western multiparty democracy; Jia’s article seems like a call to start digging trenches for an upcoming fight. According to Reuters’ translation of one passage, the Party must "build a line of defence to resist Western two-party and multi-party systems, bicameral legislature, the separation of powers and other kinds of erroneous ideological interferences," and "consciously abide by the Party’s political discipline and resolutely safeguard the Party’s centralised unity." Rebecca MacKinnon, \textit{What Does Charter 08 Mean? Too Soon To Tell...}, Jan. 20, 2009, http://rconversation.blogs.com/rconversation/2009/01/what-does-charter-08-mean-too-soon-to-tell.html.
interpretation of human rights and freedoms. A number of authors were interrogated and harassed and job security and basic social benefits were threatened, but only one person remains in custody, as far as western media has been able to report.

The international community responded very quickly and vocally when news leaked of the detention of the authors of Charter 08, and the continued imprisonment of Liu Xiaobo, a well-known author and co-author of the Charter. “Over 150 leading US and European intellectuals, including author Salman Rushdie, Umberto Eco, Seamus Heaney issued an open letter calling for Liu Xiaobo’s release.” Also, “over 160 leading Chinese intellectuals living overseas issued a letter in support of Charter 08. These people include the writer, Ha Jin, and the Princeton University historian Yu

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23 “China’s No 4 official, Jia Qinglin, warned in the party’s theoretical journal Qiu Shi in mid-January that the country should ‘build a defensive line against interference by incorrect western thinking.’ He dismissed the ideas of a multiparty system and separation of powers as erroneous.” Small Green Shoots of Rebellion Among Ordinary Chinese, supra note 20.

24 “At least 70 of the Charter’s 303 original signatories have been summoned or interrogated by police and China’s powerful Central Propaganda Department has warned all domestic media not to interview or carry articles by anyone who signs the charter. The interrogations gathered momentum this week and all those called in have been ordered to retract their support for the Charter. The government appears to be concerned by the heady language and the prominence of many of the signatories, who include mid-level government officials and Communist party academics.” Jamil Anderlini, Beijing Acts To Stifle Dissident Call For Reform, FINANCIAL TIMES, Jan. 3, 2009, http://www.ft.com/cms/s/0/ccb39784-d937-11dd-ab5f-000077b07658.html.

25 By no means is this statement meant to downplay the arrest and ‘retention’ of Liu Xiaobo. It is only meant to indicate that China did not arrest and interrogate as extensively as the Czech government.

Ying-shih. The Dalai Lama has also publicly supported the Charter.”27 Vaclav Havel adamantly and publicly praised Charter 08 in an op-ed in the Wall Street Journal, calling for the immediate release of Liu Xiaobo.28 The U.S. State Department officially stated that it had deep concerns over Chinese citizens being “detained, interrogated and harassed as they prepared to commemorate Human Rights Day” and called upon the Chinese government to release Liu Xiaobo and to “cease harassment of all Chinese citizens.”29 To date, Liu Xiaobo remains in custody, the Chinese government continues to shut down all postings of the Charter30, and the signatories of the Charter has risen to over 8,100.31

B.) SIMILARITIES

“It is evident that Charter 08 is guided by the same spirit as Charter 77 was in its days. Yes, we did draw inspiration and encouragement from the Czechoslovak movement Charter 77, from the works of Václav Havel, from other Czech personalities. The two documents, Charter 77 and Charter 08, share certain similarities since the former Czechoslovakia and today’s China share a similar authoritarian ideology and style of governance, a similar social atmosphere and moral situation in an absence of truth and justice. Both Charters are also underpinned by the same principles based on adherence to international treaties and defence of human rights. Just as Charter 77 once did, Charter 08 comes in a post-totalitarian time with an active civic perspective, ethos of citizenship and joint civic responsibility for public affairs...Just like

27 Id.
29 Id.
Charter 77, Charter 08 is not a subversive manifesto. We do voice criticism but our stance is on the whole constructive.”

Predominant similarities of the two Charters are their reliance on international human rights documents, their claim to be working within their countries respective legal system, the informal nature of the Charter movements, the government reaction to the documents’ publications, and the involvement of diverse sectors of society.

Both Charters rely on international documents previously signed by their governments as the basis for the cry for political, legal and social change. The reason for this approach by Charter 77 which was then mimicked by Charter 08, was that the authors wanted to come across not as anarchists, but as law-abiding citizens, calling to task their government to live up to existing commitments. In 1968, the Czechoslovakian government signed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These agreements were ratified and became a part of the Czechoslovak legal system, giving basis to Charter 77’s primary demand – “that the government obey its own laws.” China signed the ICCPR and ICESCR in 1998, providing Charter 08 with the same foundational demand as Charter 77 – for the

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33 Sabatova, supra note 8.
34 China’s Charter 08, supra note 2.
government to live up to its own international commitments to human rights.\textsuperscript{35} Reliance on these international agreements seems to have been and continue to be a strong basis for the overwhelming international support of both Charters.

In the same vein, both Charters insisted on trying to work within the existing national laws in the authorship and promulgation of the Charter. This was one of the key motivators to keep Charter 77 a movement and not a political party. Proclaiming themselves as a new political party would have put the Charter 77 signatories outside the existing Czech law which forbade formation of alternative parties to the ruling Communist party.

It is important to make a distinction here. Charter 77 did not call for just an authentic living out of existing law. Although the document itself could be considered within the realm of legality because it did not create a political party, it was advocating for a change of law. In the same way, Charter 08 can be technically considered a legal document as it does not claim to be creating a new political party. However, it is vital to keep in mind that it is calling for a fundamental upheaval of the entire Chinese political and legal system. For example, it calls for a move from a one-party system. Deeply engrained in the history and Constitution of the PRC, is the centrality of the Communist party as the sole leader and representative of the peoples’ will.\textsuperscript{36}

\textsuperscript{35} \textit{Id.}

\textsuperscript{36} “Under the leadership of the Communist Party of China and the guidance of Marxism- Leninism and Mao Zedong Thought, the Chinese people of all nationalities
Another similarity between the Charters is the breadth of their membership. As already mentioned, Charter 77 grew out of the most unlikely partnership: intellectuals and rockers. Charter 77’s simplicity brought together writers and artists, Christians and atheists, laborers and clerks, old and young.\textsuperscript{37} Although Charter 08’s creators formed a more homogenous group than Charter 77’s authors, the reach of the internet has brought Charter 08 to a broad array of supporters. In a few short months, it had garnered the support of over 8,100 signatories from all walks of life: farmers, lawyers, teachers, students, factory and construction workers.\textsuperscript{38}

It is important to keep in mind, however, that although both Charters ended up with a diverse base of signatories, Charter 77 began with the consensus of diverse members, whereas Charter 08 was initiated by a smaller elite group, and then gained momentum in other sectors of society as it circulated the internet. Coming on the heels of this distinction, the following section will look at significant differences in the environments surrounding Charter 77 and Charter 08.

C.) DIFFERENCES

\textsuperscript{37} Sabatova, supra note 8.  
\textsuperscript{38} Small Green Shoots of Rebellion Among Ordinary Chinese, supra note 20.
The key differences between the Charters’ environments are the extent of unrest pre-existing in the societies, the available modes of communication, the breadth of the Charters’ goals, and the cultural contexts.

The political and social realities of Czechoslovakia leading up to and during the days of Charter 77 were tumultuous. The majority of the citizens were deeply yet quietly disgruntled with the governing elite. The government was failing to meet the basic daily needs of the general public. The events of Prague Spring undercut the government's credibility and lead to increased government control out of fear of losing ultimate power. The police crack down of 1972 and the resulting political trials had relegated political dissenters to the outskirts of society and the average citizen maintained a state of subdued distrust and disagreement.39 "Charter 77 was a bolt from the blue in the otherwise stagnant political atmosphere of Czechoslovakia."40 remarked Professor Vilém Prečan, one of the editors of today’s Web posting and head of the Czechoslovak Documentation Centre in Prague. "Together with movements for human and civil rights in other countries of the Soviet bloc, Charter 77 became a vital factor working from below in the Helsinki process and towards the democratic revolutions of 1989."41

39 Prečan, Savranskaya & Blanton, supra note 1.
40 Id.
41 Id.
Conversely, China is experiencing enormous economic growth, even amidst the global economic crisis.\textsuperscript{42} The average Chinese citizen is wealthier than ever before and there is a general sense that the Communist Party has been the reason for this improvement.\textsuperscript{43} There is unrest over perceived abuse of human rights, but it is revealed in spurts, showing a disapproval with distinct situations rather than with the general well being of the country.\textsuperscript{44} Examples of such significant incidences sparking national discontent include the melamine milk poisoning,\textsuperscript{45} the nail house rules\textsuperscript{46} and the Weng’an Mass Incident.\textsuperscript{47} Speaking on Charter 08, Roland Soong, a well-respected Hong Kong based blogger noted, “I am more interested in why there is no groundswell of popular support flowing from inside China. It is not true that the relative silence is due to official suppression. When people in China really feel strongly about something, they can still be heard. For example, in The Weng’an Mass Incident, netizens kept posting and posting at the largest Chinese forum Tianya.cn even though their posts had an average lifetime of 15 seconds before being deleted.”\textsuperscript{48}

\textsuperscript{44} Note that this is a reflection of the average citizen, and there is most definitely unrest in particular minority groups and those with ideologies that do not align with the Government’s approach, i.e. Falun Gong members and migrant workers.
\textsuperscript{45} Austin Ramzy, China’s Melamine Woes Likely to Get Worse, TIME, Nov. 4, 2008, http://www.time.com/time/world/article/0,8599,1856168,00.html.
\textsuperscript{48} How Charter 08 Is Being Received, supra note 30.
According to Yu Jianrong, Director of the Centre for Social Issues, Rural Development Institute at the Chinese Academy of Social Sciences, where there is widespread discontent, the problem is one of contradictory interests, not a fight for power and rights.

"...The current peasant problem in China is mainly a matter of interests, rather than power. I have mentioned in many places Guangdong Party Secretary Zhang Dejiang's judgment regarding the rights defence issue at present. Zhang said in a report to the national leadership on 8 May 2007 that a lot of problems had occurred in Guangdong, but they were all contradictions among the people. What are contradictions among the people? They are ones that can be resolved using money. This may not sound nice, but he was right, the rights defence struggles of workers, peasants, and townspeople are at present struggles about interests, not power struggles. They are not trying to gain the power of the ruling party, but want you to give him interests."49

Apart from the differing social atmospheres of the Charters, the available modes of communication have played a significant role in how the Charters were initially promulgated and how they were (and for Charter 08, are) passed around to the general public. Charter 77 relied on print and word of mouth, whereas Charter 08 has been nearly entirely internet-based. This is a vital difference to keep in mind in trying to foresee whether Charter 08 will follow the path of Charter 77. Communication by print and word of mouth naturally confines the reach and the number of people expressing the ideas. The centralized organization that this sort of communication requires perhaps may have played a key role in maintaining the solidarity of the Charter messengers, whereas the ability of any person to discuss

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and comment on the Charter on the internet gives an entirely new dynamic to how the Charter 08 message is being revealed. The exact implications of this difference are yet to be seen, but it is a factor that should not be overlooked.

Some have hypothesized that the internet provides Charter 08 with a greater reach and momentum and consequently a more significant immediate threat against the Chinese government.\(^50\) "(Charter 08) is a testament to the power of the Internet. [It's] allowed Charter 08 to galvanize and bring together a lot of people from different walks of life and locations."\(^51\) Despite Chinese government attempts to shut down any mention and discussion of the Charter from Chinese-accessible internet\(^52\), there has been only limited success, and new blogs and sites pop up as soon as the government takes down others. A recent study found that the Chinese Google search engine has registered over 119,000 hits for the Chinese words for Charter 08.\(^53\)

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\(^50\) "...The Internet has vastly expanded the charter's reach, with no central organization. That makes it a new kind of threat to a government concerned about organized challenges to its rule." *How Charter 08 Is Being Received*, supra note 30.

\(^51\) *How Charter 08 Is Being Received*, supra note 30, quoting Joshua Rosenzweig, of the Dui Hua Foundation, a group that promotes human rights in China.


\(^53\) Study conducted by *The National*, found at http://initiativesforchina.org/charter08/ (last visited June 29, 2009).
The impact of the internet on Charter was articulated by Zhang Zuhua, one of the drafters of Charter 08, in a December 2008 interview. “Thirty-one years ago, in the era of Charter 77, there was no Internet, so it was difficult to spread the document. Yesterday, I "Googled" Charter 08. Right now there are already more than 300,000 links about Charter 08. A lot of young people use blogs or QQ [referring to popular instant message software in China] groups to make friends, and they’ve also spread this new Charter. The English version of Charter 08 was spread rapidly. So thanks to the Internet, it’s impossible to block information from society now.”

Another key difference is the breadth of the goals of the Charters. Charter 77 was a “model of simplicity” with its focus remaining clearly on civil and political rights as expressed in the two international covenants. With the relative newness of the 1948 Universal Declaration of Human Rights and fresh experience of World War II, the drafters and signers of Charter 77 focused attention on traditional political and social rights, such as political participation, freedom of speech and expression, the rule of law, and the right to assemble and to form groups. The authors of Charter 77 were careful not to use intentionally inflammatory language and even as late as 1989, did not even use the term communism out of respect for those signors who

55 Id.
56 Sabatova, supra note 8.
aligned with this political philosophy, but disagreed with the governing elites’ application of the ideals.\textsuperscript{58}

Charter 08 is much more ambitious in the rights demanded. Along with reliance on fundamental principles and traditional civil and political rights, it calls for a variety of very specific economic and social rights as well as environmental rights.\textsuperscript{59} It also explicitly hits upon a key element of the Chinese political system – one-party rule. The role and centrality of the Communist party in China is not only emblazoned in the Party’s historical rise to leadership, but is intricately and explicitly interwoven into the Constitution and laws of China.\textsuperscript{60} The Communist party is the self-proclaimed savior of China from imperialism and colonialism and is described in the Constitution as the authentic and only voice of the people.\textsuperscript{61} Consequently, Charter 08’s demand for a removal of the one-party system is asking for a fundamental shift in China’s legal and political system.

Perhaps the most distinct difference between the reality in China today and the reality of Czech Republic in 1977 is the debate of the universality of human rights and the role of “Chineseness” in implementing human rights. The Chinese

\textsuperscript{58} Sabatova, \textit{supra} note 8.
\textsuperscript{59} \textit{China’s Charter 08, supra} note 2. For example, abolishment of the two-tier household registry system (section III, point 8); establishment of social security system (Section III, point 16); protection of the environment (Section III, point 17).\textsuperscript{60} Preamble to the Chinese Constitution, \textit{supra} note 36.
\textsuperscript{61} “After waging hard, protracted and tortuous struggles, armed and otherwise, the Chinese people of all nationalities led by the Communist Party of China with Chairman Mao Zedong as its leader ultimately, in 1949, overthrew the rule of imperialism, feudalism and bureaucrat capitalism...” \textit{Id.}
government has consistently held both before the publication of Charter 08, and especially in light of the Charter, that China has a cultural and historical identity that is so unique from the West that Western concepts of human rights simply do not apply wholesale in China.\textsuperscript{62} The argument presented is that China and the West are founded on inherently different cultural understandings of human rights – Chinese culture, and thus its conception of human rights is based in ideas of the community and harmony, whereas the Western world’s vision of rights is based on the individual.\textsuperscript{63}

This point cannot and should not be taken lightly. The concept of harmony is finding more and more holding even in the western legal world, as globalization makes it difficult for court enforcement and disputes are pushed into mediation and negotiation more and more. China’s impressive revelation of harmony in the 2008 Olympic Opening Ceremony was in itself an embodiment of the power, effectiveness and beauty of harmonious activity. Thousands of Chinese men and women worked themselves into visions of art during the ceremony, a symbol of the importance of working together and the reality that humans are not isolated individuals, but a community of people who benefit from a harmonious society.


The Chinese government claims that the authors and supporters of Charter 08 are attempting to impose Western concepts of ‘human rights’ on China, rather than build from the Chinese culture of harmony and community. The government claims that China is uniquely “Chinese” and that Western depictions and articulations and applications of human rights cannot and should not be adopted in the same way in China.

PART II.

There are four predominant opinions floating in the expert circles as to the future of Charter 08. The first is that in a similar way to Charter 77, this document will be the beginning of the end of a one-party Communist political system. The second is that the Charter will have no real impact on the political reality. The third is that the Charter is a symptom of a growing discontent with the system and that it will be one of many motivators of change. The fourth is that it is simply too soon to tell whether and to what extent the Charter will effect Chinese history. This Part II will present the minds and ideas behind each of these opinions.

A.) Some say Charter 08 is the most significant stance since Tiananmen Square.

The wide array of signors, the reaction of the government, the explicit comparison

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64 MacKinnon, supra note 22.
of the Charter with the UDHR already signed by China, the moral authority of its authors, the well-thought out nature and even toned approach of the Charter are all indicators, according to some, that the Charter is a truly significant and pivotal document.

According to Mr. Zhang, a co-author of the Charter, “It's gotten to be an old story here: A clutch of activists challenges the government; the government jails one or two to scare others into silence. But the movement around Charter 08 is different...A month after its release, Charter 08 is still making waves in China. A wide cross-section of citizens has expressed support online. And the government, nervous about social unrest and the approaching anniversary of Tiananmen Square, has contacted – and in some cases, interrogated and threatened – at least dozens of the manifesto's original signers.”67 According to Nicholas Bequelin, a Chinese researcher for Human Rights Watch, the text is “landmark in terms of its appeal and the attention that it has provoked.”68 Although there have been many calls for the government to reform and let go of its one-party control, many believe that certain features of Charter 08 separate it as a pivotal document as compared to the rest: “First, thousands of citizens of all backgrounds – peasants, teenage netizens, prominent lawyers, former party members – have added their names to the petition, not just the usual gadflies. They reflect a minority unwilling to accept the party's vision for China. Second, the Internet has vastly expanded the Charter's reach, with

68 Id.
no central organization. That makes it a new kind of threat to a government concerned about organized challenges to its rule."\(^\text{69}\)

According to Dr. Yang, a Harvard Senior Scholar, Charter 08 is an indication that Chinese citizens are yearning for a realization of their human rights, and predicts that Charter 08 is an indication that democracy is on its way to China.\(^\text{70}\) “A government cannot hold a gun to its citizens forever.”\(^\text{71}\) Mimicking these sentiments, blogger Youren  wrote that Charter 08 is “the boldest effort in mainland China to speak out for the Universality of Human Rights. Its influence, directly or indirectly, will no doubt be decisive at the time when these questions will have to be seriously debated by the Chinese government. Whether this happens in turbulent 2009 or many years later, China will be in debt with those 303 brave men who dared to stand up for their ideas.”\(^\text{72}\)

Others point to the ability of internet users to continue to post and pass around the Charter on the web as a sign that this movement is piercing the government’s iron control of the internet and organized dissent.\(^\text{73}\) Although the Charter ideas are not

\(^{69}\) Id.

\(^{70}\) Charter 08 Overview, Perspectives, Action, supra note 26, quoting Dr. Yang Jianli, Harvard Senior Scholar.

\(^{71}\) Id.

\(^{72}\) Youren, supra note 52.

necessarily new, the fact that millions are spreading it on the internet is revolutionary, according to Xiao Qiang, editor-in-chief of China Digital Times.\textsuperscript{74}

B.) Others say the Charter will not have a pivotal impact on the Chinese political system. According to Sasha Gong, a 55-year-old former political prisoner who now lives in the U.S., Charter 08 appeals to older dissidents like herself who have a tangible experience of political repression through Tiananmen and the Cultural Revolution, but holds little inspiration for a new generation of young people who have grown up with relative prosperity and speak a different cultural language.\textsuperscript{75} According to Ms. Gong, the way forward will most likely be through an innovative, fresh approach that speaks to the young generation, rather than through what she considers a dated mechanism of petition signing. Others view the Charter as being simply too moderate to have an impact.\textsuperscript{76}

Blogger Youren blames the government's control of the internet for inhibiting Charter 08 from having any widespread impact. “It (the government of China) has done an impressive job this time at downplaying and silencing the Charter. The lesson of 1989 is well learnt. The sad consequence of this is that today the vast

\textsuperscript{74} Id.
\textsuperscript{75} Id.
\textsuperscript{76} “The charter doesn't even mention Tiananmen Square,’ says (Ciping) Huang (executive director of Weijing Sheng Foundation), incredulously and with a yell. 'That's why I won't sign it. This is an event that everyone should know about but its not even mentioned.' The government has detained one of the charter’s authors, Liu Xiaobo, but so far it appears to have left most of the signers alone. Huang says this proves that the charter’s demands are weak. ‘China is on the brink of revolution, and this charter is far too moderate,' said Huang,” Id.
majority of the Chinese population has no idea of the existence of the Charter 08. And I am not only speaking of the masses of peasants. A quick survey among my personal Shanghai friends, all of them with university education and speakers of at least one foreign language, gave discouraging results: Not a single one of them had even heard the term “lingbaxianzhang” (Charter 08) one week after its publication...Its direct impact is limited, and it has probably already run all it had to run.”77 Youren concludes that neither this Charter nor any charter will provide the impetus for political change. Rather, he looks to Leaders to spark political change, and views intellectual creations such as the Charter, as supporting fuel for such leadership. Youren notes that Charter 08 could be the “precursor and the basis for future debate.”78

Wan Runnan, an exiled dissident and respected businessman79 cited to implications beyond the circumstances surrounding Charter 08 for why the soil is not ripe for significant political change in China. In his 2006 article, “Why The Chinese Communists Are Not Doomed To Finish Yet,” he summarizes six factors that contribute to his thesis title: the Chinese Communist Party (CCP) has learned from the former Soviet Russia and eastern Europe and has been more meticulous and vigilant about suppressing any opposition; the CCP has established a sufficiently stable international environment for itself through strategic alliances; China’s continued economic growth has provided the CCP with adequate resources to

77 Youren, *supra* note 52.
78 *Id.*
maintain the power and credibility to govern; the CCP has actually moved away from some of its core ideologies in the modernization process; the economic growth has created a new middle class which has provided a stability to Chinese society; and the CCP’s ability to provide a succession of leadership has removed concerns about its ability to maintain an effective government.\textsuperscript{80}

C.) Others say that the Charter will not be the primary instigator of change, but a useful and significant movement forward towards democratization and better human rights protection. Chris McNally, a professor at the University of Hawaii who specializes in Chinese politics summarized the impact of Charter 08 with these words: "Symbolically it shows that China is at a crossroads. Chinese people will be faced with a decision of how to go forward in the next decade."\textsuperscript{81} McNally posited that whether or not the petition is effective, it is a good indicator that the Chinese people are searching and ready to find a new way forward.\textsuperscript{82} Agreeing with McNally, Beijing writer Jiang noted that although China is enjoying a general increase in prosperity\textsuperscript{83}, there are looming problems that the current political system is not equipped to handle, but that "if scholars and regular citizens can express the problems openly (as done in Charter 08), then perhaps (China) can find some solutions."\textsuperscript{84}

\textsuperscript{80} \textit{How Charter 08 Is Being Received}, supra note 30.
\textsuperscript{81} Schectman, supra note 73.
\textsuperscript{82} \textit{Id.}
\textsuperscript{83} Such as a widening income gap between economic classes and current and impending environmental damage. \textit{Id.}
\textsuperscript{84} \textit{Id.}
D.) A fourth prevailing opinion is that it is simply too soon to gauge the impact of this Charter. Respected speaker and blogger, Rebecca MacKinnon, reacted to predictions about Charter 08 by saying that, “It's way too soon (to tell).”\textsuperscript{85} Another prolific blogger mimicked Ms. Mackinnon’s sentiments: “There is no telling right now how influential this document is going to be looking into potentially conflictive 2009.”\textsuperscript{86} A February 2009 Huffington Post article reviewed some of the prevailing commentary on Charter 08, and noted that although may human rights activists and scholars were excited and optimistic about the petition, there does not seem to be consensus on its importance or ability to succeed in its stated goals.\textsuperscript{87}

\textbf{Part III.}

I agree generally with this final perspective that it is too soon to tell the particular path Charter 08 will take, and the extent it will impact Chinese politics. The future of China is ambiguous, even without Charter 08 in the picture. China has shocked the predictions of the world in growing out of the economic horror of the Cultural Revolution and into a world economic leader. It has broken the typical communist mold by integrating a market economy with a planned economy. It has opened the door to the West in its push to attract foreign business, but at the same time

\begin{flushleft}
\textsuperscript{85} MacKinnon, supra note 22.
\textsuperscript{86} Youren, supra note 52.
\textsuperscript{87} “But not all China human rights activists and scholars share his sense of optimism about the petition, known as Charter 08. While most agree that a petition signed by so many ordinary people inside China is a historic first, there is no consensus on its importance or that the new movement will succeed.” Schectman, supra note 73.
\end{flushleft}
maintained a tightly controlled veil on the inner workings of the political system. It has created a sophisticated body of codified tort, property, criminal, and corporate law in a very short amount of time, while adamantly holding onto a one-party system. China is a paradox.

Consequently, predicting the trajectory of Charter 08 is difficult, if not impossible. I remember the day Charter 08 was published in the New York Review of Books. I was thrilled at this signal of courage and quickly jumped to the assumption that this document would have a similar impact as Charter 77. However, as I began to heavily research the circumstances of both Charter 08 and 77 and watched the national and international reactions to the document, I found this assumption slipping away, and ultimately concluded that it was unfounded. Taking into consideration all of the history, facts and opinions discussed in Parts I and II, I do not foresee Charter 08 having the same pivotal effect or following even a similar trajectory as Charter 77. This prediction is based on three factors.

First, ironically there is not enough widespread and deep-rooted unrest, in my opinion, for Charter 08 to have the same impact as Charter 77.88 Charter 77 was planted in the fertile soil of literal and political starvation. China today is economically booming and Chinese citizens are enjoying far more comforts and

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88 Daniel Drezner, *What does Charter 08 tell us about China in 09?,* FOREIGN POLICY BLOG, Jan. 1, 2009,
opportunities than seen in many decades. The controlled ‘opening up’ of China and the continued Western influence on China are providing the average Chinese citizen with a greater sense of freedom than experienced under imperialism, colonialism, and earlier communist leadership. Despite the outward criticism of China’s approach to Tibet and the Falun Gong, among other human rights issues, it seems that the average citizen is content, and even satisfied with the existing situation.

Second, Charter 08 is reaching for the sky in its demands for reform. Its goals are far more sweeping and idealistic than Charter 77, making national consensus and momentum less likely. Perhaps this all-encompassing approach is what is needed for China today, and is what is called for in this world of third generation rights; however, the authors of Charter 77 made it infinitely clear that it was the simplicity of the document that provided ground for broad consensus and brought people from all sectors of society together in a common reform movement. Charter 08 calls for very specific changes, from recognition of environmental rights, to removal of the one-party system, to the institution of a social security system. Charter 77

89 “(Justin Yifu) Lin (Word Bank Chief Economist and Senior Vice President) said China’s economy is expected to have a 7.2 percent growth for 2009...Lin pointed at three advantages of China’s economy that strongly contributed to its growth potential, which include well-structured fiscal conditions, the world's highest foreign currency reserve, and more room for the government to push for expansionary measure.” World Bank Vice President Shows Optimism On China’s Economy, CHINA DAILY, June 23, 2009, http://www.chinadaily.com.cn/bizchina/2009-06/23/content_8314735.htm (last visited June 29, 2009).

90 Nearly 80 Percent Chinese Happy With Life, supra note 43.
91 Sabatova, supra note 8.
remained very basic in its demand, relying closely on the express language already agreed to in international human rights documents.\textsuperscript{92}

Third, China is sitting in a very different political and social international position than 1977 Czechoslovakia. China is a world super power. It is the second largest economy in the world, falling only slightly behind the United States.\textsuperscript{93} It controls a majority of the United State’s debt. It boasts the largest population in the world. It is one of the five permanent members of the United Nations Security Council.\textsuperscript{94} In sharp contrast, 1977 Czechoslovakia was a small country buried in eastern Europe, struggling to get out of the shadow of World War II and burdened by a starving economy.\textsuperscript{95} The Chinese government has developed a credibility and sense of legitimacy by its leadership in bringing China towards economic and social progress. The lack of credibility of the 1977 Czech government created an ideal situation for an informal movement to present a legitimacy that the government lacked. This atmosphere is not present in China today, and given the presence of the Chinese

\textsuperscript{92} \textit{Manifesto of Charter 77 – Czechoslovakia, supra} note 57.
\textsuperscript{95} “The Czechoslovak economy had serious problems, however. Investments made in industry during the late 1970s and early 1980s had not yielded the results expected. Consumption of energy and raw materials was excessive. Czechoslovak leaders themselves decried the economy’s failure to modernize with sufficient speed. According to many Western analysts, other constraints were inherent in the communist system imposed in the late 1940s; yet the cautious Czechoslovak leadership of the 1980s appeared reluctant to make major changes.” \textit{Library of Congress Country Studies – Czechoslovakia}, \textit{LIBRARY OF CONGRESS}, found at http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+cs0083) (last visited June 29, 2009).
government in the international community, the likelihood of an informal
movement garnering enough credibility to threaten the government seems slight in
comparison to 1977 Czechoslovakia.

Although I do not foresee Charter 08 following the same trajectory as Charter 77, it
is far too soon to write it off as a bleep on the screen. The enormous power of
courageous individuals standing up for their beliefs and dreams for their country at
the expense of personal persecution should not be discounted lightly.

In this light, I bring the discussion full circle by concluding with Vaclav Havel’s
encouragement to the detained and imprisoned authors of Charter 08. “We found
that it was possible to change the situation after all, and those who were mocked as
being Don Quixotes, whose efforts were never going to come to anything, may in the
end and to general astonishment get their way. I think that is important. In a
peculiar way, there is both despair and hope in this. On the one hand we do not
know how things will end, and on the other, we know they may in fact end well.”96