

DOES CHINA HAVE A STABILITY PROBLEM?

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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DOES CHINA HAVE A STABILITY PROBLEM?

FRIDAY, FEBRUARY 27, 2009

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 2:06 p.m., in room 628, Dirksen Senate Office Building, Charlotte Oldham-Moore, Staff Director, presiding.

Also present: Douglas Grob, Cochairman's Senior Staff Member; Andrea Worden, General Counsel and Senior Advisor on Criminal Justice; Lawrence Liu, Senior Counsel; Kara Abramson, Advocacy Director; and Wenchi Yu Perkins, Senior Research Associate.

Also present: Members of the audience: Brian Kendall, Andy Green.

OPENING STATEMENT OF CHARLOTTE OLDHAM-MOORE, STAFF DIRECTOR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Ms. OLDHAM-MOORE. Good afternoon.

On behalf of the incoming Chairman of the Congressional-Executive Commission on China [CECC], Senator Byron Dorgan, I welcome you to what should be a very interesting panel discussion.

The topic of today's roundtable is social stability, one of the top concerns of Chinese officials this year. As posted analysis on the CECC Web site highlights, officials have expressed concern about slowing economic growth and rising unemployment, especially among China's 130 million migrant workers.

In addition, tensions continue with ethnic Uyghurs and Tibetans, which are reaching a boiling point on the Tibetan plateau right now, and there are growing calls for political reform, demonstrated by the Charter 08 movement. The Chinese Government also faces increasing pressure from the Internet, which has emerged as a major channel for public discontent.

2009 is also a year of several significant Chinese anniversaries. These include the 20th anniversary of the Tiananmen Square democracy protests and crackdowns, the 50th anniversary of what Tibetans refer to as the Tibetan Uprising, and the 60th anniversary of the founding of the People's Republic of China. In the past, anniversaries have served as a catalyst for public protest in China.

The purpose of today's panel discussion is to closely examine the issue of stability and drill down into what exactly we mean by that word in the context of China. How significant a challenge does ensuring stability pose to China today? How concerned should the United States and its policymakers be about stability in China?

Will China's concerns with ensuring stability affect its implementation of international human rights standards and the rule of law?

We have a very distinguished set of panelists today who will discuss this issue from three important, but very different, perspectives. First, Rebecca MacKinnon will discuss the challenges posed by the Internet, and China's response. Bama Athreya will address unemployment and labor unrest in China since the onset of the global economic crisis. Finally, Jacques deLisle, who is visiting us from Philadelphia—we are very lucky to have him today—will discuss the legal and institutional tools China uses to ensure stability.

I'm going to turn it over to my colleague, Doug Grob, who will introduce our panelists in greater detail.

STATEMENT OF DOUGLAS GROB, COCHAIRMAN'S SENIOR STAFF MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Mr. GROB. Thank you very much, Charlotte.

On behalf of Representative Sander Levin, I'd like to welcome all of you here to the Congressional-Executive Commission on China's roundtable: "Does China Have A Stability Problem?"

I'm very pleased and honored to be able to introduce to you today, to my left, Professor Rebecca MacKinnon. Thank you for joining us. Professor MacKinnon is a 2009 Open Society Institute Fellow, and an Assistant Professor at the University of Hong Kong's Journalism and Media Studies Centre, where she teaches courses on online journalism, and conducts research on the Internet, China, and censorship. Professor MacKinnon is a leading expert on China and the global Internet, and is currently writing a book on the subject. Previously, she served as CNN's bureau chief both in Beijing and in Tokyo. So, thank you very much for joining us today.

Also to my left is Dr. Bama Athreya, whom we are very fortunate to have with us. Dr. Athreya is Executive Director of the International Labor Rights Forum, which is a nonprofit organization focusing on the improvement of the treatment of workers worldwide. She is a cultural anthropologist by training who has studied labor issues in Cambodia and Indonesia as well as in China. She also has lived and worked in China, and served as a panelist at a CECC roundtable in 2002, and we are very pleased to have her back. So, thank you very much. We look forward to your remarks.

Finally, to my right, Professor Jacques deLisle. Professor deLisle is the Stephen A. Cozen Professor of Law at the University of Pennsylvania, a member of the faculty at the University's Center for East Asian Studies, and also Director of the Asia Program at the Foreign Policy Research Institute [FPRI] in Philadelphia. As I'm sure you all know, FPRI produces some fine analysis on a full range of topics, including, but not limited to, those on which it is the charge of this commission to monitor, analyze, and report. Professor deLisle's scholarship focuses on the law and politics of contemporary China, including economic and political reform and human rights in China. So, Jacques, we are very pleased that you could join us today.

And so with that, I would like now to turn the floor over to Ms. MacKinnon.

STATEMENT OF REBECCA MacKINNON, FELLOW, OPEN SOCIETY INSTITUTE, AND ASSISTANT PROFESSOR, JOURNALISM AND MEDIA STUDIES CENTRE, THE UNIVERSITY OF HONG KONG

Ms. MACKINNON. Thank you. I study the Internet, but I still can't handle microphone technology. [Laughter.]

As with everything in China, positives and negatives tend to exist simultaneously, which makes studying China particularly interesting. That is certainly the case with the Internet and sociopolitical change in China. I think in the West we tend to focus on the relationship between the Internet and China as sort of more as the negative side, that it's a challenge to the regime, that it enables a platform—a very new platform—for the airing of grievances, for exposing official abuse and protest.

But the Chinese Government has so far managed, through censorship and manipulation, to stop localized incidents from metastasizing into national movements. This is in part due to the Chinese Government's success—while technically censorship is not perfect, it works well enough when combined with surveillance and law enforcement that dissent that is expressed on the Internet and is expressed every day does not get turned into nationwide political movements, for the most part, or they are nipped in the bud before they can turn into specific action.

Another point is that, although the economic crisis, as Charlotte mentioned, poses a particular challenge to China this year, and we have this anniversary year with the 20th anniversary of the 1989 crackdown, and many other anniversaries coming up, the Chinese Communist Party has really displayed an ability to learn and adapt to the Internet age and has been experimenting with innovative new approaches to using the Internet as a tool for maintaining legitimacy.

So what is important to, I think, recognize, is that the Chinese Government does not just view the Internet as a threat, or bloggers as a challenge to regime power in absolute terms. This is also viewed as an opportunity and one could in some ways almost make the argument that it's possible that the Chinese Communist Party could maintain its power longer thanks to the Internet than if the Internet didn't exist. So, there are a lot of different conflicting trends going on.

Now, the topic of this panel is stability. Of course, if you look at the number of mass incidents going on, in 2005 the Minister of Public Security said that there were roughly 74,000 protests or mass incidents happening around China. Last year, there was a government report that listed 127,000 mass incidents happening around China. Again, absolute numbers are really hard to know.

The fact is that unrest is increasing. Unrest has always been there, but it is increasing. But what does that really mean? Because what we're seeing is that the government is taking an increasingly sophisticated approach in terms of managing information about protests and managing how people are able to react to protests.

The government's approach is clearly not just about smashing heads and suppressing information, but also trying to emphasize to localities that the causes of the discontent need to be dealt with,

and holding local governments responsible for preventing unrest. This is where the Internet comes in. The approach is that the governments need to do a better job at paying attention to the conversations taking place on the Internet, to noticing when incidents are likely to happen.

So, a couple of examples. In July 2008, last year, there was a major riot in Weng'an County in Guizhou province involving about 30,000 people, and it was sparked because a young woman turned up dead in a river. The official coroner's report was that she had committed suicide, but it was widely felt by locals that she had been killed by some young men who'd been with her when she somehow fell, or jumped, or whatever off a bridge, and that these young men were relatives of members of the Public Security Bureau locally. A riot ensued that resulted in the trashing of the local Public Security buildings. There were pictures around the Internet of this burned-down building, cars overturned, and so on.

What was very interesting, is the government had failed to prevent this protest. But then the government reacted in a number of ways to keep it from turning into a larger, nationwide movement. One level of this had to do with censorship, and of course the Public Security rounding up people who were the troublemakers, but in the blogs and the chat rooms soon after the Weng'an incident happened, in the chat rooms themselves, posts that were talking about Weng'an were taken down. So, domestically within China it's not just about blocking information.

So while the Voice of America and Radio Free Asia might write about the Weng'an protest and post a story on their Web site, and then if somebody in China wants to look at it, it's blocked. They can't access it unless they know the technologies to do so.

Domestically, if domestic Web sites are talking about the Weng'an protest, the content is removed from the Internet completely because the companies running these Web sites are required to remove the content. So it's not just about blocking, but it's about the self-censorship that's carried out by the companies themselves.

So that's kind of one level at which news or conversations about this riot, and the meaning of the riot, and the causes of the riot, and the larger political implications of the riot, conversations were prevented from spreading too widely.

Second, what happened was very interesting. The government allowed the official media to do fairly extensive reporting about what had happened. Xinhua News Agency and a number of other official media wrote extensive investigative reports based on police interrogations of the suspects, pointing to the fact that the rioters had been misinformed and misled by rumors, and so on.

So while the unofficial information was widely suppressed on the Internet, the government moved proactively to make sure that all the Web sites in mainland China had lots of information from the Chinese Government's point of view.

What this points to is a much more sophisticated information strategy. When I was in China in the 1990s reporting from Beijing, reporting for CNN, and we tried to find out what was happening in the provinces, it was very hard. The Xinhua News Agency almost never reported this kind of thing. Now it's quite normal that

the state media does report this type of thing, and this is driven by the Internet. The authorities know that if the official version of what happened doesn't get out there quickly, then the unofficial version will dominate. So the state is adapting to this new information environment and putting its version of events out there is not just completely blocking everything out.

Another case that's very interesting to point out is an incident that happened very recently when a man died in a detention center in Yunnan province in southern China. A report got out onto the Internet that the official police report ascribed his death to, he basically smashed his head against the ground while playing a game of hide-and-seek with some fellow inmates. People started getting quite outraged around the Internet, thinking that this was yet another time when the government lies to people.

The local propaganda authorities dealt with this in a very creative way. They posted on their Web site an invitation for bloggers and netizens to sign up to join an investigative team to go to the detention center and take a look for themselves and talk to authorities there, and then the local media widely reported what was basically a dog-and-pony show that local bloggers were taken to see.

But then the story turned into—and the discussion online was defused from, the government lies to us and covers everything up and they're bad and evil, to, those bloggers who are really government patsies, going along with this dog-and-pony show, and it just kind of defused the conversation a great deal.

And also there was a lot of conversation about the brilliant young propaganda officials in Yunnan province who are very sophisticated and are opening up to citizen supervision, and isn't this great. So it turned into an argument between people who thought this was a sign of government getting more open versus a sign that the government was just manipulating people in a more sophisticated way. But what this did, is defuse the problem.

So we're seeing a great deal more sophistication, of course, combined with the fact that, as you mentioned, Charter 08—Liu Xiaobo, who's one of the drafters of it, and people like him, people who could take these localized incidents such as Weng'an and point to them and say, well, if we had had local elections and locally accountable officials, and if we had basically all these things that the Charter 08 calls for, then we wouldn't be having these problems in Weng'an anyway, so it's a larger, systemic thing, we need a movement, and so on. People like him are silenced. Or there's another gentleman named Huang Qi, who was put in jail last year as well, who tried to form a Netizen Party, tried to form another opposition party.

So what's very interesting is that you've got, on one hand, the government has largely lost control over popular culture thanks to the Internet. They've enabled a much larger space for public discourse in the Internet simply because there's no way they could stop that larger space from happening. You can't control all the conversations. Daily, when I'm reading Chinese blogs, I'm seeing some pretty edgy conversations about politics.

But what they do, is they focus on the types of conversations that are going to lead to action, the certain individuals who are getting

too popular, who might turn into opposition leaders, people like Hu Jia, the AIDS activist who is also now in jail, been sentenced, people like that. Those are the concentrated targets.

Another, a rights-defending law firm, the Yi Tong law firm in Beijing, one of the lawyers there is a gentleman named Liu Xiaoyuan, who writes prolifically on a blog every day about criminal defense cases and about black jails. He wrote extensively about the Yang Jia murder case, where a man was executed after having killed a number of policemen, but the whole issue was, was he given due process, and this kind of thing. He wrote extensively about this. His law firm has been shut down for six months by authorities.

So there are efforts to kind of intimidate and silence people who could serve as ringleaders, yet there is a feeling among many people in China—I mean, the people are writing on—there are 30 to 50 million bloggers in China writing every day. It's a minority who are talking about politics, but still, most of those people are not worried about the police coming and knocking on their door, even if they're telling jokes about CCTV having burned down and other things that are somewhat politically edgy, that the vast majority of people on the Internet are feeling so much more freedom than they had, that this is providing something of a safety valve in terms of, people do feel that there are many more things they can do before they get so angry they're running into the streets.

So again, where this all goes longer term is much harder to say, but in the shorter term you're seeing the government trying to really use the Internet to win over the hearts and minds. And also all of the major Web portals and Internet companies who run blogging services and chat rooms, all of them have employees who give regular reports to the State Council and to other organs about, what are the major concerns of our users that they're writing about.

So the government is very much taking seriously the chat, the chatter, that is happening on the Web and using this as an early-warning mechanism to find out about problems that may eventually turn into unrest. This is one reason why Hu Jintao, this summer, paid a visit to the Strong Nation Forum, which is a very popular sort of nationalist Web forum run by The People's Daily, and did a chat with netizens, and it was very heavily publicized. He said, we need to listen to people's voices extensively and pool the people's wisdom when we take actions and make decisions. The Web is an important channel for us to understand the concerns of the public and assemble the wisdom of the public.

The People's Daily has set up a fan site for Hu Jintao and Wen Jiabao. I think it's called "Babao zhou," or something like that. It's very strange. So there's a real attempt to show that we, the government, are cool too, and we're there in the Web, and we're your friend, and we're also trying to help protect your children from pornographers and other things, and there are a lot of bad guys out there, too, and we're here for you and we're engaging and we're becoming more open than we used to be, while at the same time there's no democratic reforms. Local elections have been rolled back since the late 1990s and in the legal system there has been no meaningful progress toward independent courts or anything else, which I'm sure Professor deLisle will talk about more.

Ms. OLDHAM-MOORE. Thank you. That is quite interesting. Bama Athreya, please feel free to begin.

**STATEMENT OF BAMA ATHREYA, EXECUTIVE DIRECTOR,
INTERNATIONAL LABOR RIGHTS FORUM**

Ms. ATHREYA. Thank you very much. It's nice to be here today. Thank you for the invitation to address the Commission.

I am the director of the International Labor Rights Forum. I just want to say before starting my comments that we are an advocacy organization. We're based in Washington, DC, and we work in several countries.

We have had programs in China for the past few years, working with legal practitioners, principally in the law schools, to strengthen enforcement of China's labor legislation.

That apart, though, the main thrust of my comments are going to be on what is happening in the private sector and the crisis and its effects on employment, and its attendant effects on stability among worker populations, particularly in the export processing areas.

So it is a very different sort of a presentation than Professor MacKinnon's—her remarks were fascinating by the way—and really the focus is on what is happening in the private sector and what are some of the policy responses that might help to address the problem.

Now, this is a global problem, so let's be clear that we are seeing reports around the clock on the effects of the global economic crisis on export processing workers virtually throughout east and southeast Asia, millions of layoffs in virtually every country that had previously been dependent on exports for growth in light manufacturing, and China as well. We've seen over the past, going on 20 years now, a strategy for growth that was heavily premised on exports to consumer markets in the West, and very heavily on the U.S. consumer market.

So it is no accident that, given the contraction of the U.S. economy and the downturn in U.S. consumer spending, and particularly on those light manufactured products that have been the lifeline for the creation of these zones and factories for the past several years—toys, sports shoes, garments—that you would see dramatically rising unemployment, that you'd see millions of workers being laid off in southern China, so, just keeping that context in mind.

We are concerned with the global economic crisis. We are concerned with the policies that need to be in place to provide the adequate safety nets for these millions of workers who are now losing their jobs, and are losing their jobs in a context where they have very little access, frankly, to existing safety nets or legal protections.

I'm just going to cite a few of the most recent statistics. In an article of this month, Chen Xiwen of the Central Rural Work Leading Group, which is a government advisory body, said that as many as 26 million migrant workers are now "coming under pressures for employment." Okay. So think about just the scale of the potential unemployment problem. These are migrant workers, and so presumably they have been employed up until this point in light manufacturing for export in southern China.

On December 16 of last year, the China Daily quoted Professor Chen Guangjin as putting the unemployment rate for new college graduates at “over 12 percent.” China’s statistics agency has committed to a comprehensive survey of China’s labor market, starting in big cities and extending to the whole country by the end of 2010. Those results will be very interesting.

But again, we really want to focus on what is happening in export sectors, as we are talking about tens of millions of workers who are employed in those sectors and who are now either losing their jobs, or in danger of losing their jobs.

Not surprisingly, there has been significant unrest that has been a result of the wave of unemployment. One of the most notable cases, and widely reported, took place last fall when taxi drivers in Chongqing, Sanya, Yongdeng, Shantou, Guangzhou, and elsewhere, so several cities, several locations at once, went on strike over high rental fees, problems with police, and competition from unlicensed drivers. So, this was a very interesting wave of strikes among the taxi drivers. An interesting case because, you know, reflecting a little bit back to Professor MacKinnon’s comments, the government response was at the time to allow the strikes to happen, to sort of allow the pressure to be blown off in this way.

Laid-off employees at some of the world’s largest toy plants have protested by the thousands for unpaid wages. So what has happened, and what is actually quite common in these export sectors, is that factories shut their doors, and they shut their doors and workers are very often owed back wages, because very often workers go into these factories and pay bonds or agree to have wages withheld up front as a condition of employment. So when the factories precipitously shut their doors, workers not only lose their jobs, but they are owed back wages, so they are losing a month, two months’ wages and being put out on the streets with no social safety nets.

In some instances, local governments have paid workers part of the money owed to them. This is in some instances. We are seeing very spotty responses by local governments, and more on that in a minute. Workers have blocked roads—we have seen different types of creative actions—in attempting to cross into Hong Kong to bring their complaints to factory owners who are based in Hong Kong, in some cases.

We have also seen small factory owners protesting, as the nature of subcontracting in the global manufacturing chains means that oftentimes you have these small factories that are perhaps partially locally invested and that are vulnerable because they are subcontractors to contractors who may themselves be owed money. So what I’m saying is, you’ve manufactured your toy, but you haven’t gotten the costs for the toy yet. Those come later.

Well, when the bigger company goes out of business or simply cuts the orders, the factory owners themselves may be owed costs for products they have already produced, and which is one of the reasons why the workers get put out on the street without back wages. So, we have even seen protests by small factory owners, and that’s been very interesting.

One of the things that I want to note and really focus a bit on is the pressure this puts on local authorities in terms of enforce-

ment of labor laws. There have been some very interesting debates over labor laws in recent years, and I want to go back and talk a little bit about those and what the current context might mean for labor law enforcement or non-enforcement.

There was a Labor Contract Law that is a fairly recent law and has been the subject of great discussion in the international press, as well as domestic press. It was an interesting law insofar as one of the things that happened, was there was a public comment period. That was an unusual thing to happen. When the law was a draft law, there actually was a public comment period.

Well, one of the controversial things that happened—oh, I should just back up for a minute and say, what the law does, is it establishes normal labor relations in the country.

In private enterprises, in the private sector in China, most workers had not technically been covered by China's labor law until—I think the law was passed two years ago, 2007. So, up until two years ago. There was no formal employment relationship that was recognized by law for workers in many of these new enterprises that were in the private sector, or quasi-private sector, and set up for export.

The Labor Contract Law took an important step toward identifying and formalizing those labor relationships so that those workers would enjoy the coverage of basic labor laws governing minimum wages, maximum working hours, et cetera.

When the comment period occurred, some comments were put—in very critical comments—in by the U.S. Chamber of Commerce and the European Union Chamber of Commerce, pretty much objecting to the formalization of labor contracts with workers in these light manufacturing enterprises. Because those were public comments, they were identified and taken out to the public and became a subject of some controversy.

So I note all of that because one of the things that is happening is we are seeing some push-back now by employers that are claiming that the Labor Contract Law will make them uncompetitive in this global economic crisis, and I want to talk a little bit about that.

Some foreign businesses have cited stricter labor regulations, meaning the Labor Contract Law and some other new laws that have been promulgated recently, as a contributor to factory closures. For example, Bloomberg News reported on February 11 that toymakers Mattel and Hasbro had complained of drastically higher worker costs hurting their profits in China. So the excuse being given for the factory closures, at least in some context, is, oh, there are these new labor laws, they make it so tough for foreign businesses to find China profitable anymore, and so therefore we have to close our doors.

Now, the reality, if you look at the statistics on toy sales for the last holiday season, is that this is a global problem. It is not a China labor law problem. We are concerned that U.S. companies like Mattel and Hasbro may be perhaps profiting from misery by arguing that the reason why they have had to diminish toy production in China is because of new labor laws rather than admitting that they would have had diminished toy production in China in any case because they are selling less toys.

I would also just want to note that in January, just a month ago, Guangdong province, which of course is where much of this light manufacturing is located, put limits on law enforcement's ability—official limits—to freeze enterprise owners' bank accounts and detain enterprise owners. Okay. Now, this is significant because in situations where factories close and workers are owed back wages and they may want to appeal to authorities to obtain those back wages, the ability of authorities to access owners' bank accounts, of course, would be relevant to settling such cases.

So now if Guangdong province is saying we don't want you to be able to do—for the moment, let's just not be able to do that, I mean, this is a clear sign that they recognize there is a problem: there are layoffs, workers are not getting their back wages and they might perhaps ask owners/enterprises to have access to the bank accounts, we don't want this to happen in the interim.

Now, we actually are concerned that this would lead to greater unrest, so it's interesting that these sorts of regulations to protect enterprises and employers, we're seeing them come into effect in some places.

I will talk about the labor cost issue. Does the enforcement of labor law actually raise labor costs? We don't have that much data. I would certainly want to argue that if that's the case, then we might anticipate that employers would routinely violate labor laws because, of course, abiding by laws, no matter what the laws say, would increase your labor costs.

There was once an interesting sample survey that we found by Yao Xianguo, who is the Dean of the College of Public Administration at Zhejiang University. This study found that companies that were in compliance with pre-existing labor legislation only saw labor costs rise 0.69 percent when the new Labor Contract Law went into effect. So if companies were already in compliance, the marginal cost of complying with the new Labor Contract Law was less than 1 percent, so I think we have to say that's a wash.

I want to just skip to a few of the potential opportunities. I actually want to make one large point, first. We would argue that what the evidence shows is that what companies are really concerned about with the new Labor Contract Law, as it formalizes employment relationships, it does another thing. It obviously formalizes workers' rights to bring complaints under the law, and frankly to affiliate with one another as well.

What companies are really afraid of with the Labor Contract Law is not rising costs, per se, it is the potential for an empowered Chinese workforce that asks for its rights under the law. We were fascinated that one of the other things that happened shortly after the Labor Contract Law was passed, and even during the debate, was workers themselves in these export processing zones, in fairly significant numbers, started to access workers' education centers throughout the province for information about the new law. They were interested in the new law. They wanted to know what it said. They wanted to know how it covered their rights.

As time is limited, let me just skip quickly to a few things that we would recommend the Chinese Government do, and that we would recommend the U.S. Government consider as well in this

period of growing unemployment and potentially weakened or diminished protection for workers under the law.

We would certainly advise strict implementation of Chinese laws and consistent implementation of the Labor Contract Law, and other pre-existing labor legislation, and particularly in the zones that are being hardest hit with the unemployment problem.

We would also be very keen to see, in the new strategic economic dialogue that is taking place between the U.S. Government and the Chinese Government, that labor issues should be a cornerstone of that dialogue, a cornerstone, because stability of employment and decent work—decent work, which means work that abides by all international labor standards and that includes a role for enforcement of regulation—would, in fact, be extremely critical to China's economic stability in the future. So we hope the economic dialogue would involve labor advocates on both sides and would, in fact, incorporate labor issues as a major component of its dialogue.

Since my time is limited I will conclude there, but thank you once again for the opportunity to provide these remarks.

Ms. OLDHAM-MOORE. Thank you, Bama. We'll come back for questions on these topics as well.

Professor deLisle?

[The prepared statement of Ms. Athreya appears in the appendix.]

**STATEMENT OF JACQUES deLISLE, STEPHEN A. COZEN
PROFESSOR OF LAW, UNIVERSITY OF PENNSYLVANIA,
DIRECTOR, ASIA PROGRAM, FOREIGN POLICY RESEARCH
INSTITUTE**

Mr. DELISLE. Thank you. It's a pleasure to be here. The virtue of going last is that some of the points I wanted to cover have already been covered, so I might be able to stay somewhere near my time limit, with any luck.

Professor Grob invited me to take a broader approach, and I think I will, partly because he said I could, but also partly because the question I've been asked to answer, which is the legal and institutional aspect of China's possible stability problem and the regime's capacity to deal with threats to stability, depends on how bad you think the problems of threats to stability are. I think the problems are rather easily and often exaggerated.

What I want to say, basically, is that China has threats to stability, but doesn't really have a stability crisis. The wheels are not about to come off. I want to go through what is essentially a bad news/good news story, in that order, and on each side touch upon three related points, with an emphasis on legal and institutional issues: first, economic growth and inequality; second, the legitimacy of the kind of inequality we are seeing in China; and finally, the capacity, or lack of capacity, of legal institutions and other political institutions to deal with the resulting stresses.

First, the bad news. You all know what it is. On the growth side, we're dropping from an average of 10 percent, 10 percent plus, to a situation in which 7 percent is considered a bit of a stretch. Chen Xiwen and others are talking of 20 to 30 million migrant workers losing their jobs, and other jobholders and jobseekers in the more formal sectors are in trouble, too.

As you have heard, China's economic growth remains very dependent on exports and the export demand has fallen off. This is not merely a problem of a temporary downturn in global demand; there is a set of broader structural issues behind it. As you heard, some of the foreign-funded or foreign-sales-dependent companies have burnt some bridges. They have left behind some bad feelings and some unpaid debts. The debts are hard to collect legally, but they and the broader sense that such firms behaved unfairly and unreliably could have long-term consequences.

Beyond that, Chinese exports face a couple of other problems: one is China's worsened reputation for toxic, poisonous, dangerous exports. A positive reputation is going to be hard to recoup, and China does not yet really have a good mechanism for fixing the underlying problem, bureaucratically or legally; another is the specter of protectionism from trading partners, including the United States—surely exaggerated, after one hears the occasional bit of congressional testimony about sanctions responding to China's currency manipulation and such, but not entirely unfounded. In downturns protectionism generally spikes upward, and it can have considerable staying power where the United States and others among China's trading partners may be facing longer-term, more structural adjustments in their economies. These tendencies toward protectionism are a genuine worry for China.

In addition, growth in China remains significantly driven by foreign investment, but many foreign capital providers are in crisis or wary. Even though much of outside investment in recent years has shifted to production for domestic sales, there is still a significant component that focuses on exports. Also, there are serious worries in the foreign investing community about legal changes that have made it harder or more uncertain for investors—forms of de facto protectionism for Chinese companies, through things like more restrictive provisions in the catalog of foreign investment opportunities that came out in 2007 and signs of anti-monopoly law review perhaps being used especially aggressively against foreign acquirers.

Relying on domestic demand is the long-term solution for China's economy, but it's not easy to achieve in the short-term. The \$600 billion Chinese Government stimulus plan includes not all that much new money as far as we can tell, and the money may not be well used. Some may be used for more highways to nowhere.

The consumer side of domestic demand is hard to increase. People save a lot in China because of the lack of a social safety net, and the lack of developed consumer credit markets. Without fixing those intractable problems, it will be very hard to raise consumer spending to fix the growth problem.

Inequality. Well, you know the numbers there, too. The Gini coefficient for China is around 0.48, maybe even higher. China ranks 93rd out of 125 countries in terms of its degree of equality in the World Bank rankings. Urban/rural income ratios are more than 3:1, richest-to-poorest province per capita income ratios are around 10:1. These are huge gaps.

The impact of the current trend toward higher unemployment on overall inequality is unclear because some of the people who are losing jobs are not the worst off. So, the overall distributional

effect—of the sort captured in a Gini coefficient—may not show a major change, but a surge in job losses among the relatively poor is still potentially a serious problem. We also have the looming problem of farmers facing water shortages and other forms of environmental degradation and some of the least well-off Chinese, therefore, facing bad conditions.

There are signs that the legitimacy of inequality may be dropping in China. For a long time, a popular view has been, in effect, “You get rich because you’re harder working, or luckier, or smarter.” There are at least anecdotal indications that that perception is, at least, shaken. We can see the publicity that recently attached to incidents of corrupt officials in China—Chen Liangyu, deposed Party Chief of Shanghai, is the latest poster boy for this—and to a more diffuse sense seemingly in Chinese society, that wealth comes too often from personal and political connections.

We can look at things like the Pew survey. Although there are questions about how much we can rely on the survey as an accurate measure of Chinese opinion, it is likely informative in a general way about the attitudes of urban, relatively educated Chinese, at least. We see 89 percent identifying inequality as a major problem, and 78 percent identifying corruption as a major problem. These are worrisome numbers.

If you look at the U.S. media, you can see some nice juxtapositions that capture jarring gaps and contrasts. I heard National Public Radio reporting this morning about a Los Angeles house-buying expedition by some nouveau riche from China. At the same time, you can pick up the New York Times and see a story about unemployed Dongguan factory workers trying to figure out how they’re going to make ends meet. In addition, there are the reported 120,000 “incidents” per year of some form of social unrest, many of them reflecting complaints about inequality, injustice, or unjust inequality.

What’s the bad news in terms of legal and institutional means for coping with these problems? A good set of laws and a good legal system that can address the sources of discontent and the illegitimate instances of inequality can go a long way toward fixing some of the problems or defusing pressures that might lead to instability.

Here, the recent news is not entirely good. Wang Shengjun, as the new head of the Supreme People’s Court, is not his predecessor, Xiao Yang. He’s a good deal more revanchist, by any measure and has taken it upon himself to emphasize the need to look to public will, which often means party interpretations of public will, in adjudicating criminal cases, and particularly to be tough on crime and in death penalty cases. He emphasizes those issues more than the rule of law agenda that we saw receiving greater attention before.

The Politburo Standing Committee member in charge of the law portfolio is Zhou Yongkang, a former Public Security Minister, who seems cut from the same cloth as his predecessor, Luo Gan, who also stressed law and order and famously said that weaknesses in China’s legal system created opportunities for enemies who would Westernize or divide China.

Li Keqiang, likely the next premier, has a legal education, but it is largely a “*zhengfa*,” legal/political education, which is not ex-

actly what gets taught in Chinese law schools today. It is a rather different background from what “legal training” connotes in other systems. China also has been developing emergency powers laws to give greater powers, greater formal powers, to deal with unrest.

There is now clearly a chilly climate for those who have tried to raise some of the rights concerns you’ve heard mentioned earlier on this panel. Gao Zhisheng, one of the leading crusading or “rights protection” lawyers has disappeared yet again; the Yitong law firm, as you have heard, is in trouble.

There is another possible marker of concern about the capacity of legal and other institutions in Charter 08 and the goals it sets forth. We had a fairly quiet period for this kind of criticism from intellectuals, but with Charter 08, we see a bunch of them coming out of the woodwork, 300-plus signing it initially, and putting forward an extraordinary, if long-term, list of aims; a truly constitutional order, democratic reforms, the rule of law, government accountability, Bill of Rights-like freedoms and so on. This is an extraordinary and fundamental package of reform goals articulated in an exceptionally public form.

Relevant for our purposes here is something you’ve also heard mentioned earlier on this panel, which is the gap between the official views of what is right and what is legal, on one hand, and popular views, on the other. Rebecca MacKinnon has talked about the attempt to close that gap, but the gap is real. In many highly celebrated and politically charged incidents in recent years, we’ve seen this divergence between the law on the books and popular perceptions. It’s pretty striking.

There appears to be a consensus that Chen Liangyu is corrupt, but that he was singled out for prosecution for political factional reasons as well as for his illegal behavior. That’s certainly a widely held view in China. In the Chongqing Nail House case, the famous Wu Ping and Yang Wu were invoking property rights that weren’t actually the law yet. The law hadn’t come fully into line with protecting those, even though the constitutional underpinnings were there and implementing legislation was soon to come into effect. Although their resistance to demolition of their house and their quest for greater compensation lacked a firm legal basis in the principles they invoked, their stance won sympathy and support from a large audience.

The Sun Zhigang incident—the horrible case of a student who died from abuse in custody after being mistaken for a migrant—is another example. Yes, what he suffered was abuse even by the rules at the time, but he was detained and killed under a system of “custody and repatriation” that was a kind of procedural or due process black hole and was much criticized but that was not illegal at the time, and indeed, was perfectly clearly authorized.

Yang Jia, the Shanghai cop killer, the type of person who ordinarily would be an unsympathetic figure, except for the fact that, in China today, the police are not terribly popular because of reported abuses and clear instances of abuse, and the sense that Yang was not given much due process and was not properly identified as mentally ill and so treated. There are other similarly illustrative cases that Professor MacKinnon and others have cited.

Let me switch, in the time I've got left, to the good news, to why I think that although there are all these problems and these problems do feed discontent, unrest, and possible threats to stability, China does not face a crisis in which we're likely to see serious social instability.

Why? First, growth. Seven percent growth ain't bad. Most of the world gets by on a lot less than that. The 7 or 8 percent minimum is an untested article of faith among many who watch China's economy, and I've never heard a convincing case for why China needs 7 percent when pretty much everybody else, even in the developing world, gets by with less, and when China is not facing a huge bulge of people coming into the workforce the way countries with a different, broader-based age pyramid are.

The view is based on the assertion that the regime's only basis for maintaining stability is that it delivers uninterrupted, rapid growth in per capita income and that there is no partial substitute for it. I think that's an aggressive assumption that has yet to be proven.

Second, the regime can do, and has incentive to do, a lot to sustain fairly high growth. It is in good fiscal health, certainly by world standards. The government has significant financial resources to spend on stimulating the economy and backstop troubled institutions. There are long-run reasons for the regime to pursue policies that will also have short-run stimulative effects: to shift growth to greater reliance on domestic demand and a more consumer-driven economy; to build a social safety net that will drive down saving and drive up consumption. The regime has shown itself capable and willing to engage in inflationary lending and spending to get a sluggish economy going, in part because China's leaders know they can rein it back in, as they have by hitting the brakes to curb escalating inflation several times already in the reform era.

The newly unemployed migrants, so far, are going home. That's a good thing for stability. That is, unemployed and unhappy people—especially unattached young men—living in cities are, in large numbers, a potential threat to all but the most stable and well-institutionalized regimes. Notwithstanding the rural roots of the Chinese revolution, if you've got to take your pick, you're better off having migrants go back to the farms or smaller cities where they are more dispersed, where there is at least some basis for subsistence and where there is a supportive, and constraining, social network. If the economic downturn goes on long enough and becomes bad enough, then we may have a stability problem, but for now the migrants' exodus provides something of a safety valve.

In terms of inequality, inequality isn't, per se, explosive. There are many other countries or economies in China's range in the Gini coefficient. They include Nepal, Rwanda, Mexico, Costa Rica, and Hong Kong. I defy you to tell me what metric that groups those entities together tells you about inequality and stability. Maybe it just tells you the Gini coefficient is a terrible measure of politically relevant types of inequality.

There are also some significant ameliorative efforts undertaken by the regime. We have seen the elimination of the "*sannong*"—the three burdens—on the countryside, on farmers. There are attempts

to deal with excessive expropriation and under-compensation for expropriated land rights and a real attempt to create stronger land rights and land tenure, particularly in the countryside. In the urban areas, the regime had largely given up, as of a few years ago, on repatriating migrants and tried to build down institutional and physical infrastructure to accommodate and integrate them. Now that many migrants are going back to their places of origin, some of the pressure is off of that effort. There were some significant moves, as you have heard, to extend greater labor rights to workers in the private economy and to build a social safety net as well.

These initiatives haven't been entirely successful or comprehensive in aim, but in the short run the perception that there is some progress, and that the regime, at least at the center, is really trying, buys it some space.

In terms of the legitimacy of the conditions of inequality and their potentially producing instability, there is a lot of robustness still to the notion that at least some of the rich succeeded not for corrupt or bad reasons but for good, legitimate ones. There are plenty of entrepreneur heroes, some a little colorful, or a little troubling, but not seen as having illegitimately won fortunes.

Zong Qinghou, for example, started selling beverages out of a tiny store and he went on to create Wahaha, a giant—if to American ears somewhat sinisterly named—company, one now in a pitched battle with international food products giant, Danone. As the Chinese economy becomes more and more privatized, or at least as private or semi-private firms play a larger role, the perceived connection between wealth and preexisting political clout may weaken.

If you look at the Pew surveys and the Gallup surveys, which again have their problems as reliable measures of Chinese public opinion, and surveys conducted by Chinese entities, which also have some problems, you do find some pretty remarkable numbers that should not be dismissed out of hand. The Pew survey famously recorded last year that 80 percent-plus of Chinese thought their country was on the right track—the highest rate among countries surveyed; 80 percent of Americans thought the opposite, that is, we thought our country was on the wrong track.

Sixty-five percent responded that they thought the Chinese Government was doing a good job on major issues. In the Gallup poll, 50 percent think the future is going to be very good for them. These numbers may have come down some with the arrival and deepening of the global economic crisis and there are questions of accuracy, but they're still pretty striking.

There is a popular sense in China that local officials are the problem. This view is, "The central government is okay; it's the local, lower-level guys near me who are the problem." That's a very helpful thing for the regime and the leadership at the center. There may now even be an emerging sense that some of the problems that China faces in the current crisis are just "facts about the world." It's a global crisis; it's not a regime failure. Again, that can buy some political space for the regime.

Moreover, the leadership seems fairly united in dealing with the difficulties it faces. We don't seem to be in a period of serious elite factionalism.

There is a remarkable savviness, as you've heard earlier concerning the Internet, in this regime and its ability to spin things publicly. Think of how well SARS was handled, as a PR matter at least, compared to what you would have seen earlier, and how the Sichuan earthquake was handled, with Wen Jiabao going out and picking up the phone and yelling orders to spur rescue efforts. Such measures matter for creating a sense that the government, at least at the central level, cares and is trying to do something for the beleaguered people.

This is a proven, capable regime. We have seen 30 years of remarkable success in what has been a white-knuckle ride of breathtaking change, occasionally daunting crises and many more potential crises. Who would have bet that there would be as little instability as there has been, given the transformation China has gone through?

Affluent individuals and intellectuals, concentrated in urban areas, are remarkably pro-status quo groups. They are not a source of instability at the moment. Through a combination of co-optation and fear, the regime has done a pretty good job of removing these key elements in relatively plausible scenarios that have discontent and unrest turning into a real crisis.

For the urban professional and middle classes, regime policies of distributing largess and employing people and making the case that the policies that have benefited the urban areas depend, to some extent, on the existing order remaining in place have been broadly successful. That is reinforced by affluent urbanites' fears of a redistributionist peasant mob, which would gain influence if there were democracy. For intellectuals, the regime-proffered deal has been: you get a nice job if you stay within the zone of acceptable views, but if you step outside of it you're going to wind up in jail or, at least, in diminished circumstances.

My final point is about the legal institutions and the positive stories concerning their ability, perhaps, to cope with the challenges I have described. There are a lot of mechanisms that have grown up over the reform area, although some have faced retrenchment recently, that do provide a lot of steam valves, relief from particular abuses, ways to monitor discontent and therefore cope with it, and ways to allow popular input into governance.

They range from things like the implementation, albeit imperfectly, of the village elections laws; to the administrative litigation law which brings 100,000 or so cases forward a year, with 20 to 40 percent plaintiff success rates, and arguably a deterrent effect beyond that; to some tolerance for collective class action-like suits by expropriated holders of property rights; to contracts cases that look like disputes over commercial deals but really are pushing back against government abuses if you scratch the surface; to the legislation law, which provides for public hearings; to experiments with grassroots deliberative democracy. All these things, and "*xinfang*"—letters and visits—as well, imperfect as they are, have offered some mechanisms to provide redress and a sense, at least,

of influence, and in some cases real influence, to ordinary people with grievances.

If you look at the general picture of legality, there are many problems, but, as what I have just said suggests there is a happy side of the legal-institutional story that augurs well for stability. China now ranks, by the World Bank rankings, in the mid-40s percentile for rule of law. That's not bad. It is above low- or middle-income country averages, and it's above much of the world that we don't think of as being lawless. Cases that I mentioned earlier, like Sun Zhigang and the Nail House case, and even Gao Zhisheng, before he got into politics, when he was doing more narrowly legal work, suggests that there is some scope for seeking legal redress of grievances that, unaddressed, could foster instability.

Each of those cases helped lead to changes in the law or were bound up with ongoing changes in the law that provided some avenues and some remedies. More broadly, there are good, self-interested reasons on the regime's part to provide remedies that work—good Leninist reasons for why the regime's leaders would want to provide a system that works and provides some redress and input for the public.

That said, finally, the harsh side of the legal story that I was talking about earlier has its uses in maintaining stability. It's a very effective way of cracking down on those who would challenge the Party-state's Leninist organizational monopoly, a monopoly over organized politics, if not all expressions of dissent. We saw it in the handling of Falun Gong. We've seen it in the periodic shut-downs of petitioners who come to Beijing or provincial capitals with their complaints, and we've seen it in the handling of the Yitong law firm, Gao Zhisheng, and others who have pressed legal rights and asserted legal restrictions on the state.

With that, I will stop. Thank you.

Ms. OLDHAM-MOORE. Thank you, Mr. deLisle. That was an epic treatment of the topic. It was fabulous.

I'm going to go to Lawrence Liu, our senior counsel at the Commission. He will get us started with the question and answer period and then we'll turn to the audience.

Mr. LIU. [Off microphone]. I'd just like to, first of all, thank you for your excellent presentations. My question is about Charter 08 and to the extent that Charter 08 actually poses a threat to stability in China given your perspective and observations of China or whether China might be better off allowing citizens greater freedom of expression.

Ms. OLDHAM-MOORE. I'm going to recap what Lawrence just said, for those in the back who couldn't hear. His question was regarding the Charter 08 movement. China's response to it appears to be that it is a threat to social stability. Do the panelists believe it is a threat? Would China be better served by responding, allowing more of that kind of activity, not less?

Mr. DELISLE. I'll try to start the answers from the panel on this. I think it falls into either of the two categories that push buttons, and therefore get a reaction. One, is it is advocating radical systemic change. I mean, we're not talking trimming around the edges.

You all remember back in the days of Wei Jingsheng, where he would say all sorts of caustic things about the regime and then say, “But I’m only trying to improve socialism; I’m trying to work within the system and make it live up to its principles.” Well, Charter 08 is pretty thorough-going stuff. I mean, you go through, what is it, the 19 demands, I guess, and it’s hard to figure out what’s left standing, in some sense, of the existing system. I mean, separation of powers, rule of law, constitutional review, democracy, accountable government. So, it really does step beyond the pale of acceptable friendly amendments.

There is that, and I think also it is a whole bunch of people, including these, as Rebecca quite rightly said, well-known intellectuals who are potential rallying points. There’s the specter of Tiananmen, the 20th anniversary of which is coming up, that still looms. There is the sense that this is the alliance that caused problems before, intellectuals with a following who say some pretty radical things interacting with an underlying set of sources of social discontent and dissatisfaction with regime behavior that leads to this kind of synergy, and I think sometimes, a misreading of what the movement is about. But still, that’s the sort of recipe for possible unrest that China’s rulers worry about.

Ms. MACKINNON. Just to add to that, I spent nearly a month in China in late December and January and was talking to quite a lot of people, quite a number of people who had signed Charter 08, plus just sort of a range of other people, about their opinions on this. One point to make is that of course the Charter 08 is not calling for a specific action now, right? It sort of sets out a goal for the distant future.

One of the criticisms that I heard from many intellectuals, some of whom actually signed the thing, was that this was like a “*xing wei yi shu*,” it’s like performance art. You know, you put it out there, but what does it actually mean? It sounds really great, looks really great, we agree with it, but we’re here, it’s there. How do you get from here to there? That’s the big question.

Many of the people I know who have signed it, some of whom have been questioned, some of whom haven’t and so on, say, “Yes, I like this goal over here, but I don’t want revolution now, today, to get to there because I have kids in school, I have this and that, I have—you know, so on.” We need a debate to figure out how do we build this road to get to there? So a lot of the conversations I was hearing around Charter 08 related to, okay, we need to figure out, if that is where we want to go, how the heck you go there without jeopardizing everything, without the country completely collapsing.

It’s very nice to have this goal out there that many of us agree, that sort of the liberal thinking part of the Chinese sort of society agree—there’s another, less liberal segment of intellectuals and others who don’t necessarily agree. But for those who do agree, if we move too quickly will we end up like Russia, which is, you have a democratic revolution, but then the mob takes over and you never get there. So how do we make sure that doesn’t happen?

So there’s a lot of debate and discussion about, yes, we want to go there, but how do we do it? There isn’t much consensus. There’s more consensus about, within the liberals in China, the end goal

than there is how to get there. So I think that is one point. That is one reason why, as an immediate threat, it's not such an immediate threat because there is absolutely no consensus about what to do or whether to take any kind of immediate action, or whether this is just kind of an ultimate goal that people should gradually work toward, but not do it in a way that is overly disruptive because China is not ready for it. You often hear people saying that kind of thing inside China.

But on the other hand, it sets out a clear set of goals and the party has failed to set out, where should China be in 50 years? Where should China be? What should China look like? There is actually broad consensus that corruption is a problem. The status quo is not particularly acceptable. Communist Party officials will admit, we've lost control of the provinces. There are all these problems we need to fix, we've got to deal with.

But, so, okay. What is the goal 50 years down the road? They can't really tell you, other than that China will be bigger, stronger, better, faster, and it will be a world power. But what does that mean for the average Chinese person? They can't really give you an alternative vision that's more attractive than this vision over here. So in that sense it is a big challenge, but it's more kind of a hypothetical or kind of long-term challenge than it seems to be an immediate threat.

But to get back to your point of, has the crackdown on signatories of Charter 08 called more attention to it or actually kind of served to be counterproductive from the Chinese Government's point of view, probably so. I have read a number of blog posts by different people who said that they weren't originally planning on signing it because they agreed with some of its provisions but not all of them, or had issues with Liu Xiaobo, or this, and that, and the other thing, but they ended up signing it because when they started writing about it they got censored, and it made them so mad that they decided to sign it anyway. Or, I wasn't going to sign it, but my friend who signed it got called in for tea by the police, and that really made me mad so I signed it to support my friend, you know, that kind of thing.

So one could argue that had the government just kind of not paid too much attention to it or employed more kind of spin tactics as opposed to hard censorship and questioning tactics, actually maybe fewer people would have signed it and there would have been more argument about what people think of Liu Xiaobo or what they think of specific provisions and so on. But the questioning of people, and also censoring of blog posts and forum posts talking about it, made people rally and more solidarity around the general idea and argue less about specifics.

So if there hadn't been censorship, if there hadn't been pressure put on people, maybe we'd see a much more detailed fight going on about, okay, yes, that's great, but it's performance art. What do we do tomorrow? We might see, actually, more arguments about that rather than more people on the liberal side of society rallying around it.

Mr. GROB. Rebecca, if I could just jump in here for one second to ask for clarification. Based on your discussions and your understanding of the debates concerning Charter 08 in China today, is

Charter 08 being discussed in terms of stability? Is it being discussed as a response to a stability problem, as a solution to a stability problem, or as a stability-preserving road map for change? I mean, are the words “Charter 08” and “stability” being uttered in the same breath by anyone other than the government?

Ms. MACKINNON. I think you hear “Charter 08” and “corruption” uttered together much more than “stability” in general conversations. I think that arguments or discussions about democratic reforms in the past have hit on the stability issue. So when the village election reforms were moving forward or were making the greatest amount of progress in the late 1990s, some people in the Civil Affairs Ministry who were really trying to push forward on this, one of their justifications was that in villages that had truly free, fair, competitive, secret-ballot elections, that there was less unrest. Those areas were more stable than places that didn’t have quality competitive elections.

So that argument has been made in the past. I have not seen it so much related to Charter 08. It’s more been about justice and anti-corruption, kind of social justice terms, is what I’ve seen the conversation in, although certainly you do see intellectual arguments being made about, if we really want a stable society long term, we need multi-party democracy because that’s the only way to have an accountable government. I mean, that argument is always there, and has been around for a while—obviously not in mainstream press or anything, but you’ve heard it for a while. That hasn’t been the emphasis. But other people may have been hearing different conversations and it would be interesting to hear.

Mr. GROB. Thank you. Thank you.

For those who may not be familiar with it, Charter 08 is a document outlining what has been described as a “blueprint” for political change in China. It was initially signed by over 300 Chinese citizens, and since has been signed by thousands more, both inside China and outside of China. It was released on the eve of December 10, the anniversary of the Universal Declaration of Human Rights, and was modeled, ostensibly, after the founding of Charter 77 in Czechoslovakia. If you are interested in reading more about this document, please visit our Web site: www.cecc.gov.

Ms. OLDHAM-MOORE. Okay. Thank you.

Questions from the audience? When you stand up, please state your name and affiliation, if you like.

VOICE. [Off microphone].

Ms. OLDHAM-MOORE. That’s beautiful. I can’t restate it. Andrea?

Ms. WORDEN. [Off microphone]. I just wanted to give a plug for Rebecca MacKinnon’s blog, which you can find at <http://rconversation.blogs.com/>. Among other things it contains her brilliant analysis of Charter 08.

Ms. OLDHAM-MOORE. Okay. Thank you.

VOICE. [Off microphone]. Yes. I have a question for Professor Jacques deLisle. How much do you trust this Pew survey which—where was that survey done? How was it done? Does it reflect the current state of the Chinese—peasant workers?

Ms. OLDHAM-MOORE. A question for Jacques deLisle regarding the Pew study on right track, wrong track in China, the credibility of that survey, for Jacques deLisle.

Mr. DELISLE. I think there are all sorts of problems with the Pew survey if you're taking it as an accurate measure of Chinese opinion. Is it really 80 percent? Almost certainly not. There are the obvious problems with any survey in China, that there are obviously acceptable answers and somewhat less acceptable answers, and how much confidence do the respondents have in giving a straight answer without fear of repercussions. It is a skewed sample. I mean, it is skewed for urban, better-off Chinese, and all that.

So I wouldn't quote it for any particular percentage, but I don't think it is insane because it does pick up a lot of answers that say things are bad. It says corruption is very high and inequality is a very serious problem. The numbers are as high for that as they are for the sense the country is headed in the right direction, or the government is doing a good job.

And, yes, there are reasons to think that's a politically acceptable package of answers, but there are other surveys that point more or less in the same direction. There are some internal Chinese surveys done that certainly back up the notion of great distrust of local government, and correspondingly relatively high trust in the central government, and there's lot of anecdotal stuff that supports it.

Whatever you make of surveys, it remains a striking fact that stability has been maintained and legitimacy seems relatively high, and that stability is only partially attributable to harsh, repressive methods. So I wouldn't quote the Pew survey as gospel by any means, but I think it is one set of perhaps misleadingly concrete quantitative measures of a qualitative phenomenon that I think does exist.

Ms. OLDHAM-MOORE. Thank you.
Wenchi Yu Perkins? Please.

Ms. PERKINS. [Off microphone]. My question is for all panelists. Whether we think China has a stability problem or not, we probably all agree that the Chinese Government is concerned about stability. Due to the economic downturn, the Chinese Government has introduced a number of measures providing social safety nets to migrant workers and college graduates. I'm curious about your view on such government response. Some argue that the conservatives in the government introduce those measures out of the concern of social instability, whereas some reformists believe that there is no better time to push through certain reforms during financial crisis. I'm curious about your analysis. Some of the new policies are very creative, such as lifting household registration—*hukou*—restrictions. There's even one State Council Circular issued on February 13 that requires companies to consult with the All-China Federation of Trade Unions [ACFTU] if they plan to lay off more than 20 employees or more than 10 percent of all company employees. These are interesting developments even though the enforcement might be a different issue.

Ms. ATHREYA. That was a terrific question. And it's true. It's been very interesting. There has been an immediate policy response and recognition that there would have to be some type of social safety nets put in place in other measures. I think that's a fascinating response because, first of all, it's an acknowledgement—there's much to be said about this beyond just a couple of

minutes—of the potential unrest that can be caused by economic hardships. And certainly we would endorse that, and we've seen evidence of that in our own country and elsewhere in the world, I think, the recognition by the Chinese Government that this is the problem and we'd better deal with it.

In a way, there's no virtuous cycle except for serious policy measures. If you let the strikes happen, you let the steam off, you need a policy response at the end of the day or it snowballs. Or if you try to put the lid on too tight, we're not going to enforce labor regulations at all, then you potentially generate more protests.

The interesting thing that remains to be seen about the policy response beyond the enforcement question—let's assume good faith on enforcement—is, will then you start to create expectations? Because once you've got, as you say, this opportunity for dramatic new policies to be put in place, you're not going to revoke them later when growth goes back up from 6 percent to 10 percent, or whatever.

They are going to remain in place. They're going to build new expectations of society and of workers for continued protections in good times or bad. So I think I don't have a crystal ball, the jury's out on that, but it will be interesting to see. In a way, you almost have to go down a road toward a type of industrial relations framework that is arguably more open and more in line with international standards at the end of the day.

Ms. OLDHAM-MOORE. Thank you.

Anybody else from the audience?

Mr. KENDALL. [Off microphone]. A question for Mr. deLisle. You mentioned, you just kind of touched on, the relationship between the central government and the local governments. With the new stimulus package that the Chinese Government has put through, and we hear the debate here in the United States all the time about where the resources are going, I'm wondering if you've seen or if you understand that there will be a change in dynamic between the central government and the local governments, which have had a lot of autonomy in certain policy areas, whether there's going to be sort of a desire to pull that back.

Ms. OLDHAM-MOORE. To quickly recap his question regarding the Chinese stimulus package, the tension between the local governments and the central government, and where does he think the resources might be going, and those kind of bureaucratic pressures. Are they changing?

Mr. DELISLE. I don't think we really know all that much about it yet. I mean, the last time I looked really closely at this issue, which was a month or more back, the debate was still going on about what exactly was in this package. Yes, there was \$600 billion, but there was still a debate over how much and what—so the sense is, oh, 25 percent is infrastructure, probably 25 percent is genuinely new spending as opposed to work that was already budgeted or things that people thought were likely to happen in the ordinary course. People had numbers all over the map. So, the jury is still out on that.

But your broader point is certainly a recurring issue within the reform era. I mean, as everybody in this room I am sure knows, the genius of the early years of reform was decentralizing power

down to more local governments, and it's been a pain in the neck ever since, the attempt to rein it back in. I think the lessons of the stability problems or potentially stability-threatening moments of the last several years have been to reinforce that concern about local governments being non-responsive and unaccountable.

So if you look at much of the criticism of the way SARS was handled, the blame was steered toward local officials who either underreacted or overreacted. There was a very interesting debate surrounding the emergency response law and what had been initially proposed as an emergency powers law of a broader sort during the last several years. Much of the debate was focused on finding ways of exercising tighter control over local officials who were seen as going off the rails.

Those moves also are means for dealing with the stability problem, and show that it's a real concern. I think there's every reason to believe that that concern will continue, as there are good reasons to fear more local incidents of unrest.

Now, there is a bit of a tension there, of course, as Professor MacKinnon has alluded to. The central leadership wants to hold the local officials responsible, and if it really does rein them in, it becomes harder to shove blame down the chain. But there is a robust history now of feeding people's preexisting views that the local guys are the problem and the central guys are really the people's friends. You can debate the second half of that, but they have done a pretty good job of selling at least the first half of it.

On the resource side, again, it was something which was a huge crisis for a good chunk of the reform era a decade or so ago. There was this problem of the declining double-ratios, that is, the share of GDP that the government captured was falling toward single-digit levels and the share of total government take that was getting to the central fisc, as opposed to sticking with local governments, was plummeting as well. With some tax reforms and some other restructuring measures, they fixed that problem to a significant degree, but there's always this revenue-leaching issue.

I think the problem with handing out stimulus package funds is, if you let it go down to the local level where inevitably the program is implemented and the money spent, you can do that but risk a return of familiar problems. The risk should not be exaggerated. I think, given the size of the Chinese economy today, the new revenue that will be under the control of local governments through the stimulus package is probably not huge, relatively. The bigger issue is going to be that if the authorities choose to try to get growth going again through another cycle of cheap credit and potentially inflationary moves, then where does that increased bank lending go? A lot of that goes to entities that are linked to local governments.

Ms. OLDHAM-MOORE. Thank you.

We have just a few minutes left. Kara Abramson, then Andy Green. Go ahead.

Ms. ABRAMSON. [Off microphone]. Thank you very much. I'd like to ask the panelists to address how the issue of stability plays out in the Xinjiang Uyghur Autonomous Region and Tibetan areas, whether in the area of Internet controls, legal institutions, or labor rights.

Ms. OLDHAM-MOORE. A small question. Very small. Kara asked about how these issues of Internet, freedom, labor, and institutional structures play out in the ethnic areas of Xinjiang and Tibet.

Ms. MACKINNON. Well, just on the Tibet question particularly, because this was a very big topic on the Chinese Internet last year when you had the unrest in Tibet, and then the international criticism, the international reporting of what had gone on, and then a vigorous debate on the Chinese Internet about whether the Western portrayal of what was happening was correct. I think the ethnic minority issues, to frame it as the Chinese Government would, the issues related to Tibetans, or Uyghurs, or other groups, are tough, because what we're seeing on the Internet happening is that voices that might be sympathetic to independence or autonomy are censored very quickly.

If they're not censored, they're shouted down very quickly, because in addition to censorship, in addition to a more sophisticated spin, you also have many tens of thousands of people who are now either paid or volunteer pro-government commentators whose job it is, or whose volunteer role it is, to spin conversations on the Web in a pro-government direction.

Plus, you have a phenomenon that has come to be known as cyber-nationalism, where there are quite a lot of people in China, for reasons similar to why you get very, kind of, nationalistic people in the United States who don't want to hear bad things about their country, you also get a lot of people in China who want China to be great, want the world to love China, and don't want to hear anything bad about their country and don't want to hear anything about foreigners criticizing China.

So those types of views end up getting free reign, whereas the more liberal views, the views that are more sympathetic to ethnic autonomy or independence, don't get heard, are either censored or drowned out, so it gets into this more skewed situation.

But what basically the result was last spring was that if you had done a poll of people who were capable of speaking on the Chinese Internet last year, they probably would have voted to just send the PLA in and go even further. There was very little sympathy among the Han Chinese who could be heard on the Chinese Internet toward the challenges faced by the indigenous Tibetan population.

So this is kind of one of the issues, too, is that I think sometimes there's a perception in the West that if we kind of speak out for the groups that are suppressed, that there would be widespread sympathy for this among the Chinese population, but oftentimes people tend to rally around their governments.

There is also increasingly a sophisticated kind of set of media criticism that goes on in China, and there is a group of students who have set up a Web site called Anti-CNN, which some of you might have heard of, that was established during the aftermath of the Tibet unrest, when the international media—you know, it has its errors in reporting news about China.

In addition to Jack Cafferty calling the Chinese Government "goons and thugs," which many people in China took offense at, you also had situations where, for instance, a major news agency had some video and some photos of Nepali police rough-handling some Tibetan protesters. This was mislabeled as Chinese police

rough-handling Tibetan protesters. It was all over the Western media, because it was agency material, and this was upheld as a prime example by many people in China as an example of how the Western media was just out to get China, and just doesn't want China to succeed, and is just spreading lies about the nature of the Chinese Government.

So, that is a problem, too, is there are a lot of people in China who are seizing upon errors in Western media coverage and saying, "See, they're just lying about us, they want to keep us down, they don't want our Olympics to succeed, they don't want us to be successful, they're racist, et cetera." It gets very strong. So, yes. It's a complicated issue.

Ms. OLDHAM-MOORE. Thank you.

Ms. ATHREYA. We don't work in the Autonomous Region, so I'll pass on that one.

Ms. OLDHAM-MOORE. Okay.

Jacques deLisle?

Mr. DELISLE. I would just say that in special autonomous regions, the word "autonomous" should be seen as an ironic term. I mean, they are among the least autonomous areas. Almost any metric you pick, including other things I looked at a bit more, such as access to legal advice, quality of institutions—there's a pretty clear gradient that tracks wealth. It does globally, and it also appears to do that within China. There are some idiosyncratic blips, but by and large the sense is the quality of institutions is much higher in the more affluent areas. The inland areas are poorer, and that creates these problems of weaker institutional capacity. In addition, they are seen as restive areas, posing greater stability challenges.

The Olympics provided the occasion for trotting all of this out. I mean, there was the quite hard line on Tibet that you saw not only in official China but also among Chinese students in the United States, where Chinese authorities were not pulling their strings. There also was the regime's raising the prospect of terrorism from Xinjiang to justify some of the quite elaborate, shall we say, quite robust security measures around Beijing.

Ms. OLDHAM-MOORE. Thank you.

Andy Green, you have the last question.

Mr. GREEN. [Off microphone]. I'm Andy Green. In Hong Kong, there has been real anger about the Lehman mini-bond crisis. These instruments were sold to investors in Hong Kong as secure, low risk investments, but they were actually risky derivatives, and people lost a lot of money. This has led to popular protests in Hong Kong and demands for compensation through the political rather than the legal process. I'm wondering whether this could happen in China. With the fall of the stock market in Shanghai and some of the other financial issues—money flowing out of China in record numbers—if investors in the middle to upper middle class have lost a lot of money, will they be a source of instability, especially as there are many of them in Shanghai or Beijing? If they cannot pursue their claims in court but rather take them to the political process, will that be a problem?

Ms. OLDHAM-MOORE. Thanks.

Anyone want to take that?

Mr. DELISLE. I can give a partial response. It seems to me there are two potential problems here that your comments point to. China has done very well through money coming in from the outside and through money generated in China staying home. Now we see some problems with both of those, and that can have, obviously, ripple effects throughout the economy. To the extent that performance legitimacy remains what it's all about, and it does to some extent, then anything eroding wealth or growth is obviously a threat.

If the crisis really takes down the urban newly rich in China, then it will be hurting a group that really has been the social niche that, in many countries, has been a big part of the drive for political change, as we saw in democratization in other countries in east Asia. This group has in a sense been bought off through an implicit social contract that says, "You get to keep your money, and we have enough legal protections that you're not going to get expropriated and you're not going to get dragged into jail in the middle of the night if you're not doing anything political. You enjoy a sphere of autonomy and protection. In return, you don't demand radical political change or challenge Party leadership."

If that all comes unstuck, then the deal I was describing earlier, the combination of, for intellectuals, decent jobs, and the threat of jail, or at least harassment, if they go too far, and, for the regular professional classes, you keep your money and, if either chaos sets in or we democratize too quickly even if chaos doesn't set in, that's bad news for you.

What the affluent urbanites and intellectuals are getting economically to not pursue an agenda of political change—if that comes off the table, if the regime's side of the bargain goes unfulfilled, then there is potentially a big problem. But it seems to me that everybody who has been anywhere near the Shanghai Stock Exchange, for many years now, is used to a fair amount of volatility. Right now, the rest of the world is starting to look more like Shanghai rather than Shanghai looking different than it did before.

Ms. OLDHAM-MOORE. Yes. Thanks so much.

I want to thank Rebecca MacKinnon, Bama Athreya, and Jacques deLisle for joining us today. It was a very complex topic, and a great deal of food for further thought has been generated today. Please check our Web site for the transcript of this panel discussion.

Thank you, audience, for coming. [Applause.]

[Whereupon, at 3:32 p.m. the roundtable was adjourned.]

APPENDIX

PREPARED STATEMENT

PREPARED STATEMENT OF BAMA ATHREYA

FEBRUARY 27, 2009

The global economic crisis has led to large-scale job loss in China, owing mainly to a sharp fall in global demand for the country's products. This has had a particularly severe impact on certain segments of the population, such as migrant workers and students. On February 2, 2009, Chen Xiwen of the Central Rural Work Leading Group, a government advisory body, said that as many as 26 million migrant workers "are now coming under pressures for employment." China Daily quoted Professor Chen Guangjin of the Chinese Academy of Social Sciences as putting the unemployment rate for new college graduates at "over 12 percent" on December 16, 2008. These numbers are rough, but China's statistics agency has committed to a comprehensive survey of China's labor market starting in big cities and extending to the whole country by the end of 2010.

There have been numerous strikes and protests. Last fall, taxi drivers in Chongqing, Sanya, Yongdeng, Shantou, Guangzhou and elsewhere went on strike over high rental fees, problems with police and competition from unlicensed drivers. Laid off employees at some of the world's largest toy plants have protested by the thousands for unpaid wages. Local governments have had to step in and pay workers some of the money owed them as employers disappear overnight. Workers have blocked roads and attempted to cross into Hong Kong to bring their complaints to factory owners based there. Small plant managers have, in turn, protested for money owed them by larger factories.

All this has put severe pressure on the implementation of China's labor laws, especially legislation enacted in 2008, such as the Labor Contract Law, Law on Labor Dispute Mediation and Arbitration, Employment Promotion Law, and the Draft Regulations on the Growth and Development of Harmonious Labor Relations in the Shenzhen Special Economic Zone. In January, Guangdong Province put limits on law enforcement's ability to freeze enterprise owner's bank accounts and detain enterprise owners for minor offenses. Already in November, the central government allowed local authorities to delay minimum wage increases. Meanwhile, companies have disingenuously cited stricter labor regulations as a contributor to factory closures. For example, Bloomberg News reported on February 11, 2009, that toymakers Mattel and Hasbro have complained of higher worker costs hurting their profits in China.

In fact, China's new workplace regulations are not to blame for layoffs. According to a sampling survey by Yao Xianguo, the Dean of the College of Public Management, Zhejiang University, companies that were in compliance with pre-existing labor legislation only saw labor costs rise 0.69 percent as a result of the Labor Contract Law. Companies are really afraid of an empowered Chinese workforce—not the specifics of labor legislation. Layoffs are the result of global economic stress.

It is typical of businesses to take advantage of crises by intimidating governments into backing down on workers' rights and cutting taxes. But if China wants to kick-start its economy, it must both spur consumer spending by putting more money in the pockets of working people and make public investments in physical infrastructure and social services. The country has taken positive steps toward shoring up infrastructure in its stimulus package. China should also move forward on building a new national social security system as it is contemplating, because the difficulties migrant workers face in transferring social security payments home has become a major issue in labor law. It should strictly implement legislation like the Labor Contract Law. And it should allow government agencies, unions, workers' service centers, and universities to play their full roles in ensuring workers' rights are respected.

The United States, in turn, should set a positive example by itself ratifying all the ILO's core labor standards and passing legislation like the Employee Free Choice Act. It should ensure that U.S. companies contemplating slowing production in China that all wage arrears owed their Chinese workforces are paid along with legally mandated severance packages. The lively dialogue that preceded the passage of the Labor Contract Law in 2007 was healthy, but American multinationals must not force labor flexibility and other discredited practices on the Chinese. Improving working conditions in the United States and China should become a cornerstone of the Strategic Economic Dialogue. This conversation should include representatives of unions and civil society from both countries. Finally, the U.S. Government should continue to support the growth of a civil society in China, as it has in other parts of the world.

