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On the Imperfect Democracy and Human Rights Nexus: China and Italy Compared

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Abstract

Different countries have different legal provisions and human rights protection mechanisms, with different or similar outcomes in terms of citizens' rights fulfilment in different cases. Studies confirm that liberal democracy and human rights have a strong positive correlation and causal nexus. Nonetheless, legal and policy loopholes can yield poor performances in democratic systems with outcomes similar to those qualifying authoritarian governments. To observe it, two deeply different countries in terms of recognition of individual freedoms and form and type of government, namely China and Italy, will be compared. Patterns of compliance will be observed, using the outcomes of UPRs and treaty bodies reviews as a basis. This will be put in context by taking into consideration the two countries' domestic system and engagement in global and regional human rights mechanisms, which mainly applies to Italy as a member of the European Union and the Council of Europe. Through the aforementioned observations, this article aims to contribute to the academic debate on the relationship between human rights and democracy. In conclusion, the patterns identified throughout the analysis will be taken into consideration, together with the two countries' stances on international human rights standards in international fora, to try and elaborate possible future scenarios in China and Italy's compliance with their international human rights obligations.

Keywords: *Italy; China; Human rights; International Human Rights Law; Democracy and Human Rights.*

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Introduction

Legal provisions can differ largely among countries as they differ in form and type of government and in the extent to which individual freedoms are recognised and fulfilled. Yet, different provisions can have similar applications and lead to de facto similar outcomes. Likewise, formally equivalent provisions can lead to largely different practices as countries' institutional balances differ.

As illustrated below, it is well established that (liberal) democracy and human rights enjoy a strong positive correlation. Notwithstanding this, this article will illustrate that even longstanding democracies may as well suffer legal and policy loopholes that yield poor performances in rights fulfilment, much as autocracies may do, in specific fields. Furthermore, the article will provide speculations on future developments in the two countries' understanding of and attitude towards international human rights standards. This paper thus aims at proposing a comparative study that will contribute to advancing the debate on the relation between human rights and democracy by focusing on the failures democratic governments may face in fulfilling their international human rights duties, despite their generally stronger engagement and obligations in regional human rights mechanisms.

This paper will take China's and Italy's practices guaranteeing the fulfilment of international human rights standards, or failing thereat, as case studies. Italy and China will be taken into consideration as they represent different polities, a democratic and an undemocratic one respectively (Freedom House 2018 and EIU 2018), with deeply different cultural and historical backgrounds and different degrees of engagement in regional human rights mechanisms. China is widely acknowledged as a country with a conflicting stance towards the current global order, raising focal scholar debates during the first decade of the current century (Glaser and Medeiros 2007; Ikenberry 2008; Mearsheimer 2006; and Buzan 2010). Furthermore, China itself is keen on self-portraying as a champion of multilateralism and transformation of the global order alike (Li 2006 and Grant 2012), though always stressing its peacefulness (Zheng 2005 and Zhang 2018). While growing in centrality in international society, China has not opened up in the academic sector as much as it opened its market. Most of China's scholarly work is in Chinese and this poses an obstacle to western scholars in understanding China (Li 2006).

This study will take into consideration China's and Italy's engagement in regional and global human rights systems and their domestic institutional environment, including the independence of their judiciary. Notwithstanding the positive correlation between liberal democracy and human rights

fulfilment, it is maintained that the establishment of democratic mechanisms and polity per se may at times not necessarily yield better standard fulfilment in certain fields if independent mechanisms and justiciability are lacking.

Given the wide range of issues that a comparative analysis of this kind can cover, the matters under consideration must be restricted in scope. This article will first of all focus on the protection of individual freedoms. As it will be shown, individual freedoms are similarly provided for in the constitutional texts of China and Italy but differences are major in outcomes. Secondly, this paper will assess the two countries' practices and legal-constitutional provisions on torture and inhuman and degrading treatments, since both the case studies display criticalities in their legal environments that fail to prevent such practices. Finally, racial discrimination issues will be considered, since both countries face migration flows and engage in troubled and often conflict-prone relations with domestic ethnic minorities, albeit to deeply different extents.

The first section of this paper will thus provide a deeper outline of the reasons behind the choice of Italy and China as case studies. The second section will instead observe the two countries' understanding of human rights. The article will then move forward briefly overviewing the literature on the correlation between human rights and democracy, following with an assessment of the two countries' human rights protection mechanisms. Taking into consideration their status of ratification of international human rights treaties and protocols, the article will then analyse and compare the two countries' performance in the aforementioned human rights fields. It will finally move towards conclusion after drawing observations on possible future developments in China's and Italy's performances in fulfilling human rights.

1. Why China and Italy and Why They are Comparable

China and Italy are chosen as case studies as they present different political systems and degrees of entanglement and commitment in regional human rights mechanisms. Such differences, albeit being a complicating factor in a comparative analysis, prove useful to test this paper's initial statement, i.e. to show that even long-established democracies with a strong engagement in regional human rights mechanisms may have severe failures in protection mechanisms. The former is a centralised single-party state with a more relativistic understanding of human rights and a strong collectivist social background, deriving both from the Communist Party's seven decades of rule and from the more ancient Confucian tradition (Killion 2005 and Li

2006). The latter is instead an established western democracy whose status is internationally acknowledged by its membership of the European Union, which assumes Italy's domestic system is coherent with the Copenhagen Principles on democracy, rule of law, and human rights (European Commission 2016). As for their regional engagement in human rights mechanisms, China is the centre of the most Westphalian region in the world, as Kissinger (2014) puts it. None of the regional organisations and fora to which China is member has established human rights mechanisms. The only slight exception is ASEAN, whose human rights declaration does not however involve China as it is not member of the Association but only of the ASEAN Plus Three forum. It must be pointed out that ASEAN's Declaration is not a binding document and therefore establishes no enforcement mechanism. On the other hand, Italy is engaged in the European human rights system, which sees the EU Charter of Fundamental Rights and the jurisprudence of the Court of Justice overlapping with the Council of Europe's European Court of Human Rights (OHCHR 2019).

Furthermore, China has been a leader for countries and movements advocating the recognition of 'Asian values' and cultural relativism in the 1990s (Turner 1993 and Li 2006). While the universality of human rights has often been questioned by cultural relativists, the academic community has widely acknowledged their universal validity (Langlois 2017). From a legal perspective, international human rights law is established at the UN level and such norms are equally binding for all the countries that signed and ratified the treaties (OHCHR 2018a). From a philosophical and sociological perspective, the issue has been widely addressed in academic literature (Henkin 1989; Ramcharan 1998; Joas 2011; and O'Connor 2014). Human rights' legal universality will prove sufficient for the sake of this paper, sociological and philosophical debates notwithstanding. It is however interesting, for the sake of analysis, to overview China's older and newer attempts to relativize human rights standards. In particular, it must be underlined that several relativistic interpretations of international human rights norms have been elaborated by the Chinese academic community to foster and favour economic and social rights rather than civil and political. Among these interpretations, it is worth mentioning the concepts of 'Marxist human rights' and 'socialist human rights' (Li 1992). More recently, during China's November 2018 Universal Periodic Review (UPR)¹ cycle, the country's representatives, echoed by state media, made reference to 'human rights development with Chinese characteristics' (Xinhua 2018) and

¹ at the time of writing, China's last UPR cycle was held in 2018, while Italy's was held in 2014.

dismissed criticism on the ground that 'no country can dictate the definition of human rights and democracy' (UN Web TV 2018). This attitude hints at the emergence of a new wave of cultural relativism. Such stream of thought has been under academic scrutiny for decades (Donnelly 1984). While human rights universality and centrality in the current global order has been widely recognised in academic literature in the current century (Sjoberg et al. 2001), the debate on cultural relativism has not completely faded yet (Viik 2012). It must be acknowledged that art. 5 of the 1993 Vienna Declaration and Programme of Action states that 'national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind'. Nonetheless, the same article stresses that '[a]ll human rights are universal, indivisible and interdependent and interrelated.' It also adds that '[t]he international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis', posing on each state the duty, 'regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms' (World Conference on Human Rights 1993).

2. On China's and Italy's Understanding of Human Rights

A reconstruction of the transformation and/or development of China's and Italy's understanding of human rights is essential to fit the following analysis in a clear theoretical framework to allow observers to foresee possible future developments.

To start with, it must be pointed out that the rights discourse in China emerged during the late Qing dynasty (1636-1912) (Weatherly 1999). When China succumbed to western powers in the XIX century, a push for renovation in the western sense grew stronger to face world powers. The rights discourse thus started entering intellectual circles. However, when the Republic was established in 1912, despite the initial presence of western democratic features such as parliamentary elections and a constitution, the understanding of rights was embedded in a wider Confucian theoretical framework. The Confucian understanding of society includes a strong respect for authority and hierarchy together with the forfeiting of individual freedoms for the sake of common good. China's two and a half millennia-old Confucian tradition absorbed western concepts and increasingly transformed through the process of establishment of a socialist society started by the 1949 revolution. Marx himself was sceptical of individual rights, maintaining that they were a divisive tool for the atomisation of society. While he envisaged the elimination of rights in a communist society, communist governments

maintained a space for them and their political use. In Mao's era, human rights were depicted as an imperialist tool for capitalist powers to disguise colonialist objectives (Chiu 1989). Chiu (1989, 3) points out that the title of the only human rights article ever published in Mao's China reads 'A Criticism of the Views of Bourgeois International Law on the Question of Population'. China's rejection of human rights as a bourgeois tool for domination became milder with the country's progressive inclusion in the global order during the 'Reform and Opening Era'. As China grew stronger benefitting from the established international order, it progressively accepted international law and the rules of multilateralism, albeit posing as a reformer (Vogel 2011 and Buzan 2010). Arguably, this attitude spread to international human rights law as well. The 1998 signature of the International Covenant on Civil and Political Rights (ICCPR) (OHCHR 2018a) may provide proof of a new stance from China towards international human rights standards. This ambivalent, albeit peaceful, attitude can be deemed to have characterised China up to Hu Jintao's end of presidential mandate in 2013. Current president Xi Jinping has however launched a 'new era', introducing his personal thought – alongside Mao Zedong's thought and Deng Xiaoping's theory – in the Party's and state's constitutions in 2018. Xi's thought is taught in Party schools as well as in common state schools and universities as part of classes and courses on socialist thinking (Buckley 2018). In this context, China adopted a new stance concerning international law and human rights in international fora. China is now claiming that 'no State can dictate the definition of human rights and democracy' and dismissed any criticism as 'politicised and biased' during November 2018 UPR (UN Human Rights Council 2019). Furthermore, it endorsed such concepts as 'human rights development with Chinese characteristics' in the same context (Xinhua 2018). This could signal a revived relativistic stance from China's part on human rights issues.

As for Italy, the continuity of its global positioning as a founding member of the EU, the previous EEC, and NATO, together with its role as a medium-size global power, makes shifts in human rights rhetoric and understanding less likely and influential in global fora. Nonetheless, Italy's recent rapprochement with the Visegrad Group within the EU and the dominance of the far-rightist Lega in the last executive, sworn into power in June 2018, made observers fear a possible shift in Italy's international stance (Stille 2018). While it is early to draw conclusions and foresee possible future developments, owing also to the new executive being nascent at the time this article is written, slight changes in Italy's positioning towards international human rights standards can be outlined. A relevant example of this is the nomination of Lega's Senator Stefania Pucciarelli as president of the Senate of the Republic's Special Human Rights Commission, which is raising concerns among observers. In

particular, Senator Pucciarelli's outspoken support for anti-Roma and anti-immigration violence, together with her only reference to Christians as a persecuted minority during her appointment speech, is held as an attempt to reshape Italian public opinion's human rights understanding (Gaetano 2018). Nonetheless, no sign of repositioning in international fora, as far as human rights understanding is concerned, has been detected. Furthermore, Lega is an opposition party at the time this article is written.

To summarise, Italy allows less daring forecasts on its future attitude to human rights for three main reasons: first, Italy's new government has been appointed too recently to understand whether or not it will incisively modify Italy's human rights discourse and how and whether it will impact on the fulfilment of standards. Second, Italy's economic and diplomatic leverage on the global level is much lower than China's: the latter's 2017 GDP was \$12.01 trillion, compared to the former's \$2.317 trillion in the same year. Furthermore, China is among the main global attractors and sources of FDI's (Central Intelligence Agency 2018). This makes Italy less likely to dare shift from the generally accepted understanding of international law and international human rights standards. Third, the Italian government is the result of parliamentary elections held within the framework of a constitution that is effective since 1948. This limits the likelihood of government changes to yield major shifts in the enforcement of human rights legislations and transformation in international positioning. Nonetheless, the anti-system stances forwarded by Lega and M5S as newly-emerged governmental forces are strong enough to lead some observer to foresee Italy's partial detachment from the universally accepted definition of human rights.

3. Democracy and Human Rights Fulfilment in Correlation: a Brief Outline

To address the question posed in this article, it is necessary to review the literature on democracy and human rights and to establish the elements of the former that most strongly influence the latter. As studies on the correlation between democracy and human rights have been manifold, so have been conclusions. However, a general agreement on the connection between a specific conception of democracy, namely 'liberal democracy', and the fulfilment of human rights has been found. Donnelly (1999), while acknowledging the diriment distinction among the different definitions of democracy and their contested nature, establishes a theoretical connection between the realisation of a liberal democracy and a better fulfilment of human rights as defined internationally. This view has broadly been

endorsed by Gould (2004). On a more empirical ground, Landman (2018) studies the correlation between the Polity IV democracy index and the human rights indexes elaborated by several government agencies, scholars, and NGOs: Amnesty International's and the US's 'Political Terror Scale' (PTS), Freedom House's 'Civil Liberties' and 'Political Rights' indexes, Hathaway's 'Torture' index, and Cingranelli and Richards' (CIRI) 'Physical Integrity Scale'. Expectedly, the correlation between civil and political rights, on the one hand, and democracy, on the other, is very strong (-0.85 and -0.91 respectively, where $p < 0.001$)². However, the correlation between Polity IV and the other human rights indexes, which are mainly focused on physical integrity, is weaker. While Landman (2018) accepts Hill's (2016) view that Polity IV is too strictly oriented on procedural democracy, he observes that the far-from-perfect correlation between the democracy index and the various human rights indexes accounts for the existence of Zakaria's (2003) 'illiberal democracies', i.e. states where the procedural aspects of democracy (e.g. elections, universal vote, etc.) are in place but violations of certain rights are not prevented. A less strictly procedural index is instead provided by the Economist Intelligence Unit (EIU 2019), whose Democracy Index takes into consideration the more qualitative 'civil liberties' and 'political culture' variables. It is therefore a democracy index that, much as Freedom House's (2018), incorporates human rights elements in the definition of democracy. The 2018 report finds that participation is on the rise, especially as far as women's participation is concerned, but no qualitative improvement in democracy is registered. If anything, the report states that Western Europe's flawed democracies, namely Italy, France, Portugal and Greece, worsened their performances. As for France and Italy, for instance, their flaws relate to government functioning (a mere 6.07 out of 10 for Italy) and political culture (5.33 out of 10 for France and 6.88 for Italy). While both countries perform fairly well on procedural matter, such as free and open elections, and grant civil liberties, institutions working mechanisms and the growing toxicity in the national political discourse (see also O'Grady 2018) prevent democracy from working fully, according to the report (EIU 2019). For the sake of completeness, EIU's (2018) Democracy Index sees China ranking 130th worldwide, with an overall score of 3.32 out of 10. As expected, its strongest flows are electoral pluralism (0.00) and civil liberties (1.47). Drawing from the figures on western Europe's democracies, the aforementioned discourse on 'illiberal democracies' seems confirmed in EIU's 2018 report. In this context,

² A negative correlation between Polity IV and the aforementioned human rights indexes, with the exclusion of CIRI, indicates a positive correlation between human rights and democracy (Landman 2018).

Bueno de Mesquita et al.'s (2005) account comes useful. Most importantly, this contribution summarises years of research on the relation between human rights and democracy and identifies specific elements of democratisation that have a stronger correlation than others with human rights fulfilment. This proves useful in the present article to focus on specific proxies to evaluate China's and Italy's institutional environment for human rights protection. Bueno de Mesquita et al. (2005) pointed out that such particular aspects of democratisation as multiparty competition and accountability have stronger influence on human rights fulfilment than others. In this view, it must be observed that the US-based NGO Freedom House rates Italy as a free country, scoring 89 out of 100, where the top mark means largest freedom and zero equals to no freedom. China is instead rated 14, with the lowest ratings in political rights and civil liberties (Freedom House 2018). The Freedom House Index is based on the fulfilment of international civil and political rights standards, i.e. freedom of expression and belief; freedom of association and participation; rule of law; and individual rights. Furthermore, electoral process; political pluralism; and government functioning are accounted for. The countries scoring the highest marks are EU and North American ones, together with Japan, Australia, South Africa and further states from South America and Europe. What these countries have in common is their constitutional system based on the principles, checks, and balances of liberal democracy (Freedom House 2018). The latest-democratised among them are former socialist members of the EU, who established a liberal democratic constitution in the 1990s.

In summary, it is established that the connection between human rights, in particular civil and political rights, and liberal democracy is strong, while procedural forms of democracy may lead to serious shortcomings in human rights fulfilment. In particular, drawing from Bueno de Mesquita et al. (2005), multiparty competition and accountability, which will be better operationalized below, will be accounted for in assessing Italy's and China's implementation system.

4. On Implementation Systems

To compare countries' performance in human rights fulfilment, their implementation systems must be examined and assessed. This section will first consider the two countries' electoral systems and the composition of parliaments. As mentioned in the previous paragraph, this choice draws upon Bueno de Mesquita et al. (2005), pointing at multiparty competition and democratic accountability as the most influential elements of democratisation

on human rights fulfilment. Secondly, the independence of the court system will be considered as a proxy for justiciability of international obligations, holding into consideration each country's monistic or dualistic understanding of international law. It must be acknowledged that, despite forms of human rights institutions exist in Italy, both countries do not have an all-encompassing national human rights institution established in accordance with the Paris Principles (China Society for Human Rights Studies 2019; Human Rights Centre of the University of Padova 2018; and ECRI 2016).

To start with, China's parliament, the National People's Congress (NPC), is elected every five years 'progressively over the course of a year through a process of indirect elections in successively larger people's congresses, effectively local councils that vote for or against nominees' (Institute for Security and Development Policy 2018). In practice, China's legislative body is a non-elected assembly of Communist Party-sanctioned members. It is worth mentioning that it gathers in plenaries only two weeks per year – i.e. the so-called 'Two Sessions' – and has never stroked any proposed legislation (BBC 2018). As mentioned, Freedom House (2018) classifies China as a non-free, autocratic country (see also EIU 2018), rating its electoral process and political pluralism with the lowest score possible of zero. Finally, Chinese courts are fully dependent on the government and adopt the upholding of the Party's rule as their main objective. While they adopt a monistic understanding of international law making international obligations binding *de jure* from the moment of signature (Guo 2009), the president of the Supreme People's Court, Zhou Qiang, remarked in 2017 that China be vigilant against 'constitutional democracy, separation of powers, and judicial independence,' while also praising the detention of prominent rights lawyers the previous year (Freedom House 2018). This hampers the application of human rights treaties.

In turn, Italy's parliament is freely and directly elected by universal suffrage through an electoral system that grants representation of the country's fragmented and transforming multiparty system. This is confirmed both by Freedom House (2018) and EIU (2018). The former marks the openness and transparency of the Italian electoral system with the highest score (12 out of 12) and its pluralism with a positive 14 out of 16. The latter merges the two variables into one and award it 9.58 points out of 10. Freedom House also recognises Italian courts' independence (3 out of 4), while acknowledging problems of corruption, and confirms Italy as a rule-of-law country (12 out of 16). EIU (2018) does not provide these figures. However, the European Commission's (2018) finds Italy has one of the highest number of pending criminal cases per hundred inhabitants and one of the longest average

duration of criminal trials. Despite this, Freedom House's findings are broadly confirmed.

5. China's and Italy's Statuses of Ratification

Before moving to the comparative analysis of the two countries' human rights provisions and practices, their statuses of ratification of international human rights treaties and protocols must be considered. This step is essential since different statuses of ratification imply different duties under international human rights law. The following table summarises the two countries' statuses.

Italy's and China's status of ratification of international human rights treaties

	Italy	China
International Convention on the Elimination of All Forms of Racial Discrimination: 1969	1976 (with declarations)	1981 (with declarations)
International Covenant on Civil and Political Rights: 1976	1978 (with declarations)	1998*
Optional Protocol to the International Covenant on Civil and Political Rights: 1976	1978 (with declarations)	NA
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty: 1991	1995 (with declarations)	NA
International Covenant on Economic, Social and Cultural Rights: 1976	1978	2001 (with declarations)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: 2013	2015	NA
Convention on the Elimination of All Forms of Discrimination against Women: 1981	1985 (with declarations)	1980 (with declarations)
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: 2000	2000	NA
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 1987	1989 (with declarations)	1988 (with declarations)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 2006	2013	NA
Convention on the Rights of the Child: 1990	1991	1992 (with declarations)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: 2002	2002 (with declarations)	2008 (with declarations)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: 2002	2002	2002
Optional Protocol to the Convention on the Rights of the Child on a communications procedure: 2014	2016	NA
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: 2003	NA	NA
International Convention for the Protection of all Persons from Enforced Disappearance: 2010	2015	NA
Convention on the Rights of Persons with Disabilities: 2008	2009	2008
Optional Protocol to the Convention on the Rights of Persons with Disabilities: 2008	2009	NA

Source: UN Office of the High Commissioner for Human Rights (OHCHR 2019)

Legend:

1976: year of ratification, without declarations unless stated otherwise.

*: the treaty was signed in the stated year but has not been ratified at the time the article is being written.

NA: the treaty has not been signed nor ratified at the time the article is being written.

6. Comparing Compliance: Italy's and China's Fulfilment of Human Rights Standards

As previously mentioned, space allows only a few exemplary topics to be covered. First, the two countries' performances on the protection of individual freedom and bodily integrity will be considered, thus moving to the prevention and punishment of acts of torture. Finally, Italy's and China's achievements (or lack thereof) in the prevention of racial discriminations will be assessed. Individual freedoms fall within the scope of ICCPR in international law, which has been ratified by Italy and to which China is a signatory party. However, the issue of bodily integrity falls under both ICCPR and CAT, with the latter being ratified by both the countries under analysis. Eventually, the last issue under analysis falls within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which has been ratified by both Italy and China (OHCHR 2018a).

As mentioned, the two countries' differ widely as far as individual freedoms are concerned. This was confirmed by civil society stakeholders during the two countries' last UPRs. On China, Amnesty International pointed out in its shadow report during the 2013 UPR that the reformed Criminal Procedure Law legalised enforced disappearances 'by removing the requirement for police to notify the family of the specific location in which an arrested or detained person is held, as well as allowing the police to detain individuals for up to six months in undisclosed locations that are not official detention centres' (Amnesty International 2013, 1). The Criminal Procedure Law was again amended in 2018, with the reform entering into force on 26 October (NPC Observer 2018). An assessment of the law itself is however outside the scope of this paper. Moving forward, according to the NGO, arbitrary 'administrative forms of detention without judicial review, [...] including [re-education through labour], enforced drug rehabilitation camps, and compulsory psychiatric detention' (Amnesty International 2013, 2) are still an issue at stake. Such punishments are often perpetrated on politically motivated grounds according to the organisation's shadow report (Amnesty International 2013). Similar concerns were reiterated by NGOs during China's third UPR cycle, held in November 2018. The aforementioned practices are found to be in place in such regions as Xinjiang (UN Human Rights Council 2018), where a crackdown on freedom of religion and belief and cultural rights of the Uyghur people is on-going (CERD 2018 and Kuo 2018). These detention and control practices go hand in hand with high-tech experimental techniques such as facial recognition systems in public places and household QR codes containing any personal information on family members (Human Rights Watch 2018). This is in breach of CAT provisions against inhuman and degrading treatments and widens the distance between China and the standards provided by ICCPR, which Beijing was called to ratify during UPRs (UN Human Rights Council 2013 and 2018). Questions related to the use of torture and other inhuman and degrading treatments thus arise, concerning an issue at stake in the Italian human rights debate as well. This matter will however be discussed later in this section. As far as the issue in question is concerned, it emerges that the Chinese legislation on persons' arrest and restriction of freedom impairs the application of international standards, while constitutional provisions appear to be less imperative in practical terms. As for Italy, while no evidence of political detention and restriction of freedom has been found, serious concern about the excessive length of criminal and civil proceedings has been raised. This brings up serious issues related to pre-trial detention, given that 40% of Italian inmates had not received a final conviction in 2014 when Italy's last UPR took place (UN Human Rights

Council 2014). Other than breaching Italian constitutional provisions, this contravenes article 14.2, which provides that '[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law' (art. 14.2 ICCPR 1976).

Summing up, while evidence of political use of restriction of freedoms have been found in China solely, both China and Italy face shortcomings in the enforcement of ICCPR obligations on individual freedom. While for Italy this means non-compliance with several ICCPR provisions, for China it arguably explains its unwillingness to ratify it.

As previously explained, the issue of torture and cruel, inhuman and degrading treatments arises from the above matters. China and Italy have both ratified the CAT and are subject to the monitoring competences of the UN Committee Against Torture (OHCHR 2018a). Moreover, Italy has ratified the OP-CAT (OHCHR 2018a) and the Council of Europe's Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe 2018), thus allowing country visits by both UN and CoE experts. While difficulties in translating 'torture' from English to Chinese and vice-versa emerged during the Committee Against Torture's interactive dialogue with China, the issue seems to be covered by a set of laws within the Chinese legal system (OHCHR 2015). Nevertheless, Italy has not yet introduced a ban on torture coherent with both the CAT and the CoE's convention in its criminal code, raising criticism from the Committee Against Torture and several civil society actors. In particular, the Italian law against torture introduced in spring 2017 provides that 'multiple acts' of torture shall occur for it to meet the legally established definition of torture (Ordinary Law No. 110/2017). Nonetheless, the CAT explicitly forbids 'any act' that falls into the definition of torture within the convention (UN Convention Against Torture 1984). This issue has been raised by the UN Committee Against Torture and by civil society as well (UN Committee Against Torture 2017 and Human Rights Watch 2017). Concerns were raised in relation to Italy's long-lasting judicial procedures and the provision of an ordinary statute of limitation for the crime of torture in Ordinary Law No. 110/2017. This latter aspect contravenes CAT's provision on statutes of limitations, which must be virtually unlimited as the UN Committee Against Torture (2017) reminds. According to Human Rights Watch (2017), these two critical aspects together can bring impunity for torturers. Furthermore, Council of Europe's Committee for the Prevention of Torture (2016) finds maltreatment is ordinarily present in the Italian punishment system. Overcrowded jails and illegal detentions mechanisms such as the so-called '41-bis' are core problems in the Italian justice system. Similar conclusions are reached by Amnesty International (2017). Provisions of Ordinary Law

No. 110/2017 fall short of international standards and may grant impunity to torturers, an issue the organisation had previously raised its shadow report for Italy's second UPR cycle held in 2014 (Amnesty International 2014).

As for China, practices regarding torture are different, given the different legal and constitutional provisions, although the two countries' international obligations are very similar. Nonetheless, the two systems present similar shortcomings despite different legal backgrounds and polities. As it emerges from the fifth and last review cycle of China held by the Committee Against Torture in 2015, the legislative ban on torture, although defining the practice in Chinese law, does not meet international criteria. While the Chinese judiciary adopts a monistic understanding of international law and thus claims the treaty's text is justiciable (Guo 2009), the Committee (2016) finds criminal liability to be severely restricted. For instance, while progress has been made with the exclusion of evidence extorted by torture from criminal proceedings, the Supreme People's Court's definition of torture does not appear to focus on recognising criminal liability for torturers. Furthermore, despite the abolition of re-education through labour (RTL), prolonged pre-trial detention is still an issue and the newly-established possibility to hold arrested individuals incommunicado amounts to degrading treatment, other than enforced disappearance as mentioned above (UN Committee Against Torture 2016). China's third UPR cycle has however cast a new light on the country's torture practices. In the period preceding the session, Human Rights Watch (2018) raised the issue of extrajudicial detention of Uyghur Muslims and other ethnic minorities, with survivors reporting daily cases of torture. Furthermore, while torture was barely mentioned specifically in the review, a group of EU Member States and other like-minded countries, including the US, raised the issue of extrajudicial detentions in Xinjiang Uyghur Autonomous Region. While China has made this practice legal into Xinjiang's local legislation, it is tantamount to extrajudicial detention and inhuman treatment as internees receive no trial and evidences of torture are mounting (UN Human Rights Council 2018).

To summarise, both countries agreed to legally ban torture in their own jurisdiction by acceding the CAT. Nonetheless, both China and Italy adopted weaker legislative provisions than requested by the international convention. Both countries hence present legal loopholes and fail to prevent torture, albeit in different forms. While Italy has an independent constitutional court, it has thus far proved irrelevant as far as the country's decades-long path towards the introduction of the crime of torture is concerned, as no pronouncement of the constitutional court has been made on the question.

The third and last issue covered in this paper is racial discrimination. Both Italy and China have ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the former has been last reviewed by the Committee on the Elimination of Racial Discrimination in 2016. While commending Italy's effort in search and rescue missions in the Mediterranean Sea and the steps taken towards the elimination of the crime of illegal entry, the Committee (2016) reiterates that the UNAR has not yet achieved independence of the government³, while Roma, Sinti and Camminanti populations are widely subjected to forced eviction, segregation and lack access to basic services, independently of their citizenship, as confirmed by ECRI (2016). The committee also recommends Italy to adopt a stronger stance on hate speech holding MPs responsible. Finally, disaggregated statistics on hate crimes are missing, while migrants and asylum-seekers often lack access to basic services and are forced into the illegal labour market where they suffer exploitation by criminal organisations (UN Committee on the Elimination of Racial Discriminations 2016). As for China, the Committee on the Elimination of Racial Discrimination in its summer 2018 review appreciated the rapid economic development of the country and its programmes aimed at spreading development to border areas. The committee finds that China's autonomous regions and multi-ethnic provinces have all enjoyed a high level of economic development. Nonetheless, members of ethnic minorities still represent one third of the country's poor despite being less than 9% of the total population (UN Committee on the Elimination of Racial Discrimination 2018). During China's previous review, which took place in 2009, the committee found that disaggregated statistics on the socio-economic situation of minorities were lacking and the country had not yet adopted a comprehensive definition of discrimination coherently with article 1 of ICERD at the time of the review. Furthermore, it recommended labour law reforms that allow internal migrants, especially those from ethnic minorities, to enjoy equal working conditions. Recommendations on migrants and asylum-seekers access to justice and hearing of their asylum requests were made. Finally, the committee called upon China to respect freedom of religious practice, given its intersection with ethnicity and culture (UN Committee on the Elimination of Racial Discrimination 2009). While the Committee found in its 2018 review that a more comprehensive plan on human rights was adopted, discriminatory practices that were abolished *de jure* are still in place *de facto*. A major aspect raised by the Committee concerned Muslim minorities

³ Ufficio Nazionale Antidiscriminazioni Razziali (UNAR) is a government-established body aimed at contrasting racial discrimination nationwide (UNAR 2019)

in northwest Xinjiang Uighur Autonomous Region (UN Committee on the Elimination of Racial Discrimination 2018). The committee, together with international NGOs such as Human Rights Watch (2018), found that Muslim Uighurs and members of other predominantly Muslim ethnic minorities are subjected to arbitrary incommunicado detention on a quest for ‘contrasting extremism’ and protecting ‘social stability’. While China initially denied the existence of such detention centres, it endorsed them as ‘vocational training centres’ at a later stage, making them legal in Xinjiang’s ‘De-Extremification Regulations’ (Kuo 2018). Human Rights Watch (2018), following up on the UN Committee on the Elimination of Racial Discrimination’s observations, finds that internees are subjected to torture and brainwashing on the basis of mere allegations. Since the Chinese government does not acknowledge the centres as prisons, internees are not recognised the right to appeal or to consult a lawyer. Such practices have dangerously increased the strength of discriminatory practices against religious minorities (UN Committee on the Elimination of Racial Discrimination 2018).

In brief, both Italy and China face failures in compliance with international standards against racial discrimination both in law and in practice, though it must be underlined that forms and severity differ sharply.

7. Speculations on Future Developments

Basing on the previous section’s analysis, together with China’s current stance on human rights issues as outlined above, future trends can be forecasted. On China’s 2018 UPR, four main observations can be elaborated: first of all, 120 out of 150 countries who took the floor during the session praised China’s human rights records. Secondly, these countries appear to be developing countries and countries with strong economic ties to China, many of which received diplomatic pressures from the latter to not support critical statements at the Human Rights Council (Human Rights Watch 2019). Thirdly, the countries in question widely adopted China’s human rights language (e.g. ‘right to development’, ‘south-south cooperation’, etc.) (Xinhua 2018). Finally, all criticism came from the EU, the US, and likeminded countries and was dismissed. No critical recommendation was accepted (Human Rights Council 2019). In the nearest future, it can arguably be expected that China will grow increasingly adversarial in its human rights stance while lobbying countries with strong economic links to keep friendly attitudes in international human rights fora. The fact that no Muslim country raised the Xinjiang question during China’s 2018 UPR, leaving aside a rapid mention of ‘ethnic minorities’ by Turkey (Human

Rights Council 2019), is symptomatic of it. When Turkey raised the issue through a public statement in early 2019, China dismissed the accusations and issued a travel warning (Choi 2019), arguably showing willingness to attack critics economically. It must also be observed that none of the eleven EU members of 16+1⁴, the Beijing-led cooperation forum between China and Central and Eastern Europe, has been critical of China's record in protecting minorities and freedom of religion (Human Rights Council 2019).

Based on this evidence and on the findings on China's recent stances in international human rights fora, it can be expected to follow its own human rights agenda in the upcoming years. Such agenda will likely be based on party-established rhetoric rejecting external scrutiny and undermining the possibility of increased compliance with international human rights standards. Observing China's records, it can be forecasted that civil and political rights will be those undergoing the strongest tightening in the 'new era'.

Italy's size and political strength do not allow it excessive attitudinal shifts in international fora. Nonetheless, setbacks in the implementation of human rights standards at the domestic level and nuanced positions in bilateral diplomatic relations, especially when foreign citizens-related human rights issues are concerned, are likely. In China's 2018 UPR, Italy avoided mentioning Xinjiang and Uighurs, while referring to minorities and vulnerable categories in general (Human Rights Council 2019). While this is a merely symbolic representation of Italy's attitude towards human rights in international fora, the Memorandum of Understanding (MoU) on the Belt and Road Initiative (BRI) Italy and China signed on 23 March 2019 allows deeper speculation (Giuffrida 2019). It must first of all be acknowledged that the agreement is not binding in nature. Nonetheless, as illustrated above, economic ties with China appear to reduce small and medium countries' likelihood to criticise the latter's human rights records. It is important to notice that modern China often opts for projecting power through investments in infrastructures. In summary, a strong shift in Italy's understanding and attitude towards human rights cannot be foreseen, while changing from the newly established government are unforeseeable. However, the signature of the BRI Memorandum may yield a further breach in EU consensus over human rights in China, on the line of EU members of 16+1. Whether or not the establishment of the new executive formed by Five Star Movement and Democratic Party will reshape Italy's positioning,

⁴ As the forum is still commonly referred to as '16+1', this denomination is adopted in this paper for the sake of clarity, although the accession of Greece in early 2019 effectively transformed it into '17+1' (Kavalski 2019).

which moved closer to Visegrad-4 within the duration of the M5S-Lega executive, cannot be speculated upon at the time this article is written.

Conclusion

This evidence, as emerging mainly from the UN systems of country review, confirms that compliance with international obligations is an issue at stake in different countries independently of their institutional characteristics and degree of freedom and democracy. It is widely acknowledged that every country in the world faces loopholes in compliance. Moreover, constitutional and legal provisions are often disregarded or too weak to be enforced, as lacking support from independent human rights institutions or court systems, to make practical outcomes mismatching with the spirit of their texts.

Nonetheless, important aspects and distinctions must be reaffirmed. First, liberal democracies are the freest countries in the world according to Freedom House's (2018) index, a status that derives directly from their best performance in fulfilling civil and political rights. Arguably, a different view should be taken on economic and social rights. While the indivisibility of civil and political rights on the one hand and economic, social and cultural rights on the other must be recognised, it can be argued that the improvement of social conditions can be a tool for consensus for illiberal and undemocratic regimes, while the former set of rights is the most strictly connected to individual freedoms and therefore fits liberal democracies better. This lies however in the realm of speculation as far as the scope of this paper is concerned.

This study therefore concludes that, while no country can claim a perfect human rights record, and while (liberal) democratic systems are best performing in human rights fulfilment – especially as far as civil and political rights are concerned – specific violations may be detected in several states independently of their polity being democratic or not. Specifically, as far as the aforementioned case studies are concerned, both Italy and China are in breach, albeit in different forms and to different extents, of their obligations as established by CAT and CERD. Furthermore, while China's democratic lacks can arguably explain its reluctance to ratify ICCPR, Italy still lags in the fulfilment of certain provisions despite a liberal democratic setup and a decades-old ratification. Delays in the implementation of civil and political rights standards are thus present in both the countries. Finally, on the basis of these considerations, issues on future patterns of compliance on the part of China and Italy can be raised in relations to the two countries' attitudes

towards human rights standards in international fora. Observations appear to suggest that China will increasingly worsen its civil and political rights records while attempting to reshape the internationally accepted definition of human rights. This attitude will allow China to cast its soft power on international allies and partners while tightening the grip on domestic consensus. As for Italy, forecasts need to be more nuanced, but a progressive detachment between international human rights standards and domestic attitude towards the fulfilment of standards was noticeable throughout the duration of the M5S-Lega executive.

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