

CHINA’S CHALLENGE TO THE INTERNATIONAL HUMAN RIGHTS REGIME

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China, emboldened by its growing power in recent years, has become more active in influencing the international human rights regime in favor of its own illiberal agenda. This article investigates China’s contemporary human rights theory and practice in the United Nations with a focus on Beijing’s strategies in the Human Rights Council. It finds that China, with the support of other authoritarian regimes and developing countries, has consistently sought to distort the Council’s procedures, undermine relevant institutions and promotes the government’s preferred norms that are in tension with international human rights principles. The article critiques Beijing’s latest version of the unique concept “Human Rights with Chinese Characteristics,” which features a statist, development-first view. The concept not only serves as a convenient discourse to legitimize China’s domestic human rights abuses, but also threatens the fundamental principle

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of accountability and the rights-based framework of the international human rights system. It defines China's differences from the West as inherent and entrenched, embodying identity-based, relativist politics that worsen political polarization in international organizations. The article concludes by discussing the interplay between China's human rights practice and today's global environment. The popular assumption at the time when China's Reform and Opening-up began in the late 1970s—that China's Communist Party and government might come to share ideals of enhancing global human rights protection—has long been outdated. The world must rethink how to address the challenge to international human rights posed by today's Chinese Party-State.

I. INTRODUCTION

The United Nations Human Rights Council (HRC or “the Council”), established by the UN General Assembly in 2006, is responsible for “promoting universal respect for the protection of all human rights and fundamental freedoms for all.”¹ This task is formidable, especially since its forty-seven member states have different interests in and varying ideas about human rights. Contestations and contentions among them are unsurprisingly inevitable. While the Council remains one of the world’s most important global platforms for a variety of actors, including international and local civil society, to examine a government’s record, to speak for vulnerable groups, and to improve global human rights protection, it is highly political in operation and more vulnerable to political maneuvers than other, more autonomous, human rights mechanisms, such as U.N. human rights treaty bodies.² It therefore provides

1. G.A. Res. 60/251, ¶ 2 (Apr. 3, 2006).

2. The HRC is often criticized for being politicized, ineffective, and weak, failing to act in egregious cases. *See, e.g.,* Roland Chauville, *The Universal Periodic Review's First Cycle: Successes and Failures*, in HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM 87, 108 (Hilary Charlesworth & Emma Larking eds., 2015) (concluding that despite some successes, the Human Rights Council’s Universal Periodic Review has seen some failures, including the disengagement of small states, a lack of mechanisms to monitor the implementation of recommendations, and non-participation of states); ROSA FREEDMAN, *THE UNITED NATIONS HUMAN RIGHTS COUNCIL: A CRITIQUE AND EARLY ASSESSMENT* 391 (2011) (“Assessment of the Human Rights Council’s formative years has demonstrated that the body is failing to fulfill its mandate, particularly in terms of protecting human rights.”); Olivier de Frouville, *Building a Universal System for the Protection of Human Rights: The Way Forward*, in NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY 241, 257 (M. Cherif Bassiouni & William A. Schabas eds., 2011) (“The main argument here is that the Council has not achieved real progress in

an excellent window for a case study of the approach of the People's Republic of China (PRC) to the international human rights regime.

As the influence of the major powers in the HRC ebbs and flows, the Council's dynamics also change. In recent years, many states and observers have been alarmed by the increasingly active efforts of the PRC to promote its own agenda, though incompatible with global human rights principles.³ This concern was heightened when the United States announced its withdrawal from the HRC in June 2018.⁴ This withdrawal occurred in the context of President Donald

comparison with the Commission, because its efficiency in reaching that purpose has not fundamentally improved.”).

3. See, e.g., HUMAN RIGHTS WATCH, *THE COSTS OF INTERNATIONAL ADVOCACY: CHINA'S INTERFERENCE IN UNITED NATIONS HUMAN RIGHTS MECHANISMS 1* (2017), <https://www.hrw.org/report/2017/09/05/costs-international-advocacy/chinas-interference-united-nations-human-rights> (“Even as it engages with UN human rights institutions, however, China has worked consistently and often aggressively to silence criticism of its human rights record before UN bodies and has taken actions aimed at weakening some of the central mechanisms available in those institutions to advance rights. Because of China's growing international influence, the stakes of such interventions go beyond how China's own human rights record is addressed at the UN and pose a longer-term challenge to the integrity of the system as a whole.”); TED PICCONE, BROOKINGS INST., *CHINA'S LONG GAME ON HUMAN RIGHTS AT THE UNITED NATIONS 1* (2018), <https://www.brookings.edu/research/chinas-long-game-on-human-rights-at-the-united-nations> (“Consistent with its ambitions to play a central role in leading the international order, China is emerging as a pivotal player in the international human rights system. In the past few years, China has shifted from its traditionally more defensive posture to a more activist role, particularly on the U.N. Human Rights Council. This stems from a two-part strategy that seeks to 1) block international criticism of its repressive human rights record, and 2) promote orthodox interpretations of national sovereignty and noninterference in internal affairs that weaken international norms of human rights, transparency, and accountability. While these goals are not new, the more proactive tactics that Chinese officials are using, especially since the reappointment of President Xi Jinping, suggest the start of a more wholesale campaign to reshape the rules and instruments of the international human rights system.”); Björn Ahl, *The Rise of China and International Human Rights Law*, 37 *HUM. RTS. Q.* 637, 639 (2015) (“As China's authoritarian political system is built on non-liberal values, there is an intrinsic tension between such a political system and the international human rights regime that assumes a liberal framework.”).

4. U.S. DEP'T OF STATE, *REMARKS ON THE UN HUMAN RIGHTS COUNCIL* (June 19, 2018), <https://www.state.gov/secretary/remarks/2018/06/283341.htm>.

Trump's nationalist policy to decrease participation in and reduce funding for international organizations. International attention is now focused on whether Xi Jinping, China's Communist Party General Secretary and President, will take advantage of this opportunity to further expand his country's influence.⁵

This article investigates the evolving practice of China in the HRC and analyzes its implications for the development of international human rights. The article proceeds as follows: Section I provides the background of China's past attitude toward the international human rights regime as a necessary context for the discussion that follows. Section II closely examines Beijing's current strategies to undercut the HRC's work by seeking to distort relevant procedures, hamper the Council's institutions, and erode international human rights norms. Section III explores the distinctive notion of "Human Rights with Chinese Characteristics"⁶ proposed by Beijing and the belief and politics that underlie it. Section IV discusses the immediate and potential implications for the international human rights regime in light of the interplay between Beijing's approach and today's global political climate.

This article contributes to scholarship by offering a much-needed, up-to-date examination of China's evolving attitude and policy toward international human rights, which is not only one of the most fraught issues in China's relations with the outside world but also one of the major fields in international relations currently impacted by a rising China. After interrogating the PRC's discourse and strategies underlying Human Rights with Chinese Characteristics, the article argues that Beijing has long sought to play identity-based, relativist politics by emphasizing China's inherent distinctiveness from what it considers to be "the West." At present, the PRC's ambition is no longer confined to avoiding international scrutiny of

5. For recent media reports noting potential impact of the U.S. withdrawal on China's influence in the HRC, see Frances Eve, *The US Withdrawal from the UNHRC is Perfect for Xi Jinping and China*, THE GUARDIAN (June 21, 2018), <https://www.theguardian.com/world/commentisfree/2018/jun/22/the-us-withdrawal-from-the-unhrc-is-perfect-for-xi-jinping-and-china>; Stephanie Nebehay, *U.S. Withdrawal Leaves Vacuum at U.N. Rights Forum*, REUTERS, June 20 2018, <https://www.reuters.com/article/us-un-rights-usa-reaction/us-withdrawal-leaves-vacuum-at-u-n-rights-forum-idUSKBN1JG1D1>.

6. See *infra* Section III.

its human rights record; it is also taking an active role in diminishing the strength of the international human rights regime and presenting China's experience as an alternative solution for other countries to adopt. Beijing is, with confidence as well as caution, seeking to increase its clout in the HRC and more generally in the international human rights system, gradually chipping away the system's fundamental principles.

II. CHINA'S CHANGING ATTITUDE AND POLICY TOWARD THE INTERNATIONAL HUMAN RIGHTS SYSTEM

The change of the PRC's approach to the international human rights system can generally be divided into several stages, which are marked by notable watershed moments including the PRC's entry into the UN in 1971, the 1978 initiation of its Reform and Opening-Up policy, and the tragic Tiananmen Massacre of 1989.⁷

Following its founding in 1949, the PRC was unable to join the U.N. regime for over two decades. During this period, especially during the era of Soviet influence in the PRC's first decade, the Chinese Communist Party (CCP) government was

7. For academic analysis of China's relationship with the international human rights system, see generally ROSEMARY FOOT, *RIGHTS BEYOND BORDERS: THE GLOBAL COMMUNITY AND THE STRUGGLE OVER HUMAN RIGHTS IN CHINA* (2000); ANN KENT, *CHINA, THE UNITED NATIONS, AND HUMAN RIGHTS: THE LIMITS OF COMPLIANCE* (1999); MING WAN, *HUMAN RIGHTS IN CHINESE FOREIGN RELATIONS: DEFINING AND DEFENDING NATIONAL INTERESTS* (2001); Andrew J. Nathan, *China and International Human Rights: Tiananmen's Paradoxical Impact*, in *THE IMPACT OF CHINA'S 1989 TIANANMEN MASSACRE* 206 (Jean-Philippe Béja ed., 2011); Dingding Chen, *China's Participation in the International Human Rights Regime: A State Identity Perspective*, 2 *CHINESE J. INT'L POL.* 399 (2009); Roberta Cohen, *People's Republic of China: The Human Rights Exception*, 9 *HUM. RTS. Q.* 447 (1987); Rana Siu Inboden & Titus C. Chen, *China's Response to International Normative Pressure: The Case of Human Rights*, 47 *INT'L SPECTATOR*, June 2012, at 45; Katrin Kinzelbach, *Will China's Rise Lead to a New Normative Order? An Analysis of China's Statements on Human Rights at the United Nations (2000–2010)*, 30 *NETH. Q. HUM. RTS.* 299 (2012); Andrew J. Nathan, *Human Rights in Chinese Foreign Policy*, 139 *CHINA Q.* 622 (1994); Pitman B. Potter, *China and the International Legal System: Challenges of Participation*, 191 *CHINA Q.* 699 (2007); Ahl, *supra* note 3. For recent reports on this subject, see SONYA SCEATS & SHAUN BRESLIN, CHATHAM HOUSE, *CHINA AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM* (2012), https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf; HUMAN RIGHTS WATCH, *supra* note 3; PICCONE, *supra* note 3.

generally antagonistic to what it viewed as the “bourgeois international law” system.⁸ According to the popular view among Chinese officials and scholars in the 1950s–1960s, the ruling class of capitalist countries used that system to “exploit and oppress” other nations.⁹ From this perspective, capitalist countries often employed human rights as a pretext to “intervene in the internal affairs of socialist countries” in the service of the “imperialist goal.”¹⁰ This PRC theory of international law should be understood in light of not only the influence of Marxism-Leninism on the CCP, but also a deep-rooted nationalist sentiment about China’s pre-1949 “century of humiliation” under imperialist intrusion.¹¹ This line of thinking has continued to exercise significant influence in later decades.¹²

Even after taking the seat of China at the United Nations in 1971, the PRC was slow to participate in the international regime and generally avoided discussing human rights issues at the United Nations.¹³ Learning to navigate the international landscape understandably required time, expertise and energy, and China at the time was still consumed by the domestic turmoil of the Cultural Revolution (1966–1976), which not only threw the political system into chaos, but also disabled its

8. For Chinese views regarding the “bourgeois international law” and “socialist international law,” see 1 JEROME ALAN COHEN & HUNGDAH CHIU, *PEOPLE’S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY* 59 (1st ed. 1974) (citing Chinese research in the 1950s concerning theories of international law).

9. *Id.* at 88–89 (citing K’ung Meng, *A Criticism of the Theories of Bourgeois International Law Concerning the Subjects of International Law and Recognition of States*, KCWTYC, no. 2, 1960, 44–53).

10. *Id.* at 607 (citing Ch’ien Szu, *A Criticism of the Views of Bourgeois International Law on the Question of Population*, KCWTYC, no. 5, 1960, at 41–43).

11. For a discussion of how Chinese perceptions of the “century of humiliation” influence attitudes toward the modern international system, see generally Alison Adcock Kaufman, *The “Century of Humiliation,” Then and Now: Chinese Perceptions of the International Order*, 25 *PACIFIC FOCUS* 1 (2010).

12. See *infra* Section III.

13. Luo Yanhua (罗艳华), *Gaige Kaifang yu Zhongguo Canyu Guoji Requan Hezuo de Jincheng* (改革开放与中国参与国际人权合作的进程) [*Reform and Opening-Up and the Progress of China’s Participation in International Human Rights Cooperation*], RENQUAN (人权) [HUM. RTS.] (Jan. 10, 2019), www.sis.pku.edu.cn/ResearchManagement6/ResearchNews30/1296901.htm, translation available at http://www.chinahumanrights.org/html/2019/MAGAZINES_0110/12533.html.

already feeble legal system and the ranks of Chinese law scholars and students.

After Chinese leader Deng Xiaoping assumed power in 1978, his turnabout Reform and Opening-Up policy required a peaceful and stable international environment to sustain the country's economic recovery and growth.¹⁴ Beijing, accordingly, adopted a more constructive attitude toward the existing international system throughout most of the 1980s.¹⁵ Its traditional antagonism turned into cautious cooperation. The PRC became a member of the U.N. Commission on Human Rights for the first time in 1982, and began to ratify and accede to major international human rights treaties during this period, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, ratified in 1980), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, acceded to in 1981) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, ratified in 1988).¹⁶

Additionally, China's approach in that era emphasized development, which would later become even more prominent in the country's agenda.¹⁷ As a socialist state with a focus on growth,¹⁸ From the outset China placed its priority in international participation on the rights to subsistence and develop-

14. Inboden & Chen, *supra* note 7, at 46–48.

15. Luo, *supra* note 13.

16. For China's ratification status for human rights treaties, see *Ratification Status for China*, U.N. OFFICE OF THE HIGH COMM'R FOR HUM. RTS., https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN (last visited Apr. 8, 2019) [hereinafter *Ratification Status for China*]. In addition, China has acceded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol and the Convention on the Prevention and Punishment of the Crime of Genocide. *State Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, U.N. HIGH COMM'R FOR REFUGEES, <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> (last visited Apr. 15, 2019); *Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948*, INT'L COMMITTEE OF THE RED CROSS, https://ihl-data.bases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=357 (last visited Apr. 15, 2019).

17. See *infra* Section III.

18. At the time of the "Reform and Opening-Up" policy, China's leadership began to reevaluate its relationship with the world and began to identify itself as a "modern socialist state," rather than a "revolutionary socialist state." Chen, *supra* note 7, at 408.

ment. It actively took part in the drafting of the U.N. Declaration on the Right to Development and has since supported the U.N. agenda on development.¹⁹

However, it is notable that, while the party-state ostensibly began to express its support for international human rights, a distinctive Chinese discourse on the subject could be clearly discerned by the mid-1980s. It combined the new, seemingly favorable attitude towards international human rights with the country's long-lasting suspicion of foreign interference. A *Beijing Review* article stated at the time, for example: "China has no objection to the United Nations expressing concern in a proper way over consistent and large-scale human rights violations in a given country, but it opposes the interference in other countries' internal affairs under the pretext of defending human rights."²⁰ This view echoed the dominant Chinese Communist thinking prior to the government's entry into the United Nations.²¹ As some scholars pointed out, the PRC, because of its traditional belief that foreign scrutiny of its human rights record might be a façade for an imperialist agenda to meddle in its domestic affairs, often claimed that such scrutiny would constitute a violation of public international law.²²

Until 1989, China was not a major target of international human rights scrutiny, partly because of international society's intention to first integrate the PRC into the United Nations, and also because of a deferential response to China's minority conception of human rights and international law.²³ The 1989 government massacre of Tiananmen Square protesters, however, brought China's human rights reality under the international spotlight. Multilateral censure was on full display at the United Nations, and many countries adopted economic sanctions and an arms embargo against China, demonstrating

19. See Liu Jie (刘杰), *Zhongguo Canyu Tuidong Shijie Renquan Fazhan de Shijian he Moshi* (中国参与推动世界人权发展的实践和模式) [*The Practice and Model of China's Participation and Promotion of Global Human Rights Development*], RENQUAN (人权) [HUM. RTS.] (June 6, 2014), http://www.humanrights.cn/html/2014/3_0606/147_2.html (discussing China's role in promoting human rights development).

20. KENT, *supra* note 7, at 34–35 (quoting Ma Jun, *Human Rights: China's Perspective*, BEIJING REV., Nov. 28–Dec. 4, 1988, at 17, 18).

21. See *supra* note 10 and accompanying text.

22. KENT, *supra* note 7, at 34–35.

23. *Id.* at 28.

overwhelming opposition to Beijing's military slaughter of protestors.²⁴

This caused the pendulum of China's attitude to swing from cautious cooperation back to antagonism—this time strategically. The U.N. Commission on Human Rights became a frontline where China battled against any resolution that would criticize the PRC's human rights record.²⁵ Two years after Beijing's 1989 massacre, in light of "Western, anti-Chinese attacks on [China's] human rights,"²⁶ a hyper-defensive Chinese government published its first Human Rights White Paper that was obviously intended for the international audience. The White Paper asserted: "Respect for each country's sovereignty and non-interference in internal affairs are universally recognized principles of international law, which are applicable to all fields of international relations, and of course applicable to the field of human rights as well."²⁷ Since then, Beijing's "ultra-statist conceptions of sovereignty"²⁸ and the expansive principle of non-interference have been an ever more prominent and constant theme in its human rights discourse, and the PRC has become more active in using the "international human rights stage to propagandize its own human rights position."²⁹

In 1993, China's delegation attended the U.N.-sponsored World Conference on Human Rights. Over 170 states, including China, adopted the Vienna Declaration and Programme of Action by consensus, emphasizing the universal nature of human rights. This was the first time the PRC recognized the

24. SCEATS & BRESLIN, *supra* note 7, at 4.

25. *Id.*

26. Luo, *supra* note 13 (translated by author).

27. INFO. OFFICE OF THE STATE COUNCIL OF CHINA, *Active Participation in International Human Rights*, in HUMAN RIGHTS IN CHINA (Nov. 1991), <http://www.china.org.cn/e-white/7/7-L.htm>.

28. SCEATS & BRESLIN, *supra* note 7, at 6. *See also* Ahl, *supra* note 3, at 643 ("On a theoretical level, the official state-centered human rights concept is still dominated by Marxist-Leninist ideology. According to the basis-superstructure model, the legislative monopoly of the State, and the instrumental character of law, human rights are not understood as inherent and inalienable rights based on human dignity but as being derived from and granted by the state as well as restricted by the level of economic development.").

29. Luo, *supra* note 13 (translated by author).

universality of human rights in an international setting.³⁰ Yet, China's rhetoric vis-à-vis universality has often been marked by ambivalence, and sometimes even conflict. China's National Human Rights Action Plan (2012–2015), for example, attached a condition to universality: “The Chinese government respects the principle of universality of human rights, but also upholds proceeding from China's national conditions and new realities to advance the development of its human rights cause on a practical basis.”³¹ There have also been incidents wherein China seems to completely renounce from the view of universality, including a stunning leaked CCP Central Committee directive in 2013 that listed “universal values” of human rights as one of the “seven perils” that the Party must combat in maintaining its power.³²

During the 1990s and 2000s, China continued to sign and ratify several core human rights treaties. In 1992, the PRC ratified the Convention on the Rights of the Child (CRC). In 1997, it signed the International Covenant on Economic, Social and Cultural Rights (ICESCR, ratified in 2001), and in the following year signed the International Covenant on Civil and Political Rights (ICCPR), which it has not yet ratified.³³ These commitments appeared to be considerably motivated in response to the still-prevalent international criticisms of China's

30. Wu Hao (吴昊), *Wu Da Shijian dian Kan Zhongguo Sanshi Nian Requān Lu Zhongguo Renquān Baozhang Jian Geng Guangfan* (五大时间节点看中国30年人权路 中国人权保障将更广泛) [*China's Thirty Years of Human Rights Path Viewed from Five Major Time Junctures: Human Rights Protections Will Be More Extensive*], RENMIN RIBAO (人民日报) [PEOPLE'S DAILY] (Dec. 3, 2008), <http://npc.people.com.cn/GB/8451951.html>.

31. INFO. OFFICE OF THE STATE COUNCIL OF CHINA, *Introduction, in NATIONAL HUMAN RIGHTS ACTION PLAN OF CHINA (2012-2015)* (June 11, 2012), http://www.china.org.cn/government/whitepaper/2012-06/11/content_25619560.htm. Similar positions can be found in other official documents. China's 1991 Human Rights White Paper, for example, stated “a country's human rights situation should not be judged in total disregard of its history and national conditions, nor can it be evaluated according to a preconceived model or the conditions of another country or region.” INFO. OFFICE OF THE STATE COUNCIL OF CHINA, *Preface, in HUMAN RIGHTS IN CHINA* (Nov. 1991), <http://www.china.org.cn/e-white/7/7-1.htm>.

32. Chris Buckley, *China Takes Aim at Western Ideas*, N.Y. TIMES (Aug. 19, 2013), <https://www.nytimes.com/2013/08/20/world/asia/chinas-new-leadership-takes-hard-line-in-secret-memo.html>.

33. *Ratification Status for China*, *supra* note 16.

human rights performance.³⁴ In addition, Beijing also launched various bilateral human rights dialogues, including those with the United States (since 1990), the European Union (since 1995), and Australia (since 1997).³⁵

The turn of the century witnessed a more active China in the international human rights system, particularly after the Party instructed the National People's Congress to amend the country's Constitution in 2004 to include the wording that "China respects and protects human rights,"³⁶ which signified a short-lived policy shift. When states negotiated the establishment of the HRC to replace the U.N. Commission on Human Rights, China took part actively, and has been a Council member most of the time since the HRC's inception in 2006.³⁷ In 2008, China further ratified the Convention on the Rights of Persons with Disabilities (CRPD).³⁸

In accordance with human rights treaties, China is obliged to submit its relevant record for review by the competent treaty bodies. Beijing, however, uses various tactics to deflect such outside scrutiny. The government delegation, for instance, often resorts to *formalism* when answering human rights treaty bodies.³⁹ Usually citing laws and regulations while avoiding any discussion of practice and concrete cases, Chinese diplomats continue to eschew meaningful exchanges about the PRC's human rights record. Beijing also uses discrediting tactics, such as attacking the credibility of interested civil society groups, in some cases harassing treaty body experts and U.N. officials⁴⁰ and accusing them of being politically biased,⁴¹ and

34. KENT, *supra* note 7, at 187, 195; Katie Lee, *China and the International Covenant on Civil and Political Rights: Prospects and Challenges*, 6 CHINESE J. INT'L L., July 2007, at 445, 447–48 ("Political considerations, as with all Chinese actions in the human rights arena, were also huge determinants of timing so the ICESCR was signed on the eve of President Jiang Zemin's visit to Washington on 27 October 1997 and the ICCPR just after the visit to China of Mary Robinson, the UN Human Rights Commissioner and the day before, 5 October 1998, the visit of Tony Blair, his first visit to China as British Prime Minister.").

35. Luo, *supra* note 13 (translated by author).

36. *Id.*

37. *Id.*

38. *Ratification Status for China*, *supra* note 16.

39. *See, e.g.*, KENT, *supra* note 7, at 93 (discussing evidence of formalism in China's report to the Committee Against Torture in December 1989).

40. HUMAN RIGHTS WATCH, *supra* note 3, at 43–46.

liberal democracies of engaging in “double standards.”⁴² China further works with countries in the Like-Minded Group (a group of developing countries that tends to vote as a bloc⁴³) to undermine the ability of the U.N. human rights mechanisms. The members of the Like-Minded Group often share China’s interests in avoiding international human rights scrutiny by diminishing the strength of the international human rights institutions.⁴⁴ China and Russia, for example, led many countries in the Group to present proposals that would limit the independence of the treaty bodies and increase state oversight of the system in what was supposed to be a treaty body strengthening process.⁴⁵

41. For China’s efforts to discredit independent human rights experts and non-governmental organizations, see, e.g., Felice Gaer, *International Human Rights Scrutiny of China’s Treatment of Human Rights Lawyers and Defenders: The Committee Against Torture*, 41 *FORDHAM INT’L L.J.*, no. 5, 2018, at 1165, 1171, 1181; HUMAN RIGHTS WATCH, *supra* note 3, at 59.

42. See, e.g., U.N. Office of the High Comm’r for Human Rights, Human Rights Council Holds a General Debate on Human Rights Situations that Require the Council’s Attention (Sept. 18, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23587&LangID=E> (“China said that China’s approach to human rights was a people-centered approach. It was a country of the rule of law, where all were equal before the law. Any political position that undermined political stability was punishable by that law. The European Union, Germany and the United Kingdom had made unwarranted accusations against China. Those attacks were typical of the double standards and politicisation inherent in the Council.”); Meetings Coverage, U.N. General Assembly, Human Rights Council Central to Tackling Most Serious Violations, Its President Tells Third Committee, as Delegates Decry ‘Stark Divides,’ Double Standards, U.N. Meetings Coverage GA/SHC/4249 (Nov. 2, 2018), <https://www.un.org/press/en/node/264649>.

43. The Group usually consists of Algeria, Bangladesh, Belarus, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Russia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe. HUMAN RIGHTS WATCH, *supra* note 3, at 9.

44. *Id.* (“These countries have demonstrated political solidarity in the Council and have worked together to weaken the universality of human rights standards and resist the Council’s ability to adopt country-specific approaches. They have shielded repressive governments from scrutiny by filling speakers’ lists with promoters of these countries’ human rights records during Universal Periodic Reviews, and giving uncritical statements from friendly governments and Government-Organized NGOs (GONGOs).”)

45. Int’l Serv. for Human Rights, *Update on Treaty Body Reform*, 4 *HUM. RTS. MONITOR Q.* 22, 22 (2012), https://www.ishr.ch/sites/default/files/article/files/hrmq_oct-2012_treaty_body_reform.pdf.

More recently, Beijing has taken a more proactive approach in obstructing and undermining the work of the international human rights system.⁴⁶ This article now turns to China's current practice, with a focus on its activism in the HRC.

III. CHINA'S CURRENT STRATEGIES IN THE HUMAN RIGHTS COUNCIL

The HRC was established in 2006 to replace its troubled predecessor, the Commission on Human Rights, which had been severely criticized for its increasing politicization, declining credibility, and failures to fulfill its mandate.⁴⁷ The Council was meant to address some issues that had plagued the Commission, but, in practice, many problems have persisted,⁴⁸ including the inclusion of members of countries credibly accused of gross human rights abuses.

The HRC has forty-seven members, elected for staggered three-year terms (with the possibility of two consecutive terms) by the simple majority vote of all member states of the U.N. General Assembly through direct and secret ballots.⁴⁹ The membership is distributed on a regional group basis in order to give widespread geographic representation and to offer more participation opportunities for small developing states.⁵⁰ As a result, twenty-six seats are reserved for Asian and African countries, whose voting behavior tends to align with China's, while only thirteen seats for the West (including East European countries).⁵¹

46. See *infra* Section III.

47. See, e.g., U.N. Secretary-General, Secretary-General's Address to the Commission on Human Rights (Apr. 7, 2005), <https://www.un.org/sg/en/content/sg/statement/2005-04-07/secretary-generals-address-commission-human-rights>.

48. See *supra* note 2 (collecting sources criticizing the HRC).

49. *Supra* note 1, ¶ 7.

50. Scott R. Lyons, *The New United Nations Human Rights Council*, 10 ASIL INSIGHTS 7 (Mar. 27, 2006), <https://www.asil.org/insights/volume/10/issue/7/new-united-nations-human-rights-council>.

51. MAAIKE OKANO-HEIJMANS, FRANS-PAUL VAN DER PUTTEN, NETHERLANDS INST. OF INT'L RELATIONS, *A UNITED NATIONS WITH CHINESE CHARACTERISTICS?* 7 (2018), https://www.clingendael.org/sites/default/files/2018-12/China_in_the_UN_1.pdf; SCEATS & BRESLIN, *supra* note 7, at 21–27.

The HRC has a number of major functions, the two most frequently used being (1) issuing resolutions concerning human rights situations of individual states (“country-specific resolutions”) and global human rights standards, and (2) holding the Universal Periodic Review (UPR), in which each state’s human rights performance is examined by other states.⁵² Moreover, the Council is responsible for more than fifty Special Procedures concerned with the monitoring of thematic human rights issues and the situation of individual countries.⁵³ Unlike the Council, which consists of state members, the Special Procedures consist of independent human rights experts or working groups that are supposed to fulfill their functions autonomously. These experts and working groups have played an important role in interpreting international human rights norms and exposing human rights abuses in individual countries.⁵⁴

Having been repeatedly censured in the Commission on Human Rights since 1989, China participated vigorously in the negotiations to set up the HRC in order to introduce its own agenda.⁵⁵ China’s proposal, competing with those of the United States, sought to increase representation of Asian countries and developing countries in the Council. The HRC adopted this proposal,⁵⁶ but did not adopt another proposal sponsored by China and other member states to eliminate country-specific resolutions, a mechanism that the Commission on Human Rights and the HRC used to censure blatant violations of human rights in specific countries.⁵⁷ After the establishment of the HRC, China became a member for the first two terms (2006–2012), followed by a necessary year’s absence,

52. For an overview of the Council’s work, see U.N. HUMAN RIGHTS COUNCIL, <https://www.ohchr.org/en/hrbodies/hrc/pages/home.aspx> (last visited Feb. 15, 2019).

53. *Special Procedures of the Human Rights Council*, U.N. OFFICE OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx> (last visited Apr. 11, 2019).

54. *Id.*

55. PICCONE, *supra* note 3, at 2–3.

56. Lo Yanhua (罗艳华), *Lianheguo Renquan Lishihui de Sheli ji qi Beihou de Douzheng* (联合国人权理事会的设立及其背后的斗争) [*The Establishment of the UN Human Rights Council and the Underlying Struggles*], RENQUAN (人权) [HUM. RTS.] (June 11, 2014), www.humanrights.cn/html/2014/3_0611/403.html.

57. PICCONE, *supra* note 3, at 2–3.

and then renewed the current two-term membership (2013–2019).

Until 2013, China's general approach, both in the earlier Commission on Human Rights and then in the HRC, remained relatively low-profile.⁵⁸ The ascension to power by Chinese leader Xi Jinping at the eighteenth CCP Congress in late 2012, however, appeared to mark another watershed moment, not only in China's domestic governance, but also in its ambition regarding global governance.⁵⁹ China's voice began to grow in various international platforms, along with its increasing financial contributions to international organizations.⁶⁰

In relation to international human rights, as well as economic matters, Xi proposed the idea of creating a "Community with a Shared Future for Mankind" (*renlei mingyun gongtongti*)⁶¹ as an arc for China's active engagement with the world. This has included China's signature new economic projects, especially the Belt and Road Initiative (BRI) and the Asian Infrastructure Investment Bank (AIIB). Notably, this new international engagement, now largely on China's own terms, is situated in Xi Jinping's broader policy of seeking to

58. SCEATS & BRESLIN, *supra* note 7, at 15–17; *see also id.* at 3 ("During its first two terms as a member of the new Council from 2006–12, China remained a background player, supporting the actions of the "Like-Minded Group" of states that oppose a more activist human rights agenda, but rarely asserting its own individual position.").

59. *See* PICCONE, *supra* note 3, at 3 ("Since returning to the Human Rights Council in 2013—and following Xi Jinping's selection as president—China has become more confident in pushing its agenda in Geneva.").

60. Patrick Wintour, *China Starts to Assert Its World View at UN as Influence Grows*, *GUARDIAN* (Sept. 24, 2018), <https://www.theguardian.com/world/2018/sep/24/china-starts-to-assert-its-world-view-at-un-as-influence-grows>; OKANO-HEIJMANS & VAN DER PUTTEN, *supra* note 51, at 6 ("China clearly regards being on the HRC as a priority, and it enjoys broad support in the General Assembly for its near-permanent membership of the Council. The fact that China is expected to overtake Japan as the second-largest contributor to the general UN budget in 2019 is also relevant, since this gives China greater leverage in the Administrative and Budgetary Committee (the UNGA Fifth Committee), which oversees the HRC's budget.").

61. Cao Desheng, *Xi's Discourses on Mankind's Shared Future Published*, *CHINA DAILY* (Oct. 15, 2018), www.chinadaily.com.cn/a/201810/15/WS5bc38adca310eff303282392.html.

enhance China's international "Discourse Power" (*huayu quan*).⁶²

Recently, Beijing has proposed its development-centered view as a "China Proposal" (*Zhongguo fang'an*, also translated as China Solution⁶³), endorsing an alternative path for developing countries as opposed to the path of Western democracies.⁶⁴ In 2017 it launched the inaugural South-South Human Rights Forum to share Chinese experience with the Global South and to host foreign programs of technical assistance fo-

62. See, e.g., E. John Gregory, *Control Issues are Feeding China's 'Discourse Power' Project*, NATIONAL INTEREST (Aug. 15, 2018), <https://nationalinterest.org/feature/control-issues-are-feeding-chinas-discourse-power-project-28862> (describing the Party's current "multibillion-dollar push" for international "discourse power (*huayu quan*)").

63. 中国方案 (*Zhongguó Fang'an*): Chinese Solution, CHINA DAILY (July 7, 2016), www.chinadaily.com.cn/opinion/2016-07/07/content_25996250.htm ("There are a few characteristics of the Chinese solution: independence, target-oriented and sustainable development, as well as stable and consistent policy, a ruling party that represents the majority of the Chinese people and guarantees both economic development and people's livelihoods, and a friendly, peaceful, win-win attitude in international affairs. . . . As a developing country with a huge population, China is exploring a development path that is different from that of developed countries. After several decades, China has made great achievements in social and economic development. Now it's time to summarize that experience for further improvement.")

64. Laurence Brahm, *'China Solution' is Diversified Solution*, CHINA DAILY (Jan. 19, 2018), <http://www.chinadaily.com.cn/a/201801/19/WS5a613485a3106e7dcc1352f4.html> ("The 19th Party Congress for the first time emphasized China's role in an integrated global context, putting forth the concept of a 'China solution' to global challenges."); *Spotlight: The Three Dimensions of Chinese Governance*, XINHUA (Oct. 23, 2018), www.xinhuanet.com/english/2018-10/23/c_137552221.htm ("For the vast number of developing countries, the CPC's ideas and practices for state governance provide them with an alternate option from western models, and inject a positive driving force in a world under great change."); Yuan Zhengqing, Li Zhiyong & Zhufu Xiaofei, *China and the Remolding of International Human Rights Norms*, 38 SOCIAL SCIENCES IN CHINA, no. 3, 2017, at 25, 42, <http://dx.doi.org/10.1080/02529203.2017.1339437> ("In its various human rights dialogues, China does not just accept Western propositions passively; it has its own understanding of the issues and cleaves to its own principles, promoting the practice of human rights norms through self-remolding. This understanding has unique Chinese characteristics, but is not limited by them; to some degree, it represents the shared views of the developing world in a more inclusive way. Through unremitting and active exploration, China has developed a "Chinese model" of safeguarding human rights").

cused on development and poverty reduction.⁶⁵ Moreover, it has sought to introduce its rhetoric into the international discourse. For example, when the United Nations incorporated into a resolution⁶⁶ the phrase, “to create a shared future, based upon our common humanity,” which mimics Xi Jinping’s slogan of “Community with a Shared Future for Mankind,” Beijing considered it a victory for its Discourse Power project.⁶⁷

Beijing’s increasing outward confidence, however, has been accompanied by ever more serious human rights abuses at home. Chinese writer and Nobel Peace Prize Laureate Liu Xiaobo, jailed since 2008 for his peaceful advocacy of freedom and democracy, died in a prison hospital in 2017 while serving his eleven-year sentence. On a broader scale, the party-state has intensified repression of dissidents, human rights lawyers and relevant civil society activists generally.⁶⁸ Among a multitude of appalling abuses is the infamous 709 Crackdown, which has resulted in the detention of more than 300 human rights activists and lawyers, with many given multi-year sentences on charges of subverting state power or inciting the subversion of state power.⁶⁹ More recently, Beijing has also

65. *South-South Human Rights Forum Opens in Beijing*, XINHAU (Dec. 7, 2017), www.globaltimes.cn/content/1079267.shtml. The Forum has established a website that hosts related news, documents and videos. SOUTH-SOUTH HUMAN RIGHTS FORUM PORTAL, p.china.org.cn/node_8001790.htm (last visited Apr. 11, 2019).

66. Economic and Social Council Res. 2017/11, ¶ 41 (June 8, 2017).

67. *Xi’s ‘Shared Future’ Now a Consensus*, CHINA DAILY (Jan. 26, 2018), en.people.cn/n3/2018/0126/c90000-9419955.html (“President Xi Jinping’s vision of building a community with a shared future for mankind has become an important international consensus echoed by many countries, organizations and political parties in the past year, according to international relations analysts.”).

68. For recent discussions of China’s repression of human rights, see Jerome Alan Cohen, *Law’s Relation to Political Power in China: A Backward Transition*, SOC. RESEARCH: INT’L Q. Vol. 86, No. 1 (2019); see generally EVA PILS, HUMAN RIGHTS IN CHINA: A SOCIAL PRACTICE IN THE SHADOWS OF AUTHORITARIANISM 55–144 (2017) (analyzing the dynamics between civil society advocacy and state repression in China in the following areas: personal liberty, the right to life, the right to freedom of speech and freedom of thought, socio-economic rights and protection of rights defenders).

69. See generally CHINA HUMAN RIGHTS LAWYERS CONCERN GRP., REPORT ON THE 709 CRACKDOWN (2016), <http://www.chrlawyers.hk/en/content/report-709-crackdown> (report detailing the 709 Crackdown).

been widely condemned for setting up vast internment camps in the Xinjiang region of northwest China, with reports that the PRC has detained more than one million of China's Muslim citizens, almost entirely Uyghurs and Kazakhs, and subjected those remaining in society to extraordinary surveillance and repression.⁷⁰ What drives the Party-state to escalate repression, paradoxically, may be a sense of heightened insecurity about Party power and political control.⁷¹

Even in areas of social, economic, and cultural rights, which China hails as the area encompassing its proudest human rights achievements, the government actually falls short of its obligations to provide fundamental protection. As the Special Rapporteur on Extreme Poverty and Human Rights, Professor Philip Alston, remarked at the conclusion of his 2016 visit to China, the PRC's current development approach fails to give individuals "meaningful access to accountability mechanisms for violations of their economic and social rights."⁷² The U.N. Committee on Economic, Social and Cultural Rights, the treaty body for the ICESCR, also identified an array of serious issues when reviewing China's performance, including basic gaps in the independence of the judiciary; the persistent and widespread discrimination against ethnic minorities; the disadvantaged position of rural women; disparities between urban and rural areas in access to health care, education, and social security; inadequate and unsafe working

70. Lucas Niewenhuis, *Re-Education Camps in China's 'No-Rights Zone' For Muslims: What Everyone Needs To Know*, SUPCHINA (Aug. 22, 2018), <https://supchina.com/2018/08/22/xinjiang-explainer-chinas-reeducation-camps-for-a-million-muslims>.

71. Jerome Alan Cohen, *The Insecurity Underpinning Xi Jinping's Repression*, WASH. POST (Sept. 23, 2015), https://www.washingtonpost.com/opinions/the-insecure-underpinning-of-chinese-repression/2015/09/23/f8f33720-6092-11e5-9757-e49273f05f65_story.html.

72. Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to China*, ¶ 75, U.N. Doc. A/HRC/35/26/Add.2 (Mar. 28, 2017) [hereinafter *Report of Special Rapporteur on Mission to China*]. For an excellent critique of China's development approach vis-à-vis state obligations under international human rights law, see *supra* ¶ 65. ("In China, it became clear to the Special Rapporteur from conversations with officials that these bodies considered much of what they do to be devoted to the goals reflected in economic and social rights but that they generally refrained from using rights-specific language and did not consider accountability mechanisms to be relevant or necessary.").

conditions; frequent sexual harassment in the workplace; restrictions on the workers' right to form and join trade unions and to strike; forced abortion and forced sterilization for the implementation of the birth quota; cases of forced evictions; inadequate measures to address ecological degradation, environmental pollution and food contamination; discrimination against persons affected by HIV/AIDS; limitations on freedom of information and expression in relation to the right to take part in cultural life; and state reprisals against activists who take up cases of violations of economic, social, and cultural rights.⁷³

Nevertheless, Beijing is, with more confidence than in the past,⁷⁴ seeking to assume a leadership role in the international human rights system, despite the fact that its actions and rhetoric obstruct or challenge, rather than promote, the work of the system. With regard to the HRC's operation, China's practice can be generally analyzed in three respects: (1) procedures, (2) institutions, and (3) norms. These categories, while inevitably overlapping, still serve as a useful discussion framework under which China's actions can be unpacked.

A. *Procedures*

First, the Chinese government tries to deflect international criticisms by strategically distorting the Council's procedures. Despite, or arguably because of, its growing power in world politics, China is ultra-sensitive to criticisms of its human rights record, and goes to great lengths to avoid public condemnation. The Council's UPR procedure, under which each state's human rights performance is reviewed every four to five years in an interactive dialogue between the state and other U.N. member states, offers an important illustration.

73. Comm. on Econ., Soc. and Cultural Rights, Concluding Observations on the Second Periodic Report of China, Including Hong Kong, China, and Macao, China, ¶¶ 10–37, U.N. Doc. E/C.12/CHN/CO/2 (June 13, 2014).

74. In the past China sometimes took the lead in mobilizing regional efforts to counter international human rights standards. See e.g., Michael C. Davis, *Human Rights in Asia: China and the Bangkok Declaration*, 2 BUFF. J. INT'L L. 215, at 216 (1995) (noting that China played a leading role in drafting the Bangkok Declaration, which was intended to pose a challenge to the applicability of universal standards of human rights in Asia.)

China has undergone three UPRs in 2009, 2013 and 2018, respectively.⁷⁵ The UPR, unlike the assessment conducted by independent Special Procedures or the independent evaluation of a state's human rights record in a treaty review, is essentially a political process. As a result, it allows greater scope for diplomatic manipulation. This permits Beijing to engage in a broad range of political tactics in dealing with UPR challenges to its human rights record.

In its first UPR in 2009, China successfully mobilized a great number of authoritarian governments and developing countries that rely on China's investment and aid to lavish high praise on its achievements in human rights.⁷⁶ In its second UPR, in 2013, although countries such as the United States, the United Kingdom, Canada, and Germany were bluntly critical of its human rights violations,⁷⁷ China was still able to rally many friendly statements by other countries, and due to the large number of mobilized speakers, each state's representative ended up having merely fifty seconds for oral presentation in China's session.⁷⁸ A number of countries, such as Cuba, Pakistan, Russia, Saudi Arabia, Ukraine, Uganda, Venezuela, Uzbekistan, Yemen, and some small African states,

75. The three reports that it has submitted, like China's responses to human rights treaty bodies and other UN human rights review mechanisms, are marked by enumerations of laws, regulations and other government measures with little efforts to evaluate their impact and describe actual practice. For China's UPR reports, see *Universal Periodic Review: China*, U.N. HUMAN RIGHTS COUNCIL, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CNindex.aspx> (last visited Apr. 11, 2019) [hereinafter China UPR Reports].

76. See Human Rights Council, Rep. of the Working Group on the Universal Periodic Rev.: China, U.N. Doc. A/HRC/11/25, at 6–15 (Oct. 5, 2009) (noting various delegations' praise of China's human rights record).

77. The United States, for example, voiced concern about China's suppression of freedoms of assembly, association, religion, and expression; harassment, detention and punishment of political activists and their family and friends; and policies that undermine the human rights of ethnic minorities. Canada urged China to "[s]top the prosecution and persecution of people for the practice of their religion or belief including Catholics, other Christians, Tibetans, Uyghurs, and Falun Gong, and set a date for the visit of the Special Rapporteur on Freedom of Religion or Belief." U.N. Human Rights Council, Rep. of the Working Group on the Universal Periodic Rev.: China (Including Hong Kong, China and Macau, China), U.N. Doc. A/HRC/25/5, at 13, 21 (Dec. 4, 2013) [hereinafter Report on 2013 China UPR].

78. *Dialogue, Issue 53: Looking for Universality at China's Second UPR*, DUI HUA, <https://duihua.org/dialogue-issue-53-looking-for-universality-at-chinas-second-upr> (last visited Apr. 11, 2019).

praised China's human rights performance.⁷⁹ Despite China's well-known abuse of religious groups and ethnic minorities in Xinjiang and Tibet, a few countries went as far as, for example, recommending that China should "crack down on cult organizations to safeguard freedom of worship and the normal religious order" (Uganda), and "[c]ontinue to counter the East Turkistan terrorist organizations to prevent their violent activities" in China's supposedly autonomous Xinjiang region (Pakistan).⁸⁰

In the third UPR in 2018, China repeated this tactic, lining up countries that would not condemn China so that those that would had less time to voice criticisms.⁸¹ Each state ended up with only forty-five seconds for oral presentation. In addition, China also tried to block genuine civil society participation by having government-organized nongovernmental organizations (GONGOs) speak in favor of China's human rights performance in order to crowd out the participation of independent NGOs.⁸² This manipulation by China of the review's procedures, which has now become its standard modus operandi, was meant to muffle criticisms and to reduce the review's effectiveness. At the end of the 2018 review, the Chinese delegate remarked on the "overwhelming" number of countries that "fully recognized China's efforts and achievements in promoting and protecting human rights."⁸³ There were still some countries that, despite the limited time, managed to raise serious issues about Xinjiang's internment camps and the treat-

79. Report on 2013 China UPR, *supra* note 77, at 5, 12–13.

80. *Id.* at 22, 27.

81. Andrea Worden, *China Deals Another Blow to the International Human Rights Framework at Its UN Universal Periodic Review*, CHINA CHANGE (Nov. 25, 2018), <https://chinachange.org/2018/11/25/china-deals-another-blow-to-the-international-human-rights-framework-at-its-un-universal-periodic-review>.

82. *UN: China Responds to Rights Review with Threats*, HUMAN RIGHTS WATCH (Apr. 1, 2018), <https://www.hrw.org/news/2019/04/01/un-china-responds-rights-review-threats>.

83. Worden, *supra* note 81 (quoting remarks of the head of the Chinese delegation, Vice Foreign Minister Le Yucheng); see also *Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on November 13, 2018*, EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN JAMAICA (Nov. 13, 2018), jm.china-embassy.org/eng/wjbfyrth/t1612734.htm ("China sets great store by the relevant recommendations in the UPR report and thanks the representatives of the vast majority of the participating countries in offering their positive comments, understanding and support.").

ment of human rights defenders and lawyers. In response, China's delegate stated, "We will not accept the politically driven accusations from a few countries that are fraught with biases, and in total disregard of facts; even less will we entertain attempts to use human rights as an excuse to interfere in China's internal affairs or undermine its sovereignty and territorial integrity."⁸⁴

B. *Institutions*

Second, Beijing has consistently sought to sap the institutional strength of the international human rights system. While recently it has donated more money than in the past to the operation of the Office of the High Commissioner for Human Rights and other human rights bodies,⁸⁵ it has, for example, worked with Russia to limit the independence of human rights treaty bodies;⁸⁶ proposed cuts for U.N. budgets on human rights work;⁸⁷ and blocked civil society participation in U.N. processes, in addition to preventing the participation of Chinese human rights activists through harassment and detention.⁸⁸

With regard to the HRC's institutions specifically, Beijing's strategies generally can be classified into two main categories: (1) *disempowering* to diminish the HRC's institutional strength, and (2) *discrediting* to reduce the credibility of various actors working in the HRC processes.

First, Beijing's actions are designed to disempower the Council's institutions that carry out independent investigation and voice concerns. Beijing has consistently sought to avoid

84. Worden, *supra* note 81 (citing remarks of the head of the Chinese delegation, Vice Foreign Minister Le Yucheng).

85. See Human Rights Council, Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Resol. 16/21: China, U.N. Doc. A/HRC/WG.6/17/CHN/1, at 18 (Aug. 5, 2013) (noting China's donations to OHCHR had increased yearly from \$20,000 to \$50,000); Human Rights Council, Nat'l Rep. Submitted in Accordance with Paragraph 5 of the Annex to Hum. Rts. Council Resol. 16/21: China, U.N. Doc. A/HRC/WG.6/31/CHN/1, at 17 (Aug. 20, 2018) [hereinafter HRC Nat'l Rep. 2018] (noting China had donated \$100,000 to the Special Rapporteur on the right to development).

86. Int'l Serv. for Human Rights, *supra* note 45, at 23.

87. PICCONE, *supra* note 3, at 4, 16.

88. See generally HUMAN RIGHTS WATCH, *supra* note 3, at 13–41 (describing China's obstruction of NGO participation).

country-specific resolutions that propose to investigate human rights abuses in certain countries.⁸⁹ It has attempted to hamstring the Special Procedures mandate holders by trying to introduce a dismissal procedure that would remove those considered non-compliant with a given code of conduct.⁹⁰ It has also been resistant to extending invitations for Special Procedures to conduct field visits to China, and, when it did finally permit such visits for some Special Procedures, it sought to control and surveil the activities of the human rights expert visitors, and impede their investigation.⁹¹ In the latest UPR, Chinese officials pressured the United Nations to remove from the process information provided by U.N. experts and NGOs, and to block the participation of a prominent Uyghur activist.⁹² China sometimes uses coercion and material incentives as well. When the HRC reviewed the UPR Working Group report in March 2019, for example, China's ambassador sent letters to foreign missions in Geneva urging them not to attend an event about the human rights situation in Xinjiang "in the interest of our bilateral relations."⁹³

When it cannot contain criticisms, Beijing resorts to discrediting tactics while refusing to engage the substance of the issues raised. Beijing frequently challenges, on factual grounds, the findings of Special Procedures as well as critical remarks by other countries.⁹⁴ It perceives criticisms by Western states, particularly the United States, to be politically motivated and biased.⁹⁵ It often complains about the credibility of

89. PICCONE, *supra* note 3, at 3.

90. SCEATS & BRESLIN, *supra* note 7, at 21.

91. HUMAN RIGHTS WATCH, *supra* note 3, at 60–69.

92. UN: *China Responds to Rights Review with Threats*, *supra* note 82.

93. *Id.*

94. HUMAN RIGHTS WATCH, *supra* note 3, at 60, 76.

95. Potter, *supra* note 7, at 714 (noting the Chinese perception that human rights criticisms in the international arena are driven by U.S. power politics). For a typical Chinese argument, see XUE HANQIN, CHINESE CONTEMPORARY PERSPECTIVES ON INTERNATIONAL LAW: HISTORY, CULTURE AND INTERNATIONAL LAW 162 (2012) ("Since 1990 till the day when the Human Rights Commission was replaced by the Human Rights Council in 2006, 11 motions were tabled by Western countries against China, albeit none of them adopted. Oftentimes such China-bashing was launched primarily to cater to the domestic consumption or electoral purposes of the criticizing country rather than for China. It is neither a secret nor a myth that even Western scholars admit that China has been subjected to double standards in the assessment of its human rights performance. Such bias became even

participants in international human rights processes⁹⁶ and portrays domestic rights defenders as “sold to foreign powers.”⁹⁷ It is noteworthy that these techniques bear many similarities to those used in other areas, including Beijing’s attempt to discredit the recent South China Sea arbitration initiated by the Philippines government. China, refusing to take part in the arbitration, claimed that the award was flawed regarding the evidence and the facts, and that the process was marked by “out-of-bad-faith dramatization and political manip-

more evident when human rights issues were driven by strategic interests and economic benefits against China. Under such circumstances, it is not surprising that China would invoke the principles of sovereignty and non-interference to defend its socio-political system and reject double-standards in human rights dialogue.”)

96. See generally HUMAN RIGHTS WATCH, *supra* note 3, at 13–41 (“The government’s tactics include restricting Chinese civil society activists from departing the country, intimidating and harassing activists on UN premises, hindering NGO advocacy efforts, and presenting the UN with lists of particular individuals who should be blocked from participation in UN events, including Human Rights Council sessions.”); *UN Diplomats and Activists Describe Chinese Pressure and ‘Threats’ over Uyghur Event at UN Rights Council*, SOUTH CHINA MORNING POST (Apr. 2, 2019), <https://www.scmp.com/news/china/diplomacy/article/3004214/un-diplomats-and-activists-describe-chinese-pressure-and> (according to a UN official, “receiving pressure from governments attempting to silence critics is fairly common, but a particularly high number of these complaints come from China about the credibility of participants.”).

97. *Id.* at 13. In addition to jailing human rights defenders at home and sometimes preventing their travel to Geneva to register their views, Beijing sought at the United Nations to muddle and diminish the meaning of *human rights defenders* in a U.N. resolution, arguing that those who claim themselves to be defenders should be punished if they are deemed to violate domestic law, and that no countries should use the notion of protecting human rights defenders to interfere with China’s “internal affairs.” Andrea Worden, *As the UN Declaration on Human Rights Defenders Turns 20, China Wages a Multi-Pronged Attack on Rights Defenders*, CHINA CHANGE (Mar. 14, 2018), <https://chinachange.org/2018/03/14/as-the-un-declaration-on-human-rights-defenders-turns-20-china-wages-a-multi-pronged-attack-on-rights-defenders> (quoting the statement of the Chinese delegation when the Third Committee adopted the resolution: “Preambular paragraph 9 contains preconceived notions that the roles and activities of human rights defenders are legitimate. China reiterates that . . . human rights defenders must carry out their activities in a peaceful and lawful way. Human rights defenders, if acting in violation of domestic law, shall be equally sanctioned by the law as others. No state shall employ the issue of human rights defenders as a tool to interfere in other countries’ internal affairs.”).

ulation.”⁹⁸ Chinese diplomats also claimed that the constitution of the tribunal was improper, trying to challenge the legitimacy of the result.⁹⁹

C. Norms

Third, and most profoundly, Beijing has pushed back norms that it perceives to be against its interests, and strived to introduce notions that are in tension with fundamental values of the international human rights system. Take the 2018 UPR, for example: The Chinese government refused to accept 62 of the 346 recommendations on the grounds that “they are inconsistent with China’s national conditions, contradictory with Chinese laws, politically biased or untruthful.”¹⁰⁰ Those rejected mainly included recommendations that urged China to seek abolition of the death penalty and publish execution data; to accede to the Optional Protocol to the CAT; to ratify the ICCPR, the International Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; to accede to the Rome Statute of the International Criminal Court; to establish an independent national human rights institution in according with the Paris Principles; to amend subversion laws for the protection of freedom of speech; to end the practice of secret detention through the measure of residential surveillance at a designated location; to release human rights defenders and lawyers; to repeal or amend laws and practices that prevent the rights to freedom of expression and free access to information; to end prosecution and persecution on the basis of religion or belief; and to cease arbitrary detention of

98. *Remarks by Chinese Foreign Minister Wang Yi on the Award of the So-Called Arbitral Tribunal in the South China Sea Arbitration*, MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE’S REPUBLIC OF CHINA (July 12, 2016), https://www.fmprc.gov.cn/nanhai/eng/wjbxw_1/t1380003.htm.

99. Julian Ku, *A Guide to Countering Chinese Government Spin on the Fairness of the South China Sea Arbitration Tribunal*, LAWFARE BLOG (June 20, 2016, 10:43 AM), <https://www.lawfareblog.com/guide-countering-chinese-government-spin-fairness-south-china-sea-arbitration-tribunal>.

100. Human Rights Council, Rep. of the Working Group on the Universal Periodic Rev.: China, Addendum U.N. Doc. A/HRC/40/6/Add.1 (advance version), at 2 (Feb. 15, 2019).

Uyghurs and other Muslim groups in Xinjiang.¹⁰¹ China dismissed all recommendations that asked it to allow the media, the United Nations, and foreign officials access to Xinjiang and to close Muslim internment camps, as interference in its sovereignty and internal affairs.¹⁰²

Moreover, China has sponsored or objected to various resolutions, demonstrating its intention not only to lessen the intensity of international scrutiny but also to promote its preferred norms. For example, before the Council passed a resolution urging all states to prevent and refrain from all acts of intimidation or reprisal against activists who participate in U.N. human rights activities, Beijing unsuccessfully attempted to introduce an amendment to the resolution to make it less effective.¹⁰³ It has also actively co-sponsored amendments designed to weaken international norms that protect civil society and to strengthen the principle of noninterference in sovereign affairs.¹⁰⁴

In recent years, Beijing has ramped up efforts to promote its own views as an alternative solution that may eventually displace current international human rights ideals.¹⁰⁵ Generally, its present attacks on international human rights norms appear to pursue at least two objectives: (1) establishing a development-first program, and (2) vindicating a statist view in matters of human rights. These goals are in contradiction with the fundamental norms concerning the indivisibility and interde-

101. *Id.* at 2–11.

102. *Id.* at 2–3.

103. Letter from Civil Soc’y Orgs. to Member States of the U.N. Human Rights Council (Sept. 26, 2017), https://www.ishr.ch/sites/default/files/documents/letter_to_member_states_on_reprisals_resolution_hrc_36_with_signatories_final_version_5.pdf.

104. PICCONE, *supra* note 3, at 8.

105. See HUMAN RIGHTS IN CHINA, STAKEHOLDER SUBMISSION BY HUMAN RIGHTS IN CHINA SUBMITTED TO THE HUMAN RIGHTS COUNCIL IN ADVANCE OF THE THIRD UNIVERSAL PERIODIC REVIEW OF THE PEOPLE’S REPUBLIC OF CHINA 4 (2018), https://www.hrichina.org/sites/default/files/hric_china_upr_2018_submission.pdf (“Specific approaches being advanced by China internationally include: a ‘governance’ approach to rights, a people-centered development model, and a focus on international ‘cooperation’ among states. Common to these state-centric approaches is the marginalization of state accountability for ensuring respect, protection, and promotion of human rights, and a rejection of the ‘universality’ of rights in favor of the ‘localization’ of rights as equal to and a replacement for international standards.”).

pendence of human rights and the individual-centered, rights-based foundation of the international human rights regime. Yet, China's alliance at the Council with other authoritarian governments that share similar interests in diminishing human rights criticism allows it to mobilize enough member states to support its agenda,¹⁰⁶ including states that have important economic and political ties to China.¹⁰⁷

In 2017, China unusually introduced a solo-sponsored HRC resolution,¹⁰⁸ entitled "The Contribution of Development to the Enjoyment of All Human Rights."¹⁰⁹ The resolution, with the backing of many co-sponsors,¹¹⁰ was adopted by a recorded vote of thirty to thirteen, with three abstentions.¹¹¹ It was apparently the first resolution in the HRC that focused entirely on the issue of development,¹¹² and Chinese media praised the resolution as the contribution of a "China Solution" to global human rights governance.¹¹³

While the adopted resolution appears innocuous, some human rights observers have criticized it for framing the right

106. One important role of the Council members is to issue resolutions that condemn human rights abuses and call for action. Many resolutions are adopted by consensus, while others are passed with a vote. A state's influence in the Council is often determined by how many other members it can mobilize to reach a consensus or produce a successful vote.

107. PICCONE, *supra* note 3, at 1, 13–14.

108. *Id.* at 9.

109. Human Rights Council Res. 35/21, U.N. Doc. A/HRC/RES/35/21, at 1 (July 7, 2017).

110. For co-sponsoring countries, see *RES/35/21 The contribution of development to the enjoyment of all human rights*, RightsDocs, <https://www.rightsdocs.org/doc/a-hrc-res-35-21/>.

111. *Id.* Countries that voted in favor of the resolution included Bangladesh, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Congo, Côte d'Ivoire, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, India, Indonesia, Iraq, Kenya, Kyrgyzstan, Mongolia, Nigeria, Philippines, Qatar, Rwanda, Saudi Arabia, South Africa, Togo, Tunisia, United Arab Emirates, and Venezuela (Bolivarian Republic of). Those that voted against it were Albania, Belgium, Croatia, Germany, Hungary, Japan, Latvia, Netherlands, Portugal, Slovenia, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America. Abstentions included Georgia, Panama, and Republic of Korea. The delegation of Paraguay did not cast a vote.

112. Luo, *supra* note 13.

113. *Id.*

to development in the service of states, not of people.¹¹⁴ The criticism is based on Beijing's track record of prioritizing a state-centered development program while marginalizing human rights concerns. The Chinese government has repeatedly described development as a top priority for the nation and touted its achievement of lifting hundreds of millions of people out of poverty.¹¹⁵ This is remarkable progress. Yet, human rights should not be confused with economic growth. The right to development is an individual right as well as a collective right. As with all human rights, the human person is the rights holder and should be "the central subject of development" and "the active participant and beneficiary of the right to development."¹¹⁶ A people-centered development approach does not treat human persons as passive recipients of state hand-outs; neither does it stifle dissent for social stability and economic growth. Indeed, when examining Beijing's position, one discovers the incompatibility of its top-down, GDP-driven development approach with the conventional concept of the right to development. In Beijing's view, its development-as-top-priority program has little room for genuine civil society participation; nor does it recognize people as rights-holders who can challenge the state for any failings in the program. In this view, development is the state's business only. It does not

114. See, e.g., PICCONE, *supra* note 3, at 9–10 ("At first glance, this resolution looks relatively harmless. . . . Upon further examination, however, the resolution suggests that respect for human rights depends on 'people-centered development,' as opposed to being inherent to human dignity regardless of a country's level of development."); Andrea Worden, *China Pushes 'Human Rights With Chinese Characteristics' at the UN*, CHINA CHANGE (Oct. 9, 2017), <https://chinachange.org/2017/10/09/china-pushes-human-rights-with-chinese-characteristics-at-the-un> ("What this means, in short, is that China will continue to promote, and attempt to expand, the importance of the right to development and economic rights, while at the same time endeavoring to curtail and weaken the enforcement of civil and political rights.").

115. Take China past UPR Reports for example. Development has been featured in these reports as a priority in China's human rights agenda. *Supra* note 75. See also INFO. OFFICE OF THE STATE COUNCIL OF CHINA, *supra* note 27 ("It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question.").

116. Declaration on the Right to Development, G.A. Res. 41/128, ¶ 2 (1) (Dec. 4, 1986).

empower people.¹¹⁷ While such a state-centered development approach may be appealing and popular, it is prone to abuses of authoritarian governments that seek political monopoly.

In April 2018, China again successfully introduced another solo-sponsored HRC resolution, also reflecting its traditional state-centered position. The resolution, entitled “Promoting Mutually Beneficial Cooperation in the Field of Human Rights,”¹¹⁸ was similarly co-sponsored by many other states¹¹⁹ and touted in the official PRC media as symbolizing “China’s growing influence and ability to set the agenda in international human rights governance.”¹²⁰ The U.S. government, to challenge the resolution, called for a vote, but the resolution was passed by a vote of twenty-eight in favor, with seventeen abstentions and one “no” cast by the United States.¹²¹ The resolution essentially called for states to engage in intergovernmental cooperation on human rights, especially by way of technical assistance and capacity-building programs, including North-South, South-South, and triangular coopera-

117. *Report of Special Rapporteur on Mission to China*, *supra* note 72, at ¶¶ 15, 45, 61.

118. Human Rights Council Res. 37/23, U.N. Doc. A/HRC/37/L.36, at 1 (Mar. 19, 2018).

119. For co-sponsoring countries, see *RES/37/23 Promoting mutually beneficial cooperation in the field of human rights*, RIGHTSDOCS, <https://www.rightsdocs.org/doc/a-hrc-res-37-23/>.

120. Permanent Mission of China to the U.N. Office at Geneva and Other Int'l Orgs. in Switz., “Build a Community of Shared Future for Human Beings” Written into United Nations Human Rights Council Resolutions for the First Time (Mar. 24, 2017), http://www.china-un.ch/eng/dbtyw/rqrd_1/speech/t1448593.htm.

121. Countries that voted in favor of the resolution included Angola, Brazil, Burundi, Chile, China, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Ecuador, Egypt, Ethiopia, Iraq, Kenya, Kyrgyzstan, Mexico, Mongolia, Nepal, Nigeria, Pakistan, Panama, Philippines, Qatar, Saudi Arabia, Senegal, South Africa, Togo, United Arab Emirates, and Venezuela. Those that abstained included Afghanistan, Australia, Belgium, Croatia, Georgia, Germany, Hungary, Japan, Peru, Republic of Korea, Rwanda, Slovakia, Slovenia, Spain, Switzerland, Ukraine, and United Kingdom of Great Britain and Northern Ireland. *Human Rights Council Res. 37/23*, *supra* note 118. See also Andrea Worden, *With Its Latest Human Rights Council Resolution, China Continues Its Assault on the UN Human Rights Framework*, CHINA CHANGE (Apr. 9, 2018), <https://chinachange.org/2018/04/09/with-its-latest-human-rights-council-resolution-china-continues-its-assault-on-the-un-human-rights-framework>.

tion.¹²² It also requested that the HRC Advisory Committee conduct a study on “the role of technical assistance and capacity-building in fostering mutually beneficial cooperation.”¹²³ The resolution dovetailed with China’s intensified efforts to cooperate with developing countries in the area of development. Observers and human rights activists have viewed the resolution with suspicion, as its wording, which centers on intergovernmental cooperation and dialogue, suggests another attempt to put states at the center of human rights work and to marginalize accountability and international scrutiny.¹²⁴ Furthermore, the Chinese government has long treated cooperation and dialogue as an alternative approach to confrontational criticisms that expose human rights violations.¹²⁵

IV. HUMAN RIGHTS WITH CHINESE CHARACTERISTICS: IDENTITY-BASED POLITICS

In addition to the strategies discussed above, China has persistently asserted its distinctiveness as a socialist state with Chinese characteristics. The term “Socialism with Chinese Characteristics” was officially proposed by Deng Xiaoping in the twelfth CCP Congress in 1982,¹²⁶ and was mainly used to explain and justify Deng’s Reform and Opening-Up policy for revitalizing the Chinese socialist economy. It later became widely used in other areas too.¹²⁷

122. H.R.C. Res. 37/23, *supra* note 118, ¶¶ 1–2.

123. *Id.* ¶ 5.

124. *See, e.g.*, Worden, *supra* note 121 (arguing that the resolution demands respect for governments while downplaying the human person as the subject of human rights); John Fisher, *China’s Win-Win’ Resolution Is Anything But*, HUMAN RIGHTS WATCH (Mar. 4, 2018), <https://www.hrw.org/news/2018/03/05/chinas-win-win-resolution-anything> (observing that the resolution focuses only on intergovernmental dialogue and cooperation, rather than actual human rights violations or accountability).

125. Kinzelbach, *supra* note 7, at 312 (“The most recurrent theme in China’s statements on the UN’s human rights monitoring is that confrontation should be avoided and that human rights should instead be promoted through dialogue and cooperation.”)

126. Deng Xiaoping (邓小平), *Deng Xiaoping Zai Zhongguo Gongchandang Di Shier Ci Quanguo Daibiao Dahui Shang de Kaimu Ci* (邓小平在中国共产党第十二次全国代表大会上的开幕词) [*Opening Remarks of Deng Xiaoping at the Chinese Communist Party’s 12th Congress*] (Sept. 1, 1982), http://www.gov.cn/test/2008-06/25/content_1027253.htm.

127. *See e.g.*, INFO. OFFICE OF THE STATE COUNCIL OF CHINA, *The Right to Subsistence—The Foremost Human Right the Chinese People Long For*, in HUMAN

Its meaning, however, is not always clear.

With respect to global human rights governance, China has proposed “Human Rights under Socialism with Chinese Characteristics.” This term made its first appearance in China’s international reporting during the 2013 UPR. In the 2018 report, it was changed to simply “human rights with Chinese characteristics.”¹²⁸ The inclusion of this phrase in China’s UPR reporting signifies greater confidence to set forth distinctive ideas about human rights on the world stage. Indeed, at present, Beijing is not reluctant to use this phrase to highlight its differences from the previously dominant liberal democracies, and to resist what it determines to be *Western* notions of human rights. This, to some extent, may be traced to the earlier perceived differences and competition between the so-called *bourgeois* international law system and the *socialist* international law system.¹²⁹ According to this theory, the bourgeois international law system was used to oppress socialist countries, and therefore socialist countries must not follow Western rules. The term also smacks of the notion of “Asian Values,” which leaders of China as well as a number of Asian countries, such as Singapore, Malaysia and Indonesia, have vigorously supported.¹³⁰

The meaning of Human Rights with Chinese Characteristics (or Human Rights under Socialism with Chinese Characteristics) may depend on the agenda and interpretation set forth by the Chinese leadership at any given time.¹³¹ Yet, one

RIGHTS IN CHINA (Nov. 1991), <http://www.china.org.cn/e-white/7/7-I.htm> (“Since 1979, China has switched the focus of its work to economic construction, begun reform and opening to the outside world, and set the goal of building socialism with Chinese characteristics. This has further expanded the social productive forces and enabled the nation to basically solve the problem of feeding and clothing its 1.1 billion people.”)

128. HRC Nat’l Rep. 2018, *supra* note 85, at 2.

129. COHEN & CHIU, *supra* note 8.

130. Michael D. Barr, *Lee Kuan Yew and the “Asian values” Debate*, 24 ASIAN STUD. REV., no. 3, 2000, 309, at 314–15 (quoting remarks of various Asian leaders in support of cultural relativism when discussing human rights while also noting that a number of Asian leaders expressed views opposing “Asian Values.”)

131. For Chinese discussions of the concept of Human Rights under Socialism with Chinese Characteristics when it was initially presented, see, e.g., Zhang Xiaoling (张晓玲), *Lun Zhongguo Tese Shehui Zhuyi Renquan Guan* (论中国特色社会主义人权观) [*On Human Rights Theory Under Socialism with*

can probably discern at least the following distinctive aspects of China's human rights rhetoric. First, as noted earlier, China emphasizes economic, social, and cultural rights and the rights to subsistence and development. China promotes development as "the priority" when describing the nation's human rights approach.¹³² It has even proposed that civil and political rights must depend on the level of overall social development, suggesting the need for sequencing and conditioning civil and political rights.¹³³ In the most recent Human Rights White Paper, released a month after China's 2018 UPR, the Chinese government reiterated the position that "the experience of numerous hardships taught the Chinese people that the rights to subsistence and development are the primary rights—the pre-conditions and the foundation for all other human rights."¹³⁴ This position is, of course, in contradiction with the funda-

Chinese Characteristics], BEIJING RIBAO (北京日报) [BEIJING DAILY] (May 4, 2009), theory.people.com.cn/GB/49150/49152/9232033.html; Chen Youwu (陈佑武) & Li Buyun (李步云), *Zhongguo Tese Shehui Zhuyi Renquan Lilun Tixi Lunhang* (中国特色社会主义人权理论体系论纲) [*Theoretical System of Human Rights Under Socialism with Chinese Characteristics*], ZHENGZHI YU FALÜ (政治与法律) [5 POL. & LAW] 54, 54 (2012); Huang Mengfu (黄孟复), *Zhongguo Renquan Shiye Chengxian Pengbo Fanzhang de Taishi* (中国人权事业呈现蓬勃发展的态势) [*Flourishing Development of China's Human Rights Enterprise*], RENQUAN (人权) [HUM. RTS.] (Apr. 27, 2013), http://www.humanrights.cn/cn/zt/qita/rqzz/2013/1/t20130427_1030674.htm. For recent discussions of this concept under Xi Jinping's leadership, see Liu Hainian (刘海年), *Shilun Xi Jinping dui Renquan Lilun de Xin Fazhang* (试论习近平对人权理论的新发展) [*The New Contribution to the Important Discourse on Human Rights by General Secretary Xi Jinping*], NANDU XUETAN (南都学坛) [ACADEMIC FORUM OF NANDU], No. 4 (2018), <https://www.iolaw.org.cn/showArticle.aspx?id=5711>, translation available at http://www.chinahumanrights.org/html/2019/MAGAZINES_0110/12533.html; Liu Huawen (柳华文), *Zhongguo Tese Shehui Zhuyi Renquan Guan—Jiehe Xi Jinping Zhi "2015 Beijing Renquan Luntan" Hexin de Jiedu* (中国特色社会主义人权观——结合习近平致“2015北京人权论坛”贺信的解读) [*The Socialist Outlook on Human Rights with Chinese Characteristics: Interpretation Based on the Xi Jinping Congratulatory Letter to the 2015 Beijing Forum on Human Rights*], GUOJIFA YANJIU (国际法研究) [CHINESE REVIEW OF INTERNATIONAL LAW], No. 5 (2016), <http://www.guojifayanjiu.org/Admin/UploadFile/Issue/ilqixmuw.pdf>.

132. See e.g., HRC Nat'l Rep. 2018, *supra* note 85, ¶ 7 (stating that "[t]his is a road that takes development as the priority" when explaining the term "the concept and theoretical system of human rights with Chinese characteristics.").

133. Kinzelbach, *supra* note 7, at 325, 331.

134. INFO. OFFICE OF THE STATE COUNCIL OF CHINA, PROGRESS IN HUMAN RIGHTS OVER THE 40 YEARS OF REFORM AND OPENING UP IN CHINA (Dec.

mental principle that all human rights are indivisible and interdependent.

Second, while the Chinese government often states that it respects universal human rights, it insists that other governments take account of its national conditions and the principles of sovereignty and non-interference with domestic affairs, which are interpreted by Chinese officials broadly and invoked liberally. China views criticism of its human rights record as interference with China's domestic affairs and condemnation of its detention of Chinese activists as an infringement of China's "judicial sovereignty."¹³⁵ This view fails to consider that a state bears legal obligations under customary international law and treaty law regarding human rights and that international scrutiny to ensure the state's accountability is not a violation of the principle of non-interference.

Third, China stresses the unity of duties and rights, as well as the unity of collective rights and individual rights. This position suggests that human rights should be conditioned on the performance of duties by the individual. The Chinese government has tried unsuccessfully to push this discourse into international human rights agendas¹³⁶ as it runs counter to the fundamental idea that human rights are inherent to all human beings, whether or not they fulfill certain duties.

In short, the characteristics of China's human rights proposition—that can be distinguished from Western-dominated human rights ideas and zealously promoted in Beijing's discourse—are apparently its statist views on development and its expansive notions of national conditions, sovereignty, and the principle of non-interference, as well as its minority position on the inseparability of duties and rights.

In 2013, after the PRC's second UPR, the Chinese delegation, in addition to condemning states that criticized China for politicizing human rights, stated, in emotionally-charged language: "Whether the shoes fit, only the person knows The Chinese are in the best position to know the situation of

2018), http://english.gov.cn/archive/white_paper/2018/12/13/content_281476431737638.htm.

135. Kinzelbach, *supra* note 7, at 320–323.

136. *Id.* at 311 (noting that China played a critical role in advocating a Declaration on Human Social Responsibilities, in which China promoted the ideas that rights and obligations were inseparable).

human rights in China.”¹³⁷ Underlying this rhetoric are identity-based, relativist politics to which Beijing is committed. In this view, the liberal philosophy embedded in the international human rights system as well as the global collective efforts of international and domestic civil society behind it are crudely reduced to *Western* values that are simply unsuited for the Chinese ways of life. This position ignores Asian societies that have adopted liberal values of human rights and openness, including most notably Taiwan, and fails to appreciate the cultural malleability of societies and the agency of individuals and groups in them. The Chinese government’s current rhetoric implies that the difference between China and other countries, particularly Western democracies, is not only a matter of policy, but also a matter of identity, which in Beijing’s view is inherent and entrenched, and therefore cannot be altered, negotiated or compromised.

Indeed, a typical argument by Beijing goes as follows: “China differs from the West in historical, cultural and religious background, economic development, political system and ideology. It is only natural that there exist differences between them on the issue of human rights.”¹³⁸ This kind of discourse tirelessly emphasizes culturally-rooted and innate differences between China and the West. While the concept of Chinese characteristics, similar to “Asian Values,”¹³⁹ may have the backing of some genuine cultural beliefs that distinguish the Chinese culture from others, we should note that the concept is

137. *UN Rights Review of China: Citizens’ Crucial Role*, HUMAN RIGHTS IN CHINA (Oct. 22, 2013), <http://hrichina.org/content/6991>. In the third UPR, China’s delegation reiterated the same position, stating that there is “more than just one path toward modernization and every country may choose its own path of development and model of human rights protection in the context of its national circumstances and its people’s needs.” Daniel Johnson, *China Hails Human Rights Progress Amid Calls to Close Detention Camps*, UN NEWS (Nov. 6, 2018), <https://news.un.org/en/story/2018/11/1025061>.

138. *Different Views Between China and the West on Human Rights: Official*, PEOPLE’S DAILY (Feb. 11, 2002), en.people.cn/200202/11/eng20020211_90299.shtml.

139. Barr, *supra* note 130, at 327–28 (“Although it is risky to apply the lessons derived from the study of Lee to anyone else, it does seem advisable to assume that regardless of ulterior, self-serving motives, many, if not most, advocates of “Asian values” also harbour genuine, culturally-based impulses that dispose them towards paternalism, authoritarianism and elitism.”).

being used by the Chinese government as a tool to shield itself from international scrutiny. This rhetoric, aided by constant references to sovereignty, non-interference, and national conditions, seeks to justify a fundamentally distinctive human rights philosophy, conveniently featuring a state-centered project pursuing growth and development, while at the same time weakening the role of people and political and civil liberties.

Furthermore, the fundamental flaw underlying China's notion of Human Rights with Chinese Characteristics are the questions of what are "Chinese characteristics" and who are the Chinese whom the PRC claims really understand and practice China's human rights reality. "Chinese" should surely include the diversity of voices in Chinese civil society. While there is reportedly a growing domestic awareness of human rights norms at the grassroots level in China, and ordinary Chinese people have attempted to participate in international human rights forums,¹⁴⁰ the party-state is determined to maintain absolute control over the kinds of voices that can represent China to the international audience. Chinese authorities have harassed and detained a number of Chinese activists who have sought to take part in international human rights processes. Cao Shunli, an activist who was prevented from going to Geneva for the UPR and died in detention, made incredibly valiant attempts to inform international society and promote human rights in China.¹⁴¹ The notion of Human Rights with Chinese Characteristics is fictional and unconvincing when it tries to mute all Chinese civil society voices.

However, as scholars observe, the international community has not openly and effectively confronted China regarding these views, allowing the government much space to sustain and expand its counter-discourse.¹⁴² What is at stake here is the integrity of the international human rights system. The discourse China repeatedly articulates in the UPR reports and various international fora can be treated as evidence of its

140. See generally HUMAN RIGHTS WATCH, *supra* note 3 (discussing how the Chinese government deters domestic activists).

141. U.N. Office of the High Comm'r for Human Rights, Deadly Reprisals: UN Experts Deplore the Events Leading to the Death of Chinese Human Rights Defender Cao Shunli, and Ask for Full Investigation (Mar. 18, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14394>.

142. Kinzelbach, *supra* note 7, at 332; Ahl, *supra* note 3, at 660.

opinio juris on human rights.¹⁴³ By constantly and consistently expressing a distinctive human rights philosophy, Beijing is launching a serious challenge to the very foundation of international human rights principles while silencing a variety of domestic voices that advocate for freedoms and human rights.

V. HOW THE GLOBAL POLITICAL CLIMATE SHAPES AND IS SHAPED BY CHINA'S AGENDA

Domestic and international civil society often rely on the robustness of the international human rights infrastructure to promote the public's rights awareness, to exert pressures on governments to improve rights protections, and to raise global standards. If the infrastructure is threatened or weakened, a global human rights backsliding may be in the offing. The following examines broader trends that may bolster the impact of China's activism discussed above and enhance the concomitant vulnerability of the international human rights regime. It further discusses potential developments that may limit China's relevant efforts.

First, although Beijing cannot change the international human rights system on its own and requires cooperation from and alliance with other nations, for years it has been able to mobilize allies in the HRC that share similar views, particularly authoritarian regimes. Beijing consistently draws support from states in the Like-Minded Group.¹⁴⁴ The governments of Russia, Egypt, Cuba, and Pakistan have been particularly active in joining China's forces in the Council as well as advancing their own agendas.¹⁴⁵

143. See e.g., Ahl, *supra* note 3, at 647 ("Given that almost all states participate in the UPR and are represented at a ministerial level, documents such as a state's national report can be treated as evidence of a state's *opinio juris* on human rights. If the precondition is accepted that clear evidence of *opinio juris* minimizes the requirement of consistent state practice, then the UPR could accelerate the forming of new customary law. If a state accepts a recommendation, though there is no corresponding obligation under public international law, the acceptance may be interpreted as a binding unilateral act, which establishes an autonomous obligation of the relevant state. Because China has not yet ratified the International Covenant on Civil and Political Rights (ICCPR), it could be argued that the PRC government enters into new binding human rights commitments via the UPR if it accepts recommendations that correspond to rights under the ICCPR.")

144. PICCONE, *supra* note 3, at 14.

145. *Id.*

In addition, China is seeking to exert greater influence on world affairs generally with the support of an even broader group of developing countries, especially those that rely on China economically. These trading partners and development aid recipients tend to back China's agenda in the HRC's voting, as well as elsewhere.¹⁴⁶ The "China Solution" proposed by Beijing, along with the BRI and other international outreach projects, claims to be "a pathway, or at least an example, for other nations seeking their own pathways toward development."¹⁴⁷ This model from China is appealing to many developing countries that have struggled to promote economic growth. The support of this group critically aids China's promotion of an illiberal agenda.

To be sure, the cause of human rights at the HRC suffers from other challenges as well, which may also be helpful from Beijing's point of view, including the recent exit of the United States. The European Union, for example, has criticized Trump's Washington for "undermining the role of the U.S. as a champion and supporter of democracy on the world stage."¹⁴⁸

It remains to be seen in what ways and to what extent the U.S. withdrawal will impede the Council's work over the long term and, indeed, whether the U.S. departure will be permanent. The international community should not exaggerate the significance of the U.S. departure from the HRC. There are other important platforms for advancing global human rights, even within the United Nations, such as the human rights treaty body system; the General Assembly's Third Committee, which is in charge of agenda items relating to a range of social and humanitarian affairs and human rights issues, and its Fifth Committee, which is responsible for administrative and budgetary matters, including budget for human rights work; the Security Council, which considers humanitarian issues; and other global fora and inter-state summits that can potentially serve as high-profile venues to raise human rights issues.

146. *Id.* at 1, 13–14.

147. Brahm, *supra* note 64.

148. Lesley Wroughton & Michelle Nichols, *U.S. Quits U.N. Human Rights Body, Citing Bias vs. Israel, Alarming Critics*, REUTERS, June 19, 2018, <https://www.reuters.com/article/us-un-rights-usa/u-s-quits-u-n-human-rights-body-citing-bias-vs-israel-alarming-critics-idUSKBN1JF24X>.

Yet, there will be some immediate consequences of the U.S. departure, including potential reductions to Council funding.¹⁴⁹ More importantly, member states of the HRC that usually partner with the United States, including the E.U. members, will likely find it more difficult to rally forceful support. Perhaps most profoundly, Washington's withdrawal symbolizes a weakened voice of democracies and a morale boost to China, Russia, and other authoritarian countries.¹⁵⁰ The U.S. accusation that the Council is politicized does nothing but further sully the reputation of the Council. Washington may one day decide to return to the HRC when U.S. policy or leadership changes, but considerable damage will have been done.

European democracies, particularly Germany and France, have been routinely outspoken in cases of the PRC's human rights violations, and the European Union, which has observer status in the Council, has been a leading actor in the multilateral human rights system. The European Union has consistently opposed China-sponsored resolutions and amendments in the HRC.¹⁵¹ However, new worries have arisen as to whether the resistance from these actors in the global human rights regime can continue to be vigorous. The past few years have

149. The U.S. government has announced a decision to cut funding to the U.N. Human Rights Council. Patrick Goodenough, *Bolton Confirms That the U.S. Will Defund UN Human Rights Office*, CNSNews (Aug. 24, 2018), <https://www.cnsnews.com/news/article/patrick-goodenough/us-taxpayers-are-already-saving-administration-confirms-decision>. However, the Council's funding from the UN regular budget (approximately 40% of the Council's total funding) cannot be specifically targeted by the U.S. cut. Yet, the United States is likely to also eliminate voluntary contributions to the Council (the United States contributed U.S. \$20 million in 2017). *OHCHR's Funding and Budget*, U.N. OFFICE OF THE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/en/aboutus/pages/fundingbudget.aspx> (last visited Apr. 12., 2019); U.N. Office of the High Comm'r for Human Rights, *Voluntary Contributions to OHCHR in 2017*, <https://www.ohchr.org/Documents/AboutUs/FundingBudget/VoluntaryContributions2017.pdf> (last updated Apr. 24, 2018).

150. See e.g., *China Says It Regrets U.S. Quitting U.N. Rights Council*, REUTERS, June 20, 2018, <https://www.reuters.com/article/us-un-rights-USA-china/china-says-it-regrets-u-s-quitting-u-n-rights-council-idUSKBN1JG0W1> ("The official publication of China's top anti-graft watchdog said in a commentary on Wednesday the U.S. decision to leave the council 'has put the American peoples' boastful image of being a defender of human rights on the verge of collapse'").

151. PICCONE, *supra* note 3, at 15.

witnessed a European Union torn by Brexit and weakened by a moral crisis in terms of how to deal with massive, unwanted immigration flows. Economic uncertainties have also heightened the importance of trade links to China. Moreover, the EU's preoccupation with terrorism may make it harder to challenge China's human rights abuses that are ostensibly committed to safeguard national security.¹⁵²

International stakeholders, foreign governments, and international and civil society groups are left with limited policies, resources, and means to address the old and new challenges China poses on these diverse fronts. Engagement and cooperation, the two oft-mentioned strengths of the international human rights regime, have not been sufficiently effective in dealing with China.

First, the human rights engagement approach—long valued by the European Union, other democratic countries, and international non-governmental organizations—is likely to continue to be a largely ineffective exercise when facing a China that simply refuses to be engaged. When China resolutely avoids any genuine discussion of its human rights practices, the exercises that purport to examine its human rights record—often filled with China's recitations of laws, regulations, and other unenforced measures—are nothing more than window-dressing.¹⁵³ China's frequent use of discrediting tactics and bias accusations also damages the trust necessary to facilitate engagement. Beijing also uses inter-state and “track one and a half” dialogues to whisk away human rights issues into quiet, closed-door meetings that help it avoid interna-

152. *See id.* (noting that the competition of pro-nationalist parties in Europe and the “[r]eal and perceived threats from terrorism and migration” may have the effect of “dampening mainstream parties’ support for strengthening the current international human rights regime”).

153. *See, e.g.,* KATRIN KINZELBACH, *THE EU'S HUMAN RIGHTS DIALOGUE WITH CHINA: QUIET DIPLOMACY AND ITS LIMITS* 195 (2015) (noting that the attitudes of Chinese participants in the EU-China Human Rights Dialogue from 1995 to 2010 turned from “purposely hypocritical” to “openly uninterested” while European participants turned from “fairly optimistic” to “entirely ceremonial.”). *But see* Margaret K. Lewis, *Human Rights and the U.S.-China Relationship*, 49 *GEO. WASH. INT'L L. REV.* 471, 487–89 (2017) (arguing that, while bilateral human rights dialogues are not going to produce human rights progress in China under the current leadership, they are still valuable in laying the groundwork for more substantive long-term cooperation).

tional condemnation and public embarrassment. It routinely lists in international reporting an array of bilateral human rights dialogues as one of its many proud human rights cooperation achievements. Yet, the impact of the dialogues, which reportedly are often frustrating to the PRC's dialogue partners, seems to favor Beijing's propaganda more than the cause of human rights. Moreover, China is expanding human rights dialogues on its own terms, including the Beijing-led South-South Human Rights Forum,¹⁵⁴ intensifying the efforts to export the China Solution.

Notable is the lack of consideration of human rights in China's state-centered development approach. Many have criticized China's BRI for being a "debt trap" for developing countries,¹⁵⁵ but not enough attention has been given to how the China Solution may be detrimental to developing countries because of the price of its human rights violations. This is apparent in numerous cases in China itself, as illustrated by forced demolition and land taking; extremely unequal development, especially for disadvantaged groups; unreflective disrespect for economic, social, and cultural rights; and relentless suppression of civil and political rights, including civil society efforts to expose corruption and complaints about the failings of the development program.

Second, genuine human rights cooperation among contending states seems unlikely. China has continued to accuse the West of being "anti-China," and using human rights as a pretext to intervene in China's internal affairs.¹⁵⁶ In this discourse, not only the West but also human rights are stigmatized and denigrated. "Western human rights ideas" are said to be harmful and not suitable for the East,¹⁵⁷ although recent

154. *Supra* note 65.

155. See, e.g., *China's Belt and Road Initiative: Debt Trap or Hope?*, STRAIT TIMES (Oct. 20, 2018), <https://www.straitstimes.com/asia/east-asia/chinas-belt-and-road-initiative-debt-trap-or-hope>.

156. *Writing a New Chapter of International Human Rights Exchanges and Cooperation*, CHINA DAILY (Dec. 8, 2017), <http://www.chinadaily.com.cn/a/201712/08/WS5a29e8a2a3101a51ddf8da09.html>.

157. See, e.g., André van der Braak, *What Would a Community of Shared Future for Mankind Look Like in the Area of Human Rights*, CHINA SOC'Y FOR HUM. RTS. STUD. (Dec. 22, 2017), http://www.chinahumanrights.org/html/2017/PAPERS_1222/9990_2.html (criticizing imperialistic "western human rights ideas").

history has seen the successful development of Asian countries that largely protect civil and political rights as well as economic, social, and cultural rights, including neighboring Japan, South Korea, and Taiwan. While China competes with the West in ideology and more, it poses itself as a leading voice for the global South. Its efforts are likely to deepen political polarization and the North-South divide in the Council and in other international fora.¹⁵⁸ In this climate, it is a daunting task for contending states to bring about genuine cooperation or even to agree upon common goals.

In light of Beijing's current apparent confidence in asserting its distinctive identity, the popular assumption at the time that China's Reform and Opening-Up began four decades ago—that the Chinese party-state might come to share similar goals with democracies in liberalizing its market, opening its society, democratizing its government, and enhancing global human rights protection—is plainly outdated, at least under the Xi Jinping regime. The PRC's present leadership is using a discourse deeply rooted in Chinese culture and society to create a deep chasm between China and the West. It disagrees with the liberal democracies of the East as well as the West not only in terms of whether human rights policies are good on their merits, but also, more deeply, in terms of *who we are*. The world faces the urgent task of understanding today's the agenda of today's Chinese regime.

Yet there is indeed a growing awareness of, and even hostility toward, China's global agenda. This sentiment does not always concern China's human rights record; often, it is inspired by nationalistic political concerns and worries about economic competition. However, China's potential influence on the human rights practices of other countries is increasingly under scrutiny. There are a number of cases in point. A recent

158. See e.g., PICCONE, *supra* note 3, at 14 (discussing the competition in voting between the Western bloc and the Like-Minded Group, which supports China); Ingrid Wuerth, *International Law in the Post-Human Rights Era*, 96 TEX. L. R. 279, at 315 (noting that "voting on human rights plays a large role in the measures of polarization within the U.N." and there tends to be bloc voting in the Human Rights Council with China, Russia and developing countries voting as a bloc to oppose Western human rights agendas); Simon Hug, *Dealing with Human Rights in International Organizations*, 15 J. HUM. RTS. 21, 21 (finding that the degree of polarization in the Human Rights Council is slightly higher than its predecessor the Commission on Human Rights).

important report that details how China seeks to influence American society warns that Confucius Institutes based in American universities harm academic freedoms in the United States.¹⁵⁹ In another example, the Australian government, after intense debate, decided not to proceed with the ratification of the extradition treaty that it signed with China in 2007, largely due to serious concerns about China's human rights violations and its unfair legal procedures.¹⁶⁰ Most recently, Beijing's human rights violations stunned many foreign diplomats and scholars when it, in apparent political retaliation for Canada's cooperation with a U.S. extradition request,¹⁶¹ detained and initiated prosecution against two Canadians, and a Chinese court imposed the death sentence upon a third Canadian after an unusual retrial that reversed a lighter sentence.¹⁶² China's aggressive push in the international human rights system may attract increasing responsiveness and resistance as international attention gradually turns to China's

159. HOOVER INSTITUTE, CHINESE INFLUENCE & AMERICAN INTERESTS: PROMOTING CONSTRUCTIVE VIGILANCE 41 (Larry Diamond & Orville Schell eds., 2018), https://www.hoover.org/sites/default/files/research/docs/chineseinfluence_americaninterests_fullreport_web.pdf ("Accusations leveled at [Confucius Institutes] revolve mainly around the exclusive use of PRC materials that promote PRC Chinese viewpoints, terminology, and simplified characters; the avoidance of discussion on controversial topics such as Tibet, Tiananmen, Xinjiang, the Falun Gong, and human rights in American classrooms and programs; and potential infringement on theoretically independent studies curricula on American campuses.").

160. E.g., Kevin Boreham, *Explainer: Why the Government 'Pulled' Australia's Extradition Treaty with China*, CONVERSATION (Mar. 27, 2017), <https://theconversation.com/explainer-why-the-government-pulled-australias-extradition-treaty-with-china-74984>; Stephen Dziedzic, *Australia-China Extradition Treaty Pulled by Federal Government After Backbench Rebellion*, ABC NEWS (Mar. 27, 2017), <https://www.abc.net.au/news/2017-03-28/government-pulls-australia-china-extradition-treaty/8392730>.

161. *China Will Take Revenge If Canada Does Not Restore Meng Wanzhou's Freedom*, GLOBAL TIMES (Dec. 12, 2018), www.globaltimes.cn/content/1131615.shtml.

162. Chris Buckley & Catherine Porter, *Scholars and Ex-Diplomats Warn of Chill After Canadians Detained in China*, N.Y. TIMES (Jan. 21, 2019), <https://www.nytimes.com/2019/01/21/world/asia/china-canada-michael-kovrig-michael-spavor.html>; Sarah Zheng, *Canadian Robert Schellenberg Sentenced to Death in China for Drug Trafficking, PM Justin Trudeau Vows to 'Intercede'*, SOUTH CHINA MORNING POST (Jan. 14, 2019), <https://www.scmp.com/news/china/diplomacy/article/2182007/chinese-court-canadian-drug-smuggling-accuseds-defence-attack>.

most troubling rights practices, such as the current massive repression of its Muslim citizens.

VI. CONCLUSION

China, a crucial member of international organizations and possessed of increasingly formidable military, political, and economic clout, has recently sought to exert influence commensurate with its power by actively participating in the international human rights regime. Beijing seeks to shape the regime in the service of its authoritarian agenda, and weaken those institutions and norms that are incompatible with its domestic policies and practices. Especially after Xi Jinping assumed the country's leadership in late 2012, Beijing's international approach has expanded apace, from a defensive position to one that is proactive and assertive in many aspects of international relations. It is increasingly taking a leading role to advance its distinctive, controversial notions of human rights, while also seeking to circumvent international scrutiny of its questionable human rights record. China's impact is not limited to the international human rights regime. Future research can focus on how China influences global governance not only in human rights but also in other fields, as well as how other countries reacts to China's agenda.

This article finds that, in the HRC, Beijing's strategies to achieve its agenda are three-pronged: distorting procedures, undercutting institutional strength, and diluting conventional human rights norms. The PRC further proposes the concept of Human Rights with Chinese Characteristics, featuring a statist, development-as-top-priority view that departs from the principle of accountability, the indivisibility and interdependence of human rights, and the people-centered, rights-based framework that underlies the very foundation of international human rights. Moreover, the notion of Human Rights with Chinese Characteristics is unconvincing as long as Beijing continues to stifle Chinese civil society.

By posing China's path as an alternative solution that is inherently different from that of the West, Beijing has played identity-based, relativist politics to shield itself from outside scrutiny in the HRC and elsewhere, and to blunt the strength of the international human rights regime. Several trends in the global environment seem helpful to China's agenda.

Other authoritarian regimes and developing countries whose views are aligned with China's share an interest in advancing their common goals. Moreover, liberal democracies now have a weakened voice in the international human rights system, further contributing to the system's vulnerability.

In the current global climate, governmental and non-governmental stakeholders remain with limited policies, resources and means to address Beijing's HRC policies and practices. Indeed, the approach of engagement and cooperation continues to be largely ineffective, given China's refusal to be engaged and its relentless campaign to stigmatize what it considers to be Western human rights ideas. Yet, it should also be noted that, thus far, China's efforts have met only mixed success. There is a growing international awareness of the PRC's troubling rights record and its influence on other countries' attitudes toward human rights. How the interaction of current dynamics will play out in the long-run is uncertain. For the time being, dealing with an increasingly assertive and influential China may prove to be the gravest challenge confronting the global human rights regime.