

China and the International Human Rights Regime: 1982-2011

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Abstract

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This thesis examines the People's Republic of China's posture toward the international human rights regime between 1982 and 2011. It focuses on three case studies, including China's participation in the drafting and adoption of the Convention against Torture and the Optional Protocol to the Convention against Torture, its role during the negotiations to replace the UN Commission on Human Rights with the UN Human Rights Council, and its posture in the International Labour Organization's Conference Committee on the Application of Standards. To explain China's conduct in these contexts, I offer a framework of five possible roles a state can adopt toward a regime—maker, promoter, taker, constrainer, and breaker. I argue that China's posture was determined by three key explanatory variables that include the PRC government's preferences and ideas about international human rights, its concerns with cultivating a positive international image, and the degree of its familiarity with the international human rights regime. In addition, China's willingness and ability to work with other countries acted as a scope condition that influenced the manner in which it played its particular role. Although I find that the PRC played a range of roles, including maker, taker, and constrainer, overall it tended toward a low-profile posture even when it was playing the more demanding role of maker or constrainer. This thesis draws on documentary records, including United Nations reports, International Labour Organization reports, UN Human Rights Council documents, Chinese government statements, and reports from non-governmental organizations, including the International Service for Human Rights and Amnesty International's New York office. It also uses material from over 90 interviews conducted with diplomats from a range of countries, including China and key countries with similar views such as Pakistan and Egypt; representatives of non-governmental organizations that participate in the international human rights regime; and Chinese officials and scholars, including several affiliated with the Chinese government.

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It was in the halls of the 7th floor of the State Department that I not only became interested in the issues explored in this thesis but also where I met and fell in love with my husband, Will. I knew that I wanted to marry him when I described him to a friend as "the best man I know." Three continents, four cities, one baby and one dissertation later, I can still say that. The process of writing this dissertation has given me a deeper appreciation

for Will who at various times served as editor, chef and protector. He has been a source of love, support and encouragement, even accompanying me on research trips, including spending a month in China. Most importantly, he is a reminder to me that "Every good gift and every perfect gift is from above, coming down from the Father of lights..." His scholarship, leadership, and faith are a constant guide and inspiration to me. It is to him that I dedicate this thesis.

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Table of Contents

List of Figures and Tables.....	vi
Notes on Names and Terms.....	vii
Abbreviations.....	viii
Chapter One	
Introduction.....	1
Chapter Two	
China's Evolving Posture Toward International Regimes: 1949-2011.....	62
Chapter Three	
China, the Convention against Torture, and the Optional Protocol to the Convention against Torture: 1982-2002.....	112
Chapter Four	
From the UN Commission on Human Rights to the Human Rights Council: China and the Establishment of the Human Rights Council, 2004-2007.....	160
Chapter Five	
China and the International Labour Organization's Conference Committee for the Application of Standards: 1983-2011.....	214
Chapter Six	
Conclusion.....	263
Bibliography.....	283

List of Figures and Tables

Figure 1: Possible State Roles.....	32
Figure 2: Number of Countries that Have Ratified Conventions 87, 98, 29, 105, 100, 111, 138 and 182.....	245
Table 1: China's Involvement with the Human Rights Regime.....	80
Table 2: UN Voting on the Optional Protocol to the Convention against Torture.....	134
Table 3: PRC and Other State Voting on the Optional Protocol to the Convention against Torture.....	147
Table 4: Key Differences Between the UN Commission on Human Rights and the UN Human Rights Council.....	168
Table 5: PRC Statements During CCAS Examination of Countries.....	228
Table 6: Countries Examined, including Countries the PRC Spoke on Behalf of.....	232
Table 7: PRC Statements During the Special Sitting on Myanmar.....	237
Table 8: ILO Fundamental Conventions Ratified by China.....	244
Table 9: China Reviews Before the CCAS (including Hong Kong).....	246
Table 10: UN Commission on Human Rights Voting on PRC Resolution No-action Motion.....	249
Table 11: Statements by Select Countries During China's February 2009 UPR.....	253

Notes on Names and Terms

In this thesis, all Chinese terms, except for well-known terms such as *Kuomintang*, are transcribed in the pinyin transliteration system.

For Chinese officials, China-based scholars and authors of Chinese-language works, names are written with the family name preceding the given name. For authors with Chinese names but writing in English, the names are written with the given name first.

Abbreviations

ACFTU	All-China Federation of Trade Unions
APT	Association for the Prevention of Torture
BWC	Biological Weapons Convention
CASS	Chinese Academy of Social Sciences
CAT	Convention against Torture
CD	Conference on Disarmament
COE	Committee of Experts on the Application of Standards of the International Labour Organization
CCAS	Conference Committee on the Application of Standards of the International Labour Organization
CCP	Chinese Communist Party
CRG	Cross Regional Group
CSHR	China Society of Human Rights
CTBT	Comprehensive Nuclear-Test Ban Treaty
CWC	Chemical Weapons Convention
ECOSOC	Economic and Social Council
ECPT	European Convention on the Prevention of Torture
G77	The Group of 77
GA	General Assembly
GATT	General Agreement on Trade and Tariffs
GRULAC	Group of Latin American and Caribbean Countries
IB	Institution-Building
ICCPR	International Covenant on Civil and Political Rights
ILC	International Labour Conference
ILO	International Labour Organization
IMF	International Monetary Fund
ISHR	International Service for Human Rights
ITUC	International Trade Union Confederation
LMG	Like-Minded Group
MFA	Ministry of Foreign Affairs
NAM	Non-Aligned Movement
NGOs	Non-governmental Organizations
NPC	National People's Congress
NPT	Non-proliferation Treaty
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organization of the Islamic Conference
OPCAT	Optional Protocol to the Convention against Torture
POSA	Public Order and Security Act
PRC	People's Republic of China
R2P	Responsibility to Protect
ROC	Republic of China
SPT	Subcommittee on the Prevention of Torture
UN	United Nations
UNCHR	UN Commission on Human Rights
UNHRC	UN Human Rights Council
UPR	Universal Periodic Review
USSR	Union of Soviet Socialist Republics
WTO	World Trade Organization

Chapter 1

Introduction

Introduction: Central Research Question

China's participation in international regimes is one of the most significant developments in Chinese foreign policy associated with the leadership's decision in late 1978 to engage in 'Reform and Opening.' The People's Republic of China (PRC) has moved from isolation in the 1960s to active involvement in multilateral organizations by the mid-1990s. As part of this trend, Beijing has become increasingly engaged with the international human rights regime, including ratifying five of the seven major human rights instruments; joining the United Nations Commission on Human Rights (UNCHR), now the UN Human Rights Council (UNHRC); and submitting to international human rights monitoring by participating in the Universal Periodic Review and providing reports to a number of human rights treaty bodies.¹ Further, China has voluntarily sought opportunities to play other key roles, including drafting various human rights instruments.² At the same time, China's growing involvement in the human rights regime coexists with

¹ China has signed and ratified the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child. China has signed but not ratified the International Covenant on Civil and Political Rights.

² China has participated in the drafting of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families and the Convention on the Protection of Workers' Rights, the Declaration on the Protection of Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities. See also Information Office of the State Council of the People's Republic of China, *Human Rights in China 1991* (Beijing: Information Office of the State Council of the People's Republic of China, 1991), Section X: Active Participation in International Human Rights Activities, <http://china.org.cn/e-white/>.

ongoing domestic human rights abuses, as well as support for rights-abusing regimes such as North Korea.³

China's participation in the human rights regime leads to a number of scholarly and policy questions that are related to debates about whether a resurgent China will be a revisionist or status quo power. For example, what kind of roles has the PRC played in the human rights regime? What are the determinants of China's posture toward the regime? What is the nature and quality of its participation? These critical and under-examined questions are important because by many accounts China is not in substantive compliance with international human rights norms. Thus, its active and voluntary participation in the human rights regime is puzzling.⁴ For example, how can China seek membership in bodies such as the UN Human Rights Council while using repression to quell domestic dissent? Unlike other regimes, such as the World Trade Organization where China stands to gain reciprocal benefits, it is not immediately obvious why China participates in the human rights regime or how it benefits from participation.

To put the question in terms of the typology developed by Stephen Krasner, has China acted as a "maker," "breaker" or "taker" of the regime?⁵ Other possible roles include "constrainer," in which a state seeks to weaken the regime or prevent it from

³ See for example, U.S. State Department, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices 2013, China* (Washington, DC: U.S. State Department, 2013), www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper.

⁴ Zhu Yuchao makes a similar point. See Zhu Yuchao, "China and International Human Rights Diplomacy," *China: An International Journal* 9, no. 2 (September 2011): 220. Also, Mitter observed that there are no immediate penalties for not joining human rights bodies. Rana Mitter, "An Uneasy Engagement: Chinese Ideas of Justice and Order in Historical Perspective," in *Order and Justice in International Relations*, eds. Rosemary Foot, John Lewis Gaddis, and Andrew Hurrell (Oxford: Oxford University Press, 2003), 227. For similar comment, see Rosemary Foot, *Rights Beyond Borders: The Global Community and the Struggle over Human Rights in China* (Oxford: Oxford University Press, 2001), 10.

⁵ Stephen D. Krasner, "United States Commercial and Monetary Policy: Unraveling the Paradox of External Strength and Internal Weakness," in *Between Power and Plenty: Foreign Economic Policies of Advanced Industrial States*, ed. Peter J. Katzenstein (Madison, Wisconsin: The University of Wisconsin Press, 1983), 52.

developing further, and “promoter,” whereby a state introduces reforms to strengthen and expand the regime.⁶ In examining China’s role in the human rights regime, I have chosen to employ Krasner’s definition of regimes—that is, the “principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area.”⁷ Although Krasner’s definition has been criticized for its complexity, lack of precision, and the overlap among some of the components, it remains widely used, is comprehensive and captures the elements of regimes that are pertinent to this thesis.

In order to tackle these questions, I document China’s behavior in three parts of the human rights regime, including participating in drafting international conventions to combat torture, negotiating reform of the UN’s primary human rights institution, and participating in one of the International Labour Organization’s (ILO) monitoring bodies. These cases represent varied human rights issues, including torture and labor rights, and a number of different institutional settings, such as drafting sessions, institutional reform negotiations that included both highly public discussions and smaller meetings confined to states and UN officials, and a public review of state compliance with ratified ILO treaties. The parts of the regime represented in this thesis, include components assumed to be both hard and easy cases, such as the Optional Protocol to the Convention Against Torture and the ILO Conference Committee on the Application of Standards, respectively. My case

⁶ Schweller and Pu discussed other potential roles, including “spoiler” and “shirker.” Randall L. Schweller and Xiaoyu Pu, “After Unipolarity: China’s Visions of International order in an Era of U.S. Decline,” *International Security* 36, no. 1 (Summer 2011): 41-72.

⁷ Stephen D. Krasner, ed., *International Regimes* (Ithaca, New York: Cornell University Press, 1983), 2. Krasner elaborated that “Principles are beliefs of fact, causation and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescription or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.” For discussion of the strengths and weaknesses of this definition, see Oran R. Young, “International Regimes: Problems of Concept Formation,” *World Politics* 32, no. 3 (April 1980): 331-56; Oran R. Young, “International Regimes: Toward a New Theory of Institutions,” *World Politics* 39, no. 1 (October 1986): 104-22; and Andreas Hasenclever, Peter Mayer, and Volker Rittberger, eds., *Theories of International Regimes* (Cambridge: Cambridge University Press, 1997), 8-14.

selection provides sufficient variation and diversity to assess the explanatory weight of my three main variables, providing a real test of the key influences on PRC behavior. The time period covered, which spans nearly three decades and the periods before and after the 1989 Tiananmen Square crackdown, further strengthen my findings. The opacity of the political system prevents access to potentially useful research materials, such as confidential government documents, and restricts access to interview subjects. Thus, in the absence of more direct evidence on China's motivations, such as PRC policy documents, some of these explanatory factors can be inferred from its behavior.⁸

In this thesis, I put forward an explanation that includes three main variables that together best account for the PRC posture toward the regime. These variables include the PRC government's beliefs about human rights (beliefs that may be shared by a wider Chinese population); Chinese officials' concern with international image; and the degree of Chinese governmental familiarity with the regime. Of these variables, I argue that the PRC's concern with its international image and its ideas on human rights were the stronger influences, and that when forced to make a choice between the two, Beijing opted to protect its image.

I also argue that China's ability and willingness to work with other countries acted as a scope condition that affected the degree and manner in which the PRC played its particular role. This scope condition had two contradictory effects. First, because Beijing found there were other countries that supported a number of its human rights views, this may have reinforced PRC human rights ideas and positions. Second, it also led to the

⁸ Similar point made by Andrew Nathan, "China and the International Human Rights Regime," in *China Joins the World: Progress and Prospects*, ed. Elizabeth Economy and Michael Oksenberg (New York: Council on Foreign Relations, 1999), 148.

somewhat contradictory result of moderating PRC behavior as Chinese diplomats allowed other countries to take more prominent and vocal positions.

This overview chapter will first discuss the broader significance of this topic. Second, it reviews the existing literature and relevant international relations theories. Third, in order to build a conceptual framework, the five typologies mentioned above will be further developed. It will then turn to explicating the three variables affecting PRC behavior toward the human rights regime, as well as the scope condition identified above. Finally, it will address the research design, methodology and sources employed.

Broader Significance

The questions this thesis explores are not trivial, especially as China has begun to play a more active role in global affairs and in international regimes. Even prior to China's entry into the UN, policymakers and scholars debated whether integration would ultimately change China or whether China would seek to alter the international system. During the PRC's isolation, arguments favoring engagement were based on the assumption that China would ultimately be changed or even "civilized" through international participation and that it would become increasingly cooperative and supportive within the international system.⁹ Some proponents of engagement, including Richard Nixon who as a presidential candidate wrote his famous 1967 *Foreign Affairs* article, made the case that it was dangerous to let China remain outside the "family of nations."¹⁰ On the opposite side of the debate, others argued that Beijing would be a disruptive addition to the United

⁹ Lincoln P. Bloomfield, "China, the United States, and the United Nations," *International Organization* 20, no. 4 (Autumn 1966): 664.

¹⁰ Richard Nixon, "Asia After Vietnam," *Foreign Affairs* 46, no. 1 (October 1967): 111-25.

Nations. A 1966 *International Organization* article warning of the dangers of PRC membership argued that: “Above all, it should be understood that the UN is not going to serve as a reform school for Peking... at best it can be a marginal aid in the urgent process of bringing China to terms with the established order.”¹¹

Although the PRC is now an active participant in international regimes, the extent to which it has accepted, adapted to, or tried to subvert international regimes remains a contested question. Almost fifteen years ago, Thomas Christensen observed that “Chinese elites are suspicious of many multilateral organizations, including those devoted to economic, environmental, nonproliferation, and regional security issues. In most cases, China joins such organizations to avoid losing face and influence... Chinese analysts often view international organizations and their universal norms as a front for other powers.”¹² More recently, in a 2010 *Foreign Affairs* article, Elizabeth Economy asserted that China has “launched a ‘go out’ strategy designed to remake global norms and institutions” and that “China has become a revolutionary power.”¹³ Yet other scholars maintain that the PRC has not pursued revisionist policies in the reform era. For example, in a 2003 article, Alastair Iain Johnston argued that “to the extent that one can identify an international community on major global issues, the PRC has become more integrated into and more cooperative within international institutions than ever before.”¹⁴

¹¹ Bloomfield, “China, the United States, and the United Nations,” 665.

¹² Thomas J. Christensen, “Chinese Realpolitik,” *Foreign Affairs* 75, no. 5 (September/October 1996): 37.

¹³ Elizabeth C. Economy, “The Game Changer: Coping with China’s Foreign Policy Revolution,” *Foreign Affairs* 89, no. 6 (November/December 2010): 142.

¹⁴ Alastair Iain Johnston, “Is China a Status Quo Power?” *International Security* 27, no. 4 (Spring 2003): 49. Johnston noted the complexity of this research question given that the definitions of status quo and revisionist are vague and under-theorized.

China's relationship with international regimes is also relevant to current policy concerns. As a 2008 U.S. Congressional study put it, "China's robust international engagement has caught many by surprise and prompted growing American debate over the PRC's motivations and objectives."¹⁵ Thus, uncovering China's role and explicating key explanatory variables will help provide insight for policy makers as they seek to comprehend PRC influence in the international system and design policies to encourage Chinese cooperation. Answers to these questions take on greater importance as China's ability to influence international regimes increases. As scholar Ann Kent noted, the PRC plays a part "in adding to, or subtracting from, the general environment of international cooperation. How it shapes those rules and uses that influence is therefore critical."¹⁶

With respect to the human rights regime, this thesis sheds light on whether the regime has shaped and influenced China or has itself been shaped and influenced by China. Or is it a mutually constitutive relationship in which both China and the regime have been undergoing change? My work also contributes to a broader understanding of China's foreign policy behavior, including whether a rising China will bolster or contest other existing international regimes, and the motivations and drivers of PRC foreign policy behavior. For example, does China act out of realism-inspired motivations, such as security and power, or do ideas play a role?

Limited work on China and the international human rights regime has been undertaken in the past decade. Thus, a contemporary exploration could yield much

¹⁵ Kerry Dumbaugh, *Congressional Research Service Report for Congress, China's Foreign Policy: What Does it Mean for U.S. Global Interests* (Washington, D.C.: Congressional Research Service, July 18, 2008), 1.

¹⁶ Ann Kent, *Beyond Compliance: China, International Organizations and Global Security* (Stanford: Stanford University Press, 2007), 3.

potential insight. In a number of ways China is a least-likely case for cooperation in the human rights regime. As noted previously, according to credible reports, the Chinese government engages in serious human rights violations. Moreover, the Chinese Communist Party-led government has challenged the notion of universal human rights using particular interpretations of state sovereignty, Asian values, and developmental arguments.¹⁷ Thus, the human rights regime represents a subject where there may be wide divergence between China and the international regime.¹⁸

It could be argued that China's status as a rising power also makes it a least-likely case for acceptance of existing international regimes. Some versions of realism suggest that rising powers will almost inevitably disrupt the international system, with Wilhelmine Germany and Imperial Japan offered as typical examples.¹⁹ While much of this literature has had a slightly different focus, emphasizing rising powers and the potential for conflict or war, the relevant point is that rising powers are assumed to be dissatisfied with the status quo. For instance, Robert Gilpin, working within the realist tradition, maintained that as the power distribution changes in the international system countries that gain power will "seek to alter the system in ways that favor their interests"²⁰ and that "a rising state attempts to change the rules governing the international system, [and] the division of the

¹⁷ China has tended toward a Westphalian view of sovereignty. For an overview of China's evolving views of sovereignty, see Allen Carlson, "More Than Just Saying No: China's Evolving Approach to Sovereignty and Intervention Since Tiananmen," in *New Directions in the Study of China's Foreign Policy*, eds. Alastair Iain Johnston and Robert S. Ross (Stanford: Stanford University Press, 2006), 217-41. For a description of China's use of Asian values and developmental arguments, see Nathan, "China and the International Human Rights Regime."

¹⁸ This divergence is described in Michael Sullivan, "Developmentalism and China's Human Rights Policy," in *Debating Human Rights: Critical Essays from the United States and Asia*, ed. Peter Van Ness (New York: Routledge, 1999), 120-143.

¹⁹ See for example, A.F.K. Organski and Jacek Kugler, *The War Ledger* (Chicago: University of Chicago Press, 1980). The underlying ontological orientation of most realist scholarship sees rising powers as necessarily dissatisfied with the existing system.

²⁰ Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981), 9.

spheres of influence...”²¹ As Lawrence Freedman has noted, “On some versions of realism, China is almost bound to seek to reshape the international system to suit its own needs, however long it takes...”²² China’s status as a rising power makes my findings particularly salient to theoretical work on ascendant powers and their posture toward existing regimes.²³

My findings suggest that even as an ascendant power, China has not sought to overturn the regime. I find that in two instances, the PRC sought to either make or constrain the human rights regime. However, the PRC did not act as a breaker of the regime and tended to pursue changes in response to instances when it felt that the regime was damaging its international image. Further, even when it sought to alter the regime, it did so in a low-key way, relying on like-minded countries to take more strident positions. This behavior and its positions suggest that the categories status quo or revisionist power fail to fully capture Beijing’s posture.

This thesis makes another major contribution by explicating the potential roles that states can play in international regimes, suggesting a variety of variables that need to be considered in any attempt to explain state behavior. My research also casts light on the methods a state might use to alter a regime and helps to explain the circumstances in which

²¹ Ibid., 187.

²² Lawrence Freedman, “China as a Global Strategic Actor,” in *Does China Matter? A Reassessment: Essays in memory of Gerald Segal*, eds. Barry Buzan and Rosemary Foot (New York: Routledge, 2004), 29.

²³ On China’s rise, see Michael E. Brown, Owen R. Cote, Jr., Sean M. Lynn-Jones, and Steven E. Miller, eds., *The Rise of China* (Cambridge, Massachusetts: The MIT Press, 2000); Randall L. Schweller, “Rise of Great Powers: History and Theory,” in *Engaging China: the Management of an Emerging Power*, eds. Alastair Iain Johnston and Robert S. Ross (London: Routledge, 1999), 1-31; David S.G. Goodman and Gerald Segal, eds., *China Rising: Nationalism and Interdependence* (London: Routledge, 1997), and Robert S. Ross and Zhu Feng, eds. *China’s Ascent: Power, Security, and the Future of International Politics* (Cornell: Cornell University Press, 2008).

states might opt to accept a regime. Finally, it also speaks to the durability and dynamism of regimes and their ability to influence state behavior.

Relevant Theories and Explanatory Approaches

The explanatory variables I put forward suggest a multi- rather than a mono-causal account of PRC behavior. My finding that international image and PRC human rights ideas were the strongest explanatory variables link to the dominant theoretical positions in important ways. First, I argue that my finding that image was the most prominent explanatory factor underscores the importance of constructivism. For example, and following an approach largely associated with Alastair Iain Johnston, the PRC's sensitivity to image may demonstrate some initial movement toward socialization into the human rights regime,²⁴ a process associated with constructivism. Important to add, however, is that China's concern with image is refracted through a realist lens: Chinese officials' world views tend to dwell on the negative material consequences that are likely to flow from a negative image. Expectations are that other, mainly Western, states use human rights tactically to punish China.²⁵ As will be discussed later in this chapter, PRC leaders learned through the Tiananmen Square crackdown that a negative human rights image could harm its trade, economic and security interests. In addition, the importance of Chinese human rights ideas underscores the relevance of constructivist insights. These theories and their assumptions about PRC behavior toward the human rights regime are discussed in this section.

²⁴ Johnston, *Social States*.

²⁵ For analysis of the PRC's instrumental view of the world, see Alastair Iain Johnston, "Cultural Realism and Strategy in Maoist China," in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (New York: Columbia University Press, 1996), 216-268.

Realism represents a broad church in international relations theorizing, but most variants view the international system as competitive and anarchical. Power is theorized to strongly influence international regimes, and states are portrayed as self-interested, goal-seeking actors that are driven by material interest, such as power, survival, or security. For realists, dominant states create and maintain international regimes that serve their interests and reflect their values.²⁶ Therefore, regimes mirror distributions of power in the international system. Some realists have predicted that China will seek to use its rising weight in the international system to create an international order in accord with its interests. In explaining PRC behavior toward the human rights regime, realists would emphasize Beijing's concern with security, power and other material interests. They would dismiss evidence that indicates a deep concern with image, noting only the impact of a negative image on its material interests. Realism also fails to account for other aspects of Chinese behavior that are outlined in the chapters that follow, such as the influence of Chinese ideas about human rights.

In contrast to realism's focus on power, neo-liberal institutionalism emphasizes state interest in cooperating to achieve collective outcomes. While realists dismiss regimes as epiphenomenal, neo-liberal institutionalists stress the influence of institutions on state behavior.²⁷ As Keohane noted, "International institutions make it possible for states to

²⁶ Kindleberger's hegemonic stability theory emphasized the necessity of power. He argued that the Great Depression was due in part to the absence of a state acting as leader in the world economy, that the presence of a dominant hegemonic power is critical to the formation and maintenance of regimes and that regimes decline when the hegemon's power wanes. Charles P. Kindleberger, *The World in Depression, 1929-1939* (London: Allen Lane, 1973).

²⁷ Hasenclever, Mayer, and Rittberger, *Theories of International Regimes*, 2-5. For some neo-liberal institutionalists, institutions influence state behavior by changing state conceptions of self-interest and facilitating cooperation.

take actions that would otherwise be inconceivable...”²⁸ Neo-liberal institutionalism’s focus on cooperation, mutual gains, and economic-interdependence may be less relevant to the human rights regime where the costs of not cooperating or complying are more symbolic than material. Yet an extension of this line of thinking suggests that as a state becomes more integrated into the global economy, it will become more interested in safeguarding key relationships and more concerned with its international image. Neoliberalism also suggests that China’s beneficial integration into the global economy could further constrain the PRC by giving it a stake in avoiding disturbances to the international system and a vested interest in the status quo.²⁹ In fact, as demonstrated in chapter 2, the PRC has become increasingly integrated and concerned with its international image, especially after 1989, and this has tempered its behavior. Samuel Kim’s argument that China’s domestic economic priorities informed its “system-maintaining” posture, which allowed it to benefit from economic integration, supports this line of thinking.³⁰ Extending these ideas further, Beijing may see diffuse benefits in being perceived as a good citizen within the human rights regime, inclining it toward more cooperative behavior.³¹ Thomas W. Robinson noted a link between China’s desire to benefit from the international economy and a more moderate foreign policy. He observed that after

²⁸ Robert O. Keohane, *Institutions and State Power: Essays in International Relations Theory* (Boulder: Colorado: Westview Press, 1989), 5.

²⁹ See for example, Robert O. Keohane and Joseph S. Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, and Company, 1978) and Bruce Russett and John R. Oneal, *Triangulating Peace: Democracy, Interdependence, and International Organizations* (New York: W.W. Norton and Company, Inc., 2001), Chapter 4. Keohane and Nye’s approach emphasizes mutual gains and is focused on regimes governing economic activity.

³⁰ Samuel S. Kim, “Post-Mao China’s Development Model in Global Perspective,” in *China’s Changed Road to Development*, eds. Neville Maxwell and Bruce MacFarlane (New York: Pergamon, 1984), 213-32.

³¹ As noted in the PRC Ministry of Foreign Affairs 2011 account of China’s foreign relations, “... it is becoming more evident that diplomacy must rely on, serve and promote development. Diplomacy must make even greater contributions to the sound and fast development of China’s economy and society.” PRC Ministry of Foreign Affairs Policy Research Office, *China’s Foreign Affairs 2011* (Beijing: World Affairs Press, 2011), Foreword by the Foreign Minister.

Beijing's prioritization of economic growth in the late 1970s, it "followed that Beijing's foreign policy was summed up by the twin goals of peace and security. Such an atmosphere would be most conducive to rapid growth and modernization while their opposites, war and threat, would destroy China's best and perhaps only chance to catch up with the developed world."³² Yet, I argue in later sections that while some of the insights emerging from neo-liberal institutionalism help account for some aspects of PRC behavior, it does not adequately explain particular actions, such as its somewhat controversial defense of key allies being examined in the ILO's Conference Committee on the Application of Standards, which is outlined in Chapter 4.

Rather than power or state interests, constructivists see ideas as having the power to shape state behavior and even state identity. According to constructivists, regimes and the norms contained within them define, socialize, and influence states. For some social constructivists, regimes facilitate socialization and the spread of norms.³³ Constructivists consider the key driver of regime formation and change to be ideas,³⁴ and would emphasize ideas and social influence as holding much explanatory power in accounting for China's posture toward the human rights regime. China's concern with its image among other states, which I detail in the chapters that follow, could suggest the creeping effects of socialization. Moreover, my finding that PRC beliefs about human rights were a key

³² Thomas W. Robinson, "Chinese Foreign Policy 1940s-1990s," in *Chinese Foreign Policy: Theory and Practice*, eds. Thomas W. Robinson and David Shambaugh (Oxford: Clarendon Press, 1999), 568-569.

³³ See for example, Jeffrey Checkel, ed., *International Institutions and Socialization in Europe* (New York: Cambridge University Press, 2007), 8, and Martha Finnemore, "International Organizations as Teachers of Norms: the United Nations Educational, Scientific and Cultural Organization and Science Policy," *International Organization* 47, no. 4 (Autumn 1993): 594.

³⁴ An exception to this would be critical constructivists who believe that social constructs, such as regimes, "reflect, enact, and reify relations of power." Moreover, powerful actors are able to play a more prominent role in the process of social construction. Unlike other constructivists, critical constructivists see a "weaker autonomous role for ideas" since power is closely linked to material power. Martha Finnemore and Kathryn Sikkink, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4 (2001): 398.

factor accounting for its behavior is consistent with constructivist theorizing, especially arguments on the salience of local ideas advanced by Amitav Acharya. However, this does not mean that Beijing is consistent, suggesting that other factors may also be at work. For example, although China has defended the principle of sovereignty and disparaged external criticism of its human rights record as “foreign interference,” when countering scrutiny of its human rights record, it has in turn criticized the records of other states.³⁵

The English School, which has been described as a middle ground between realism and idealism, stresses both power and institutions as ordering mechanisms, and maintains that despite an anarchical system and the lack of a centralized authority structure governing international affairs, states have formed an ‘international society’ that has produced rules and practices in order to establish and preserve order.³⁶ The English School’s emphasis on order and justice suggests that China would be drawn into international society in order to benefit from the rules and norms that provide protection.

A central assumption of the English School is that states cooperate for their mutual benefit, and not for entirely self-interested reasons. As scholar Tim Dunne has noted, “The

³⁵ Sceats and Breslin pointed out that in response to Sweden’s expression of concern over Tibet in 2008, the Chinese government responded by condemning violence against children in Sweden. Sonya Sceats and Shaun Breslin, *China and the International Human Rights System: Programme Report* (London: Chatham House, October 2012), 12.

³⁶ Hedley Bull was one of the key architects of the English School. See Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977). For an overview of the English School, see Tim Dunne, *Inventing International Society: A History of the English School* (London: MacMillan, 1998) and Tim Dunne, “The English School,” in *International Relations Theories*, ed. Tim Dunne, Milja Kurki and Steve Smith. In another work, Dunne noted that membership in international society was based on a “standard of civilization” that corresponded with European values. Tim Dunne, “The English School,” *The Oxford Handbook of International Relations*, edited by Christian Reus-Smit and Duncan Snidal (Oxford: Oxford University Press, 2008), 272. Dunne suggests that given the “ongoing structural human rights violations,” the PRC’s motivations for involvement in the regime are primarily strategic. Dunne, “The English School,” 144. Middle ground comment from Andrew Linklater, “The English School,” in *Theories of International Relations*, 4th ed. by Scott Burchill, Andrew Linklater, Richard Devetak, Jack Donnelly, Terry Nardin, Matthew Paterson, Christian Reus-Smit and Jacqui True, (New York: Palgrave MacMillan, 2009), 87.

rules are complied with because, like rules of the road, fidelity to them is relatively cost free but the collective benefits are enormous.”³⁷ This may be true of a number of international regimes, particularly those in economic areas. However, in the case of the human rights regime, compliance can involve significant cost, especially for an authoritarian one-party state like China whose leadership wishes to remain in power and whose human rights practices diverge from international human rights norms. Moreover, the human rights regime is not predicated on mutual benefit because other states’ failure to comply does not necessarily result in costs to other states (at least not from a short-term perspective) and compliance with the human rights regime does not necessarily result in mutual gains.³⁸ The motivation to comply would generally be reputational gains (to be explained in more detail later) of a more diffuse kind, particularly through demonstrating that a country adheres to the treaties it has signed.

While English School scholars such as R. John Vincent and Jack Donnelly have argued that international human rights serve as a new international ‘standard of civilization,’ Hedley Bull’s stress on order gave him a “cheerful skepticism about human rights.”³⁹ Andrew Linklater captures an important belief among English School scholars

³⁷ Dunne, “The English School,” 274.

³⁸ Extreme human rights abusing governments can occasionally be destabilizing to global order. For example, severe abuses that trigger refugee flows could be destabilizing. However, in the majority of cases, domestic human rights abuses such as those reported in China, have not negatively influenced global order.

³⁹ For quote on Bull’s skepticism, see R. John Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. viii. On human rights as a standard of civilization, see Jack Donnelly, “Human Rights: A New Standard of Civilization?” *International Affairs* 74, no. 1 (January 1998): 1-24 and Gerrit W. Gong, *The Standard of ‘Civilization’ in International Society* (Oxford: Clarendon, 1984). Bull’s stress on order inclined him to believe that international society would be more likely to intervene in cases in which human rights abuses threatened global order. He also gave primacy to human rights concerns of powerful states. Bull suggested that the human rights of certain groups, including for example Tibetans in China were “less likely to be upheld by international action because it is not the policy of any prominent group of states to protect them.” Bull, *The Anarchical Society*, 89. Bull elaborated that “The international order does not provide any general protection of human rights, only a selective protection that is determined not by the merits of the case but by the vagaries of international politics.” *Ibid.*, 89-90. Linklater offers a similar take on the importance of order and even suggests that international society can

that states “have different conceptions of human rights” as well as “conflicting beliefs about how such ideals can be implemented,” and that “human rights illustrates the kind of moral disagreement which the English School regards as typical of international society.”⁴⁰

Thus, the English School offers some ideas about why China might participate and seek to be compliant in the international human rights regime but on the whole their reasoning gives Beijing some scope for adopting a divergent path: it isn’t clear that human rights has become a strong enough criterion for membership in international society to act as a strong motivating force for the PRC. Although the English School’s focus on state interest in preserving order helps explain the PRC’s willingness to join international regimes and some English School scholars even suggest that cooperation to preserve order among states is more achievable and important than a focus on individual human rights, the approach only helps to explain the PRC’s preoccupation with image within the human rights regime if we accept that there are diffuse reputational benefits from being seen as faithful to the international treaties one’s government has signed.

Overall, it is the insights to be derived from constructivism that are most helpful to my explanation. The importance of social variables such as the power of ideas and concerns about international image support the relevance of constructivism. The PRC’s belief that a negative international image can affect its material interests demonstrates the realist lens that is a central part of the PRC leadership’s subjective understanding of

suffer if states try to impose their views on others. See Linklater, “The English School,” 95-96. For accounts of the disagreement between pluralistic and solidarist positions within the English School, see Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalization* (Cambridge: Cambridge University Press, 2004), 21 and Dunne, “The English School,” 275.

⁴⁰ Linklater, “The English School,” 89. Linklater noted that “members of the English School stress that noble efforts to improve international politics have the potential to produce major moral disagreements that can sour relations between states and damage international order.”

international politics. However, clearly the English School concerns with order and the role of institutions in contributing to order are relevant to the idea that China has been concerned about its international image in global politics and in the human rights area in particular.

Related Literature

There are three sets of literature relevant to my thesis topic: writing on China's participation in international regimes and global governance; literature on international regimes and global governance; and work on the diffusion of international norms, including the process of socialization. The existing scholarship helps identify possible explanations for China's behavior and factors that may influence which of the five roles a state adopts toward a regime. Yet the gaps in the literature point to the value of this thesis.

Aside from using Krasner's definition of regimes, I also elaborate on his idea that states can act as makers, breakers or takers in international regimes.⁴¹ I adopt this approach because it provides a useful initial spectrum rather than a dichotomous choice to analyze state behavior. I also further develop Krasner's initial typologies by adding promoter and constrainer as possible state roles and providing greater specificity and substantive descriptions to these roles.

Literature on China and International Regimes and Global Governance

⁴¹ Krasner, "United States Commercial and Monetary Policy," 52.

As China's participation in international regimes has grown, so has scholarly interest in its behavior within these regimes and in global governance mechanisms.⁴² While this increased academic attention is a welcome development, some limitations remain. First, previous analysis of Chinese behavior focuses on China's willingness to enter into regimes, the process of drawing the PRC into regimes and its compliance with them, leaving the question of the PRC's actual posture, including the nature of its participation and its contributions or challenges to regimes, unaddressed.⁴³ As a result of this limited focus, the literature neglects China's impact on regimes and fails to address questions, such as: what kind of participant is the PRC within international regimes? For example, in an article on China and global governance, Hongying Wang and Erik French find that in comparison with other BRIC countries (Brazil, Russia, India, and China), the PRC has under-participated in global governance because of limited interest from the government and the limited capacity of both the Beijing government and Chinese domestic society.⁴⁴ Yet, the article does not address whether China accepts or contests global governance. Also, while Ann Kent's application of the concepts of cooperation and compliance is useful in her study of China in select parts of the human rights regime, her focus was not on the details of Chinese behavior within the regime or its overall influence on the regime.⁴⁵ Similarly, Evan Medeiros addressed the reasons for the PRC's growing participation in the nuclear non-proliferation regime without giving attention to its

⁴² Johnston noted that given the PRC's level of development and compared with other states, it has been over-involved in international institutions. Johnston, "Is China a Status Quo Power?," 12-13.

⁴³ Book-length examples include: Ann Kent, *China, The United Nations, and Human Rights: The Limits of Compliance* (Philadelphia: University of Pennsylvania Press, 1999); Foot, *Rights Beyond Borders*; and Evan S. Medeiros, *Reluctant Restraint: The Evolution of China's Nonproliferation Policies and Practices, 1980-2004* (Stanford, California: Stanford University Press, 2007).

⁴⁴ Hongying Wang and Erik French, "China Perspectives in Global Governance from a Comparative Perspective," *Asia Policy* 15 (January 2013): 89-114.

⁴⁵ Kent, *China, the United Nations, and Human Rights*.

behavior within the regime.⁴⁶ This approach has limitations because although China's participation in international regimes is an encouraging sign, participation alone should not be assumed to indicate acceptance of and support for the norms and principles that form the basis of existing regimes.⁴⁷ This distinction is important because despite China's increased participation and formal commitments, its actions have not always been in line with the objectives of international regimes. For example, Medeiros conceded that while China's overall nonproliferation commitments within the regime have increased, "China's compliance with some of its commitments has been mixed and is the subject of ongoing international concern."⁴⁸ These limitations point to the necessity of my research, especially my focus on actual Chinese behavior in the regime.

Second, some of the literature has a narrow empirical basis or neglects the broader political context needed to fully interpret state behavior. For example, Andrew Nathan argued in *China Joins the World* that Beijing has actively sought to shape regime norms, but did not provide detailed empirical support for his assertion.⁴⁹ Likewise, in their article, Lai-Ha Chan, Pak K. Lee and Gerald Chan described the PRC as accepting the principle of humanitarianism and global governance while being opposed to interventionism and defending state sovereignty, yet they do not provide empirical evidence beyond an overview of PRC scholarship on global governance.⁵⁰ A later book entitled *China Engages Global Governance* by these three authors examined the PRC's influence on

⁴⁶ Medeiros, *Reluctant Restraint*.

⁴⁷ Kim, "China and the United Nations," 76.

⁴⁸ Medeiros, *Reluctant Restraint*, 240. Foot noted that despite China's integration into the human rights regime, "the Chinese government does not appear fully to have accepted the prescriptive status of international human rights norms." Foot, *Rights Beyond Borders*, 25.

⁴⁹ Nathan, "China and the International Human Rights Regime."

⁵⁰ Lai-Ha Chan, Pak K. Lee and Gerald Chan, "Rethinking global governance: a China Model in the making?" *Contemporary Politics* 14, no. 1 (March 2008): 8-9

global governance, and although they include a chapter on human rights, the length limitations preclude a detailed empirical treatment that supports their assertion that China has sought to dilute and undermine this regime.⁵¹ In an article entitled, “Is China a Status Quo Power?” Alastair Iain Johnston used voting on “no-action” motions on China-specific resolutions in the UN Commission on Human Rights to examine whether China is outside the global consensus on human rights.⁵² Because of the politicization of the UNCHR and the PRC's diplomatic maneuvering within that body, political considerations rather than assessments of China's human rights record have likely influenced voting, making the “no-action motion” an inadequate gauge of international consensus.

Third, much of this literature does not consider a spectrum of positions that China might adopt in global governance mechanisms and international regimes. For example, contributing authors to *China Joins the World* examined the PRC's posture in eight regimes, but did not assess Chinese behavior against a range of potential state roles in the regimes it examined.⁵³ Similarly, although as her 2007 book title suggests, Kent considered more than just compliance, and captured cooperation in her examination of the PRC in areas such as international security, international political economy and international human rights, the concepts of compliance and cooperation remain primarily dichotomous choices.⁵⁴

⁵¹ Lai-Ha Chan, Pak K. Lee and Gerald Chan, *China Engages Global Governance: A New World Order in the Making?* (New York: Routledge, 2012).

⁵² Johnston, “Is China a Status Quo Power?,” 8-12.

⁵³ Elizabeth Economy and Michel Oksenberg, eds. *China Joins the World: Progress and Prospects* (New York: Council on Foreign Relations, 1999).

⁵⁴ Ann Kent, *Beyond Compliance: China, International Organizations and Global Security* (Stanford: Stanford University Press, 2007).

Finally, in-depth empirical research on China and the international human rights regime has not been undertaken in over a decade.⁵⁵ In contrast to my focus on China's posture toward the regime Na Jiang's recent contribution focuses on domestic compliance and laws.⁵⁶ In a chapter-length work on global governance, Tony Saich noted China's lack of support and understanding for the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, but due to length limitations did not expand on these findings.⁵⁷ Rosemary Foot and Andrew Walter provide a useful contribution by comparing the U.S. and China on a range of issues, including nuclear issues, economics, climate change, financial regulation and the use of force.⁵⁸ However, this detailed work does not include international human rights. In similar vein, an edited book by Mingjiang Li examines China's role in and influence on global governance, including economic governance, energy and the environment, and security, and notes a clear shift from initial caution to a more active role in some issue areas and a tendency to play a supportive rather than leadership role, yet does not include a chapter on human rights.⁵⁹ Further, while Samuel Kim earlier shed light on the PRC's general orientation by introducing the useful concepts of "system-maintaining," "system-

⁵⁵ See for example Kent, *China, the United Nations and Human Rights* and Foot, *Rights Beyond Borders*. Sceats and Breslin offered a 2012 contribution in the form of a Chatham House report that looks at China's impact on international human rights norms and relevant UN institutions. While their analysis is useful they focus primarily on China's conduct in the Human Rights Council, leaving other parts of the human rights regime unexplored. Moreover, the length limitations preclude more detailed study of China's role in other UN bodies. Sceats and Breslin, *China and the International Human Rights System*.

⁵⁶ Na Jiang, *China and International Human Rights: Harsh Punishments in the Context of the International Covenant on Civil and Political Rights* (New York: Springer, 2014)

⁵⁷ Tony Saich, "Globalization, Governance, and the Authoritarian State: China," in *Governance in a Globalizing World*, eds. Joseph S. Nye and Donahue (Washington DC: Brookings Institution Press, 2000, 211-214. He described China as acquiescing and joining, rather than accepting or leading in international governance.

⁵⁸ Rosemary Foot and Andrew Walter, *China, the United States, and Global Order* (Cambridge: Cambridge University Press, 2011).

⁵⁹ Mingjiang Li, ed. *China Joins Global Governance: Cooperation and Contentions* (New York: Lexington Books, 2012).

exploiting,” and “system-reforming,” these ideas have not been examined within the context of the human rights regime.⁶⁰ A finer-grained analysis of China and the human rights regime with an emphasis on the PRC’s particular role addresses some of the limitations noted above. By developing the various state roles and investigating the PRC’s posture in the human rights regime against a spectrum of possible state roles, this thesis fills these empirical gaps and adopts a fresh approach by treating the PRC as a serious actor within the human rights regime. Moreover, it details in a way that is unusual in the literature on China and international organizations the nature of its behavior toward the regime, rather than focusing merely on its levels of compliance or willingness to participate in the regime. Thus, this research helps us to get closer to understanding the motivations behind China’s behavior, at least with regard to this particular regime.

Literature on Regimes

Scholarly interest in regimes surged in the 1970s and 1980s and focused primarily on whether institutions matter in shaping state behavior and the factors influencing the emergence of regimes.⁶¹ This early literature provides a definition of regimes and some

⁶⁰ For examples of the use of these terms see Samuel S. Kim, “Thinking Globally in Post-Mao China,” *Journal of Peace Research* 27, no. 2 (1990): 193; Samuel S. Kim, “China’s International Organizational Behavior,” in *Chinese Foreign Policy: Theory and Practice*, eds. Thomas W. Robinson and David Shambaugh (Oxford: Clarendon Press, 1994), 431; Samuel S. Kim, “China and the United Nations,” in *China Joins the World: Progress and Prospects*, eds. Elizabeth Economy and Michel Oksenberg (New York: Council on Foreign Relations Press, 1999), 45; and Samuel S. Kim, “Post-Mao China’s Development Model in Global Perspective,” in *China’s Changed Road to Development*, eds. Neville Maxwell and Bruce MacFarlane (New York: Pergamon, 1984).

⁶¹ See for example, Oran Young, “Regime Dynamics: The Rise and Fall of International Regimes,” in *International Regimes*, ed. Stephen D. Krasner (Ithaca, New York: Cornell University Press, 1983), 93-114. For an overview of the literature on regimes, see Richard Little, “International Regimes,” in *The Globalization of World Politics: An Introduction to International Relations*, 2nd edition, eds. John Baylis and Steve Smith (Oxford: Oxford University Press, 2001).

conclusions about the impact of regimes on state behavior, yet it left a number of areas unexplored.

The initial emphasis was on debating hegemonic stability theory, which meant that much of the early literature was preoccupied with the relationship between the distribution of state power and regimes. Scholars such as Charles Kindleberger and Stephen Krasner argued that a hegemonic state is necessary in order to establish and maintain a regime.⁶² Other scholars, including Oran Young, similarly suggested that power influenced regime change.⁶³ Other scholars challenged the primacy of power. For example, Robert Keohane focused on state interests rather than power as guiding state behavior, and Christer Jonsson put forward cognitive theory as an explanation for regime formation and change and introduced learning as a key variable.⁶⁴

While these works acknowledge to a certain extent that states may try to constrain or break an existing regime or establish a new one, the explanatory factors leading states to spearhead regime change and an analysis of the various roles a state can play are not explored in depth and state roles remain under-theorized. Thus, since Krasner's introduction of the roles of maker, taker and breaker, scholars have not given attention to

⁶² Charles P. Kindleberger, *The World in Depression: 1929-1939* (London: Allen Lane, 1973); Stephen Krasner, "U.S. States Commercial and Monetary Policy;" and Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in *International Regimes*, ed. Stephen Krasner (Ithaca, New York: Cornell University Press, 1983).

⁶³ Young, "International Regimes: Problems of Concept Formation," 331-56. He asserted that power shifts, along with other factors such as changes in the nature of the relevant activity, were the primary reasons for regime change. Donald J. Puchala and Raymond F. Hopkins "International Regimes: Lessons from Inductive Analysis," in *International Regimes*, ed. Stephen D. Krasner (Ithaca, New York: Cornell University Press, 1983), 66. Donald Puchala and Raymond Hopkins contended that power transition ushers in regime transformation.

⁶⁴ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Economy* (Princeton, New Jersey: Princeton University Press, 1984) and Christer Jonsson, "Cognitive Factors in Explaining Regime Dynamics," in *Regime Theory and International Relations*, ed., Volker Rittberger with assistance from Peter Mayer (Oxford: Clarendon Press, 1993), 217-218.

an exploration of the more subtle roles that states can play.⁶⁵ Further, within the limited literature on state roles, scholars are preoccupied with regime makers and breakers to the neglect of parsing other state roles. For example, in Krasner's examination of Britain's abolition of the slave trade, he pointed to the salience of the "relative power and interests of states" in discussing Britain's success.⁶⁶ While he also noted the importance of state commitment, he did not parse in detail a range of potential state roles. These weaknesses suggest a need to further develop the typologies initially offered by Krasner, particularly applying analytical rigor to the motivations that cause a state to pursue a particular role— aspects that will be given detailed treatment in this thesis.

Finally, much of the literature is based on the underlying assumption that participation in and cooperation with regimes brings tangible material benefits to states in terms of security or trade and that defection hurts the interests of other states. These assumptions fail to differentiate between different types of regimes and may be less applicable to the human rights regime, which is not centered on mutual gains. For example, in international regimes involving trade, the PRC stands to gain reciprocal benefits and a market for its exports. Similarly, the non-proliferation regime also offers the PRC the potential of enhanced security since other regime participants are bound by the same constraints and rules. In contrast, the human rights regime does not offer the same kinds of mutual gains, and state motivation for appearing to be in good standing in the regime may be more related to concerns about reputation, image, and legitimacy—terms that are defined in a later section of this chapter. For these reasons, my focus on the human

⁶⁵ Krasner, "U.S. Commercial and Monetary Policy."

⁶⁶ Stephen D. Krasner, "Sovereignty, Regimes, and Human Rights," in *Regime Theory and International Relations*, ed. Volker Rittberger (Oxford: Clarendon Press, 1993), 143.

rights regime offers new insights and also suggests that the literature on norm diffusion and socialization might also be salient to my analysis.

Thus, by expanding on potential state roles and demonstrating the continued salience of the concept of regimes, I also revive the literature on international regimes, most of which was completed prior to the PRC's more active involvement. My thesis further offers a spectrum of possible state roles in international regimes, rather than the binary choice of simply accepting or rejecting a regime. Second, these state roles provide a useful lens to consider a state's posture toward regimes that goes into greater nuance than mere acceptance or resistance.

Literature on Global Governance

The term "regime" tended to drop out of fashion by the early 1990s to be replaced by the notion of "global governance." Although there is not an agreed definition, Thomas Weiss defined global governance as "informal and formal values, norms, procedures, and institutions that help all actors—states, intergovernmental organizations (IGOs), civil society, transnational corporations (TNCs), and individuals—to identify, understand, and address trans-boundary problems."⁶⁷ Nevertheless, despite adoption of the new phrasing, the scholarship on global governance overlaps with the literature on international regimes.⁶⁸ Oran Young's book, *Governance in World Affairs*, in which he treats regimes as governance systems, is an example of the convergence between these two areas of

⁶⁷ Thomas G. Weiss, *Global Governance: Why? What? Whither?* (Cambridge: Polity Press 2013), 2.

⁶⁸ Global governance scholarship also includes a broader array of actors, including quasi-formal intergovernmental gatherings, international private associations and international non-governmental organizations.

scholarship.⁶⁹ Scholar Craig Murphy made the point that “Much of the scholarship on global governance focuses on the slightly more concrete international *regimes*, the norms, rules, and decision-making procedures that states (and sometimes other powerful actors) have created to govern international life within specific realms.”⁷⁰ James Rosenau sought to distinguish between the two by suggesting that regimes focus on a given “issue area,” while governance is “not being confined to a single sphere of endeavor.”⁷¹

Global governance literature places minimal focus on detailing state roles and state behavior within global governance arrangements, and has been preoccupied with other questions, such as the emergence and practice of governance in the absence of world government, the multiplicity of actors, and the importance of power.⁷² For example, realist Robert Gilpin, argued that many global governance arrangements reflected the power and liberal preferences of the U.S.⁷³ Taking a different approach, an edited book by Sophie Harman and David Williams on the emergence of global governance and the role played by the UN and powerful states, noted examples in which powerful states had limited influence over global governance arrangements.⁷⁴ Nye and Donahue, take a slightly different approach, noting that “states create international regimes and cede some power to

⁶⁹ Oran R. Young, *Governance in World Affairs* (Ithaca, NY: Cornell University Press, 1999). Similar overlap found in Feargal Cochrane, Rosaleen Duffy, and Jan Selby, eds. *Global Governance, Conflict, and Resistance* (Palgrave MacMillan: London, 2003).

⁷⁰ Craig N. Murphy, “Why pay attention to global governance?” in *Global Governance: Critical Perspectives* edited by Rorden Wilkinson and Steve Hughes (New York: Routledge, 2002), xi.

⁷¹ James Rosenau, “Governance, Order and Change in World Politics,” in *Governance without Government: Order and Change in World Politics*, ed. James Rosenau and Ernst-Otto Czempiel (Cambridge: Cambridge University Press, 1992), 5.

⁷² Rosenau and Czempiel, *Governance without Government*. The contributors to this edited book by Rosenau and Czempiel focused on the persistence of global governance despite ongoing challenges.

⁷³ Robert Gilpin, *The Challenge of Global Capitalism: The World Economy in the 21st Century* (Princeton: Princeton University Press, 2000).

⁷⁴ Sophie Harman and David Williams, eds. *Governing the World: Cases in Global Governance* (London: Routledge, 2013). See especially the chapters by Phil Orchard on migration and Adam Kamradt-Scott.

international organizations to govern specific issues.”⁷⁵ Much of this work is attentive to transnational actors, such as international NGOs, and shows how networks of actors, including non-state actors, have been involved in governance arrangements. I also note the role that NGOs, such as the various human rights bodies, play in the human rights regime including their efforts to draw attention to China’s human rights record, which often did damage to the PRC’s global image.

Other scholars have concentrated on gaps in global governance, yet failed to detail state roles.⁷⁶ In an edited volume by Wilkinson and Hughes contributors identified weaknesses in global governance and found that “global governance is poorly done, and equally poorly understood.”⁷⁷ In a book-length work, Thomas Weiss identified five different kinds of gaps including knowledge, normative, policy, institutional and compliance gaps, as well as challenges to global governance. Taking a slightly different approach, Jim Whitman who argues that the world is not governable, considers “political limitations” yet fails to parse state behavior in detail, such as considering a variety of possible state roles.⁷⁸ An edited book by Feargal Cochrane, Rosaleen Duffy, and Jan Selby shed some light on resistant states, including a chapter on the ivory trade, but failed to go beyond state resistance as a type of state behavior, or to provide an exposition of the means that resisters might employ, including coalition-building among like-minded states.⁷⁹

⁷⁵ Joseph S. Nye Jr. and John D. Donahue, eds., *Governance in a Globalizing World* (Washington, DC: Brookings Institution Press, 2000), 20.

⁷⁶ See Weiss, *Global Governance* and Craig Murphy, “Global Governance: Poorly Done and Poorly Understood” *International Affairs* 76, no. 4 (2000): 789-803.

⁷⁷ Rorden Wilkinson and Steve Hughes, eds. *Global Governance: Critical Perspectives* (London: Routledge, 2002), 13.

⁷⁸ Jim Whitman, *The Limits of Global Governance* (New York: Routledge, 2005).

⁷⁹ Cochrane, Duffy, and Selby, *Global Governance, Conflict and Resistance*. The chapter by Ngai-Ling Sum on Intellectual Property Rights, focuses on evasion by non-state actors rather than state roles. Mark P.

This literature points to the role of international organizations and states in global governance—a finding of potential relevance to my thesis. But, as with the literature on international regimes, the idea of a spectrum of state roles is not addressed, which again points to a limitation of the existing literature and the contribution that comes from development of a typology of state roles.⁸⁰ Other weaknesses that limit the usefulness of the current literature on global governance include the lack of a specific and clear definition of terms. It is hard to argue that this change in terminology from the concept of regimes has added much in the way analytical precision. Further, the definition provided under the regime literature is more precise and points more clearly at defined issues, such as human rights, making it a more useful lens than global governance to consider PRC behavior.

Literature on Norm Diffusion

While norms and regimes are not synonymous, using Krasner's definition of regimes, norms can be understood to be a component of regimes. As noted by Hasenclever, Mayer, and Rittberger, "A variety of norms serve to guide the behavior of regime members in such a way as to produce collective outcomes which are in harmony

Hampton and John Christensen's chapter on the global financial system portrays resisters as increasingly being won over.

⁸⁰ Young noted that self-interested actors might initiate "negotiated change," but does not examine in detail dissatisfied states, their motivations or the methods they might use to instigate regime change. Young, *Governance in World Affairs*, 145-155.

with the goals and shared convictions that are specified in the regime principles.”⁸¹ Thus, the literature on norms may contain some helpful insights.

However, despite the potential relevance of scholarship on norm diffusion, including socialization, some of the gaps in the existing literature point to the necessity of my approach. First, much of the existing literature privileges cases involving the successful spread of norms.⁸² For example, in their examination of the process of socialization, including key mechanisms such as strategic calculation, role playing, and normative suasion, the contributors to *International Institutions and Socialization in Europe*, did not address state efforts to remake norms, preferring to focus on degrees of adaptation.⁸³ Also, in a 1996 article Martha Finnemore suggested that a common global culture accounts for organizational and behavioral similarities around the world, again eschewing a discussion of resistance.⁸⁴ Later, in a 1998 article, Finnemore and Kathryn Sikkink advanced a three-stage norm “life cycle” that includes norm emergence, acceptance and internalization. While acknowledging that the completion of this cycle is not inevitable and that many emerging norms do not reach the tipping point that prompts a norm cascade, they strongly emphasized the power of global norms.⁸⁵

⁸¹ Hasenclever, Mayer and Rittberger, *Theories of International Regimes*, 9.

⁸² Amitav Acharya touches on instances in which normative diffusion failed. Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism*. Ithaca, New York: Cornell University Press, 2009

⁸³ They did address to some extent normative resistance. Jeffrey Checkel, ed., *International Institutions and Socialization in Europe* (New York: Cambridge University Press, 2007), 9-14.

⁸⁴ Martha Finnemore, “Norms, Culture, and World Politics: Insights from Sociology’s Institutionalism,” *International Organization* 50, no. 2 (1996): 326 and 334.

⁸⁵ Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 (1998): 887-917.

Second, scholars have given little attention to countries that are resisters of existing norms and those who respond by challenging global norms.⁸⁶ For example, although Thomas Risse, Stephen Ropp, and Kathryn Sikkink's five-stage "spiral model" for the diffusion of international human rights norms acknowledged resistance and denial as part of the process, they neglected to explore efforts by states to undermine or alter global norms.⁸⁷ Katrin Kinzelbach's chapter in the updated version of Risse, Ropp and Sikkink's book is a welcome contribution on China that outlines the PRC's resistance, and its trajectory along the five-stage spiral. Yet, given the length limitations, it does not detail PRC efforts to remake, constrain or break the regime.⁸⁸ Likewise, while Alastair Iain Johnston's analysis of China's behavior in security institutions develops several micro-processes of socialization and finds evidence of these processes in PRC behavior, this case was not an instance in which the PRC mounted a sustained challenge to global norms.⁸⁹

There are some exceptions to this neglect of resistance to global norms. Notable among these works is that of Amitav Acharya who focuses on the import of domestic ideas in any process of normative diffusion. Acharya, who examined Southeast Asian regional institutions, put forward an argument about norm localization in which outside norms are

⁸⁶ Scholars, including Cortell and Davis and Acharya, focus on domestic resistance, but did not examine in detail the behavior of resisters toward global norms. Andrew P. Cortell and James W. Davis, "When Norms Clash: International Norms, Domestic Practices, and Japan's Internalisation of the GATT/WTO," *Review of International Studies* 31, no. 1 (2005): 3-25.

⁸⁷ Thomas Risse and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in *The Power of Human Rights: International Norms and Domestic Change*, eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (Cambridge: Cambridge University Press, 1999), 20-25. Their later work addressed some of the limitations of their earlier work, including giving greater attention to resistance.

⁸⁸ Katrin Kinzelbach, "Resisting the Power of Human Rights: The People's Republic of China," in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Persistent Power of Human Rights: From Commitment to Compliance*, eds. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University Press, 2013).

⁸⁹ Johnston, *Social States*, 45-70.

conditioned and adapted by local agents, and then reflected back into global practices.⁹⁰ This process emphasizes mutual constitution, an idea that is important to consider when examining China's beliefs about human rights and its impact on human rights institutions.

Finally, much of the evidence for normative diffusion mainly focuses on a state's domestic compliance, such as bringing its domestic laws and practices in line with international norms, while neglecting a state's external behavior. For example, Risse, Ropp, and Sikkink's spiral model focused only on domestic behavior as evidence of human rights change without considering a state's behavior within the regime.⁹¹ Similarly, Cortell and Davis also looked at Japan's domestic practices to assess acceptance of trade liberalization.⁹² These examples of scholarly neglect of a state's international behavior, such as its conduct and contributions within the regime and the nature of its participation, suggest the usefulness of my contribution. These absences will be addressed in this thesis with specific reference to China's behavior as a potential maker, taker, promoter, constrainer or breaker.

Explanatory Framework: State Roles

This section expounds on potential state roles and introduces three explanatory factors that account for the PRC's posture toward the regime.

State Roles

⁹⁰ Acharya, *Whose Ideas Matter?*, 5.

⁹¹ Risse and Sikkink, "The Socialization of International Human Rights Norms," 22-34.

⁹² Cortell and Davis, "When Norms Clash."

In order to examine China's role toward the international human rights regime, the five state roles referred to above need to be further defined and a clear definition of "regime change" needs to be proposed. As noted previously, initial work on regimes emphasized state power, yet a variety of factors likely influence the role a state like China adopts.⁹³ The roles as presented in this section are ideal categories with actual state behavior likely running along a continuum, which is represented in Figure 1. At one end of the spectrum are regime makers that are strong supporters of the regime and are, therefore, willing to expend the effort to establish the regime. This is followed by regime promoters—that is, states that uphold the regime and even wish to see the regime strengthened yet are not as committed as regime makers. The next role on this continuum are takers, which accept the regime but may not be strongly committed to it. Even if they have a weak commitment to the regime, they are not necessarily motivated to pursue change. Constrainers exhibit much less support for the regime, and are dissatisfied with some aspect of the regime. The least supportive states would be regime breakers, who seek to challenge and oppose the regime with the goal of overthrowing it.

Figure 1: Possible State Roles

Maker	Promoter	Taker	Constrainer	Breaker
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A state that acts as a maker is willing and able to establish and maintain a regime. This requires leadership, diplomatic skill and familiarity with the international system.

⁹³ Krasner, "U.S. Commercial and Monetary Policy."

Given the effort and initiative required, makers would likely be motivated by a strong commitment to the principles underlying the regime. For example, Krasner noted that Britain's commitment to the creation of the anti-slavery regime was a key factor in the successful ending of the slave trade.⁹⁴ Aside from commitment to a specific set of values as reflected in the regime, states could also be motivated by self-interest.⁹⁵ In some cases, states might work with others to establish and maintain a regime. A maker might also first act as a regime breaker and subsequently work to create a new regime.

An additional category not included in Krasner's typologies is "promoter." Promoters are not only satisfied with the regime but want to see the regime become stronger and more durable. They are takers who want to see the regime strengthened. A variety of factors could motivate promoters, including their beliefs and ideas or self-interest. Promoters do not need to possess the same resources as makers but will often have some means to bolster the regime or they might cooperate with other states. They might also support incremental changes to reinforce and improve the regime.

Regime takers accept the regime, willingly or not. States acting as takers do not challenge the regime, and their behavior is generally in compliance with the regime. Takers might also benefit from the arrangements under the regime and may even adjust their policies in order to maximize their objectives.⁹⁶ Although this might seem to be the most passive of the five roles, takers must still devote resources to bringing their practices into compliance with the regime. While Krasner argued that small states with limited

⁹⁴ Krasner, "Sovereignty, Regimes and Human Rights," 152.

⁹⁵ For further discussion of motivation, see Finnemore and Sikkink, "International Norm Dynamics and Political Change," 887-917.

⁹⁶ Krasner, "U.S. Commercial and Monetary Policy," 52. Kim noted that China adopted a "system-exploiting" posture that allowed it to benefit from economic integration. See for example, Kim, "Thinking Globally in Post-Mao China."

capacity generally have little choice but to be takers, states of any size can assume this posture. Young suggested that a new state is also likely to be a taker because it “has little choice but to join the basic institutional arrangements of the state system.”⁹⁷

Moving along the spectrum toward states that are less supportive of the regime leads to constrainers. A “constrainer” is dissatisfied with some aspect or aspects of the current regime but is not completely opposed to it. A constrainer seeks to alter the existing regime through incremental change or prevent the regime from being strengthened. A key difference between constrainer and breaker is that the former attempts to introduce more modest change by working within the existing regime and keeping the core aspects of the regime intact. In contrast, a breaker seeks more extensive changes to undermine the regime. In order to be effective, a constrainer must possess the ability to affect change within the system. If its influence is limited, a constrainer might work in cooperation with other like-minded states. For example, Young acknowledged that small groups of actors with strong and similar interests might work together to alter a regime.⁹⁸

Regime breakers seek to destroy a regime. In order to break a regime, a state would persistently disobey and oppose the regime. For example, Japan’s defiant pro-whaling stance is a challenge to that regime. A state could accomplish this through non-compliance or non-cooperation with the regime but to be successful needs to be able to persuade others of the rightness of its position. Beyond non-compliance, a breaker would also challenge the regime in other ways, including mounting efforts to de-legitimize or discredit the regime and pushing for changes intended to erode it. Its opposition to a regime could be paired with attempts to develop an alternative regime. Breakers might

⁹⁷ Young, “International Regimes: Toward a New Theory of Institutions,” 120.

⁹⁸ Young, “International Regimes: Problems in Concept Formation,” 354.

still be regime participants until they have succeeded in setting up an alternative or in destroying the original regime. Moreover, through participation they might be able to more effectively break the regime by working from within.

Finally, Krasner offers a useful definition of regime change. According to Krasner, “Changes in rules and decision-making procedures are changes within regimes, provided that principles and norms are unaltered.”⁹⁹ In contrast, “Changes in principles and norms are changes of the regime itself.”¹⁰⁰ These are the kinds of changes that a state seeking to break a regime would pursue.

Explanatory Factors

I put forward an explanation that centers on three primary factors and a scope condition that accounts for China’s posture toward the human rights regime. These factors are the PRC government’s human rights preferences and beliefs, Chinese officials’ concern with international image, and the government’s degree of familiarity with the regime. Further, I discuss the PRC’s ability and willingness to work with other countries as a scope condition.

As noted earlier, the relevance of these factors suggest the salience of constructivism. The support for constructivism comes from both the importance of the PRC’s pre-existing human rights beliefs and its preoccupation with international image. I find little evidence that international human rights norms led to a change in China’s human rights beliefs and argue instead that the PRC’s preexisting ideas about human rights had more explanatory weight. This finding is in line with Acharya’s argument regarding the

⁹⁹ Krasner, “Structural Causes and Regime Consequences,” 4.

¹⁰⁰ Ibid.

importance of local ideas. Further, while the PRC's preoccupation with international image may indicate that China is at an early stage of being socialized, as some constructivists would suggest, the process of socialization may be ongoing and China cannot be said to have internalized human rights norms. That internalization is constrained by the Chinese leadership's subjective beliefs about international politics and which emphasizes its instrumental elements. As I argue below, the Chinese government's sensitivity to international image is largely tied to a set of realpolitik beliefs that a positive international image is crucial to protecting its material interests, including its security concerns.

The Beijing government's human rights preferences and beliefs

The PRC's posture toward the international human rights regime, including its statements, decisions and positions, have primarily been the purview of the Ministry of Foreign Affairs.¹⁰¹ These MFA positions reflect the general stance and guidance from higher level Chinese government entities, including individual leaders and the State Council. For example, following the Tiananmen crackdown, it was Deng Xiaoping who urged that China should continue to further integrate with the outside world, including continuing external economic ties.¹⁰² In turn, the Ministry of Foreign Affairs, especially

¹⁰¹ The PRC MFA represents China in the majority of organizations that form the international human rights regime. The MFA's International Organizations Department, which has a section on human rights has been responsible for China's interaction with the UN human rights regime. Kent, *China, the United Nations and Human Rights*, 43. The Ministry of Labor and Social Security is the lead Chinese agency for the International Labour Organization. Ibid., 126. The remit of other parts of the Chinese government, such as the Ministry of Justice, the Ministry of Public Security and the Ministry of State Security, influence PRC domestic human rights policy, including human rights violations.

¹⁰² For Deng's leadership over foreign policy at this time, see Jean-Pierre Cabestan, "How China managed to de-isolate itself on the international stage and re-engage the world after Tiananmen," in *The Impact of China's 1989 Tiananmen Massacre*, eds. Jean-Philippe Beja (Hoboken, New Jersey: Routledge, 2010).

Foreign Minister Qian Qichen, implemented this guidance.¹⁰³ Further, these ideas also appear to permeate other Chinese ministries and there appears to be little contestation of these beliefs within the government.¹⁰⁴ For example, MFA positions align closely with those expressed by the CCP Central Propaganda Office and the PRC State Council, including in White Papers on human rights. The Ministry of Labor and Social Security also offered views similar to their MFA counterparts.¹⁰⁵ Given the high degree of convergence in PRC human rights policy within the Chinese government, I treat the PRC as a unitary actor in reference to China's posture toward this particular international regime.

Unlike other policy areas, such as arms control, human rights may be an area that is particularly resistant to change because one-party rule is in part maintained through tight political control. As Susan Shirk observed, "human rights was the one issue on which Chinese officials could bend the least because it was intertwined with the survival of the Communist Party autocracy."¹⁰⁶ Thus, even with high-level leadership change, there is unlikely to be significant change in China's human rights posture under CCP rule.

The Chinese government's human rights ideas also strongly influenced the PRC's posture toward the regime.¹⁰⁷ While Chinese ideas have evolved somewhat since the Mao-

Cabestan notes that there was high-level debate over whether to pursue a more open or closed external posture. Ibid., 195-196 and 199.

¹⁰³ Ibid., 195.

¹⁰⁴ Svensson's description of PRC human rights thinking conveys this conformity. Marina Svensson, *Debating Human Rights in China: A Conceptual and Political History* (Lanham, MD: Rowman and Littlefield, 2002).

¹⁰⁵ Author's observation based on interviews, such as interviewee #40, Chinese government official, June 12, 2012, Beijing, China.

¹⁰⁶ Susan Shirk, *China: Fragile Superpower* (Oxford: Oxford University Press, 2008), 224.

¹⁰⁷ For background on PRC human rights ideas, see Stephen C. Angle, *Human Rights and Chinese Thought: A Cross-Cultural Inquiry* (New York: Cambridge University Press, 2002); Robert Weatherley, "The Evolution of Chinese Thinking on Human Rights in the Post-Mao Era," *Journal of Communist Studies and*

era, domestic ideas have proven to be strongly ingrained and there are clear areas of incongruity between Beijing's positions and the international regime.¹⁰⁸ Stephen Angle argued that "distinctiveness [in Chinese conceptions of human rights] continues to the present day."¹⁰⁹ Although PRC human rights ideas have been distinctive and may be viewed as genuine, PRC representatives may, at times, have used them for instrumental purposes, such as citing them in human rights fora to protect themselves or allies.

I find that Beijing's human rights views have proven to be less malleable than is often argued to be the case in other issue areas.¹¹⁰ As outlined in Chapter 2, while the PRC's positions in other international regimes have evolved, its human rights views have remained largely consistent with minimal change. The rigidity of PRC human rights ideas

Transition Politics 17, no. 2 (June 2001); Robert Weatherley, *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (New York: St. Martin's Press, 1999) and Xia Yong, *Renquan Gainian Qiyuan* [The Origin of the Concept of Human Rights] (Beijing: *Zhongguo Zhengfa Daxue Chubanshe* [China Politics and Law University Publishing House], 1992). China also privileges collective rights over individual rights and emphasizes duty over rights. Weatherley, *The Discourse of Human Rights in China*, 103 and 124, and Zhou Wei, "The Study of Human Rights in the People's Republic of China," in *Human Rights and International Relations in the Asia Pacific*, ed. James D. Tang (London: Pinter, 1995), 88. I focus on these three key beliefs because they are most important in explaining China's posture toward the regime.

¹⁰⁸ The Chinese government's sponsored scholarship after 1989 that supported official policy, possibly further limiting independent thinking. See Zhou, "The Study of Human Rights in the People's Republic of China" and Weatherley, "The Evolution of Chinese Thinking on Human Rights in the Post-Mao Era," 19-42. While government officials may deploy these human rights ideas for instrumental reasons, they also reflect broader Chinese beliefs about human rights. For examples of PRC governmental positions, see, "Chinese delegation December 4, 2006 Statement," UN Human Rights Council Extranet, www2.ohchr.org/english/bodies/hrcouncil/form.htm and "Chinese delegation February 14 2007 Statement," UN Human Rights Council Extranet, www2.ohchr.org/english/bodies/hrcouncil/form.htm.

¹⁰⁹ Angle, *Human Rights and Chinese Thought*, 205. Weatherley cites the influence of Mencianism, Confucianism, and Marxism. Weatherley, *The Discourse of Human Rights in China*, 102 and 113-114.

¹¹⁰ Ann Kent also observed less change in PRC human rights attitudes. See Ann Kent, "China's human rights in 'the Asian century,'" in *Human Rights in Asia*, eds. Thomas W.D. Davis and Brian Galligan (Northampton, Massachusetts: Edward Elgar Publishing, Inc., 2011), 208. While some independent scholars have emerged who are cautiously voicing more liberal ideas, their influence remains limited. For an overview of these voices, see Weatherley, *The Discourse of Human Rights in China*, 132-149 and Mab Huang, "Universal Human Rights and Chinese Liberalism," in *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*, eds. Michael Jacobsen and Ole Bruun (Richmond, Surrey: Curzon Press, 2000). For an overview of the evolution among ordinary citizens thinking on human right, see Gao Hongjun, "Zhongguo gongmin quanli yishi de yanjin," [The awakening of consciousness of rights among Chinese citizens] in *Zou Xiang Quanli de Shidao* [Toward a time of rights], ed. Xia Yong (Beijing: *Zhongguo zhengfa daxue chubanshe* [China Politics and Law University Publishing House, 1995]).

can be attributed to the legacy of ideologies, such as Confucianism and Marxism and PRC one-party political system under CCP rule, which limits dissent and relies on political control to maintain itself in power. The focus will be on official governmental views because of the limited influence of non-state actors in shaping PRC international human rights policy. The key relevant features of the Chinese government's conception of human rights include:

Respect for state sovereignty. China's experience during the nineteenth century, when it was forced to yield to foreign powers by granting market access and foreign-ruled "concession" areas, left it with a high degree of sensitivity to threats to national sovereignty and foreign interference.¹¹¹ As a result of the "century of humiliation," the PRC tends toward a more Westphalian definition of sovereignty.¹¹² Premier Deng Xiaoping strongly affirmed sovereignty in his 1974 address to the UN General Assembly, asserting that "We hold that in both political and economic relations, countries should base themselves on... mutual respect for sovereignty and territorial integrity... We hold that the affairs of each country should be managed by its own people..."¹¹³ In the aftermath of

¹¹¹ International Criminal Court Judge and former PRC official Xue Hanqin made similar points. See *Chinese Contemporary Perspectives on International Law* (The Hague: Hague Academy of International Law, 2012), 2-3; 26-29; and 68-69. She noted that "China's experience since the Opium War... explains why China always attaches such importance to the principle of sovereign equality in international affairs." Ibid., 28. For an overview of PRC views on sovereignty, see Shan Wenhua, "Redefining the Chinese concept of sovereignty," in *China in the New International Order*, eds. Gungwu Wang and Yongnian Zheng (New York: Routledge, 2008).

¹¹² An international relations scholar affiliated with the China Society for Human Rights noted that "China is probably now the country that emphasizes sovereignty the most in the international community" and that "while many countries have changed their conception of sovereignty, China's views have not shifted that much." Further, the human rights regime is "something invented by the West" and this has fueled suspicion. Interview #47, PRC scholar, June 11, 2012, Beijing, China.

¹¹³ *Speech by Chairman of the Delegation of the People's Republic of China, Teng Hsiao-ping, at the Special Session of the U.N. General Assembly* (Beijing: Foreign Languages Press, 1974), 18. For other PRC statements on sovereignty, see Ambassador He Yafei, interview by Swiss Newspaper Le Temps, September 7, 2011, www.china-un.ch/eng/hom/t856087.htm; Ambassador Wang Min, "Statement by Ambassador Wang Min at the Third Committee of the Sixty-sixth Session of the United Nations General Assembly on Human

Tiananmen in 1989, Deng similarly stated that “This turmoil has taught us a lesson the hard way, but at least we now understand better than before that the sovereignty and security of the state must always be the top priority.”¹¹⁴ Similarly, PRC representative, Zhang Yishan, stated in 1996 at the UN Commission on Human Rights, “The sovereign equality of States and non-interference in their internal affairs were principles enshrined in the Charter of the United Nations and were inviolable.”¹¹⁵

Even before the 1989 Tiananmen Square protests, PRC scholars noted the tension between sovereignty and international human rights norms and monitoring, stating that “the so-called international character of human rights advocated is based on [the] theory of considering individuals as subjects of international law and thus setting the principle of state sovereignty against the principle of human rights” and that “human rights must be subordinate to the principle of state sovereignty and cannot be superior to the principle of state sovereignty.”¹¹⁶ A Chinese Communist Party-affiliated scholar elaborated that “it is not appropriate to advocate human rights over sovereignty. We need to be alert about the phenomenon that in international affairs some countries will interfere in other countries’ internal affairs and violate other countries’ sovereignty in the name of human rights.”¹¹⁷

Rights,” PRC statement, Third Committee of the UN General Assembly, New York, October 26, 2011, www.china-un.org/eng/dbttxx/WMdsjl/WANGminhuodong/t871084.htm; and Ambassador Wang Min, “Statement by Ambassador Wang Min at the Third Committee of the 67th Session of the General Assembly on Human Rights,” PRC Statement, Third Committee of the UN General Assembly, New York, November 8, 2012, www.china-un.org/eng/hyyfy/t987111.htm.

¹¹⁴ Quoted in Andrew Nathan and Perry Link, *The Tiananmen Papers: The Chinese Government’s Decision to Use Force Against Their Own People—In Their Own Words* (New York: Public Affairs, 2001), 358.

¹¹⁵ UN Commission on Human Rights, *Summary Record of the 33rd Meeting*, April 16, 1996, E/CN.4/1996/SR.33, paragraph 2.

¹¹⁶ Shen, Baoxiang and Wang Chengquan, and Li Zerui, “Guanyu guoji lingyu de renquan wenti,” [On the Question of Human Rights in the International Arena] *Hong Qi* [Red Flag], no. 8 (1982): 103-4.

¹¹⁷ Interview #46, PRC scholar, June 13, 2012, Beijing China. For similar interview findings, see Allen Carlson, *Unifying China, Integrating with the World* (Stanford, California: Stanford University Press, 2005), 158 and 167. An MFA Official offered similar comments on the importance of sovereignty. Interviewee #56 PRC Ministry of Foreign Affairs official, June 6, 2012, Beijing, China.

These views on sovereignty have translated into PRC government positions that favor less intrusive forms of human rights monitoring, stronger state control over international human rights supervision, and strong reaction to what it perceives as interference.¹¹⁸ Its 1991 human rights white paper captured China's position on foreign interference and a vigorous defense of sovereignty, stating that:

China has firmly opposed any country making use of the issue of human rights to sell its own values, ideology, political standards and mode of development, and to any country interfering in the internal affairs of other countries on the pretext of human rights, the internal affairs of developing countries in particular, and so hurting the sovereignty and dignity of many countries. Together with other developing countries, China has waged a resolute struggle against all such acts of interference, and upheld justice by speaking out from a sense of fairness. China has always maintained that human rights are essentially matters within the domestic jurisdiction of a country.¹¹⁹

China's position on non-interference and a Westphalian view of sovereignty as expressed in the quote above, were prevalent in the early 1990s, and have only undergone minor modification over time.¹²⁰

One hallmark of the PRC's conception of human rights is that sovereignty and a strong state form the foundation for the realization of human rights. As Sonya Sceats and Shaun Breslin noted, "in the Chinese conception, sovereignty is presented as the

¹¹⁸ China believes that it is up to each sovereign state to oversee fulfillment of international human rights standards. Nathan, "China and the International Human Rights Regime," 139. Kinzelbach noted that occasionally the PRC stressed state sovereignty at the expense of the authority of human rights treaty bodies. 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)," *Netherlands Quarterly of Human Rights* 30, no. 3 (2012): 316 and 322.

¹¹⁹ Information Office of the State Council, *Human Rights in China 1991*, Section X, Active Participation in International Human Rights Activities. PRC scholars have shared this view. See Zhou, "The Study of Human Rights in the People's Republic of China," 91.

¹²⁰ For a scholarly account of the PRC's pragmatic and sometimes instrumental use of sovereignty, see Sow Keat Tok, *Managing China's Sovereignty in Hong Kong and Taiwan* (New York: Palgrave MacMillan, 2013).

cornerstone of or precondition for all rights.”¹²¹ Moreover, Chinese government officials have long espoused the conviction that strong states are better able to protect human rights.¹²² Whereas western thinkers often envision human rights as protecting people from the encroachments of an abusive state, Chinese government leaders more often believe that the state is the protector of human rights.¹²³

Prioritization of a right to development and economic, social and cultural rights. A central tenet of Beijing’s conception of human rights is an emphasis on economic, social and cultural rights over civil and political rights and advocating for a right to development.¹²⁴ At times the PRC has advanced the view that economic and developmental rights are the foundation for the realization of other rights.¹²⁵ For example, the 1991 white paper stated that “the right to subsistence is the most important of all human rights, without which the other rights are out of the question.”¹²⁶ The 2003 Survey of China’s Foreign Affairs published by the Foreign Ministry also advanced this view, stating that “Economic and

¹²¹ Sceats and Breslin, *China and the International Human Rights System*, 7. According to scholar Nathan, “Political rights in modern China have most often been justified by their service to social goals, especially achieving a strong state.” Andrew Nathan, “Sources of Chinese Rights Thinking,” in *Human Rights in Contemporary China*, ed. R. Randle Edwards, Louis Henkin, and Andrew Nathan (New York: Colombia University Press, 1986), 154. See also Pang Sen, *Dangdai Renquan ABC* [The ABC of Contemporary Human Rights] (Sichuan: *Sichuan Renmin Chubanshe* [Sichuan People’s Publishing House], 1997), 26.

¹²² Sceats and Breslin, *China and the International Human Rights System*, 7 and Kinzelbach, “Will China’s Rise Lead to a New Normative Order?,” 321.

¹²³ Angle, *Human Rights and Chinese Thought*, 249. Weatherley argued that Qing dynasty Chinese scholars thought that granting political rights would augment the state’s power. Weatherley, *The Discourse of Human Rights in China*, 3.

¹²⁴ Weatherley argued that this focus can be traced to China’s Marxist and Mencian traditions, which focus on human welfare. Weatherley, *The Discourse of Human Rights in China*, 6 and 107. See also Kinzelbach, “Will China’s Rise Lead to a New Normative Order?,” 324-329. As noted by scholar Dingding Chen, this priority predates the 1989 Tiananmen Square crackdown and is not merely a response to international human rights pressure. PRC statements on this point begin prior to 1989. Dingding Chen, “Explaining China’s Changing Discourse on Human Rights,” *Asian Perspectives* 29, no. 3 (2005): 169 and 176.

¹²⁵ Weatherley, *The Discourse of Human Rights in China*, 115 and Kent, “China’s participation in International Organisations,” 152.

¹²⁶ Information Office of the State Council of the PRC, *Human Rights in China 1991*, Section X, Active Participation in International Human Rights Activities. Xue Hanqin concurs, noting that “... China attaches importance to economic, social and cultural rights and the right to development in its human rights process.” Xue, *Chinese Contemporary Perspectives on International Law*, 152.

social development is the basis for the full realization of human rights. Poverty is a major obstacle for enjoying human rights. International society must attach great importance to economic, social, cultural rights, and the right to development and help the majority of developing countries to eliminate poverty and realize development.”¹²⁷

Given these views, it is not surprising that the PRC, along with other countries in the developing world, championed a right to development and argued that economic and social rights should have at least equal standing relative to civil and political rights.¹²⁸ In 2005, China, speaking on behalf of 19 other countries, asserted that there should be “more emphasis on the promotion of economic, social and cultural rights, and the right to development.”¹²⁹ This focus is partially rooted in China’s developing country status, yet even as the PRC has experienced soaring economic growth rates and become world’s second largest economy, it has not wavered in its endorsement of economic rights and a right to development.

Differing national conditions. While at times the PRC has indicated at least a rhetorical acceptance of universal human rights standards, PRC officials have “continued to argue that rights would vary with different social and political systems, levels of economic and cultural development, and national customs and habits.”¹³⁰ A 1989 *Renmin Ribao* article

¹²⁷ PRC Ministry of Foreign Affairs Policy Research Office, *Zhongguo Waijiao 2003*[China’s Foreign Affairs 2003], (Beijing: *Shijie Zhishi Chubanshe*, 1998), 345.

¹²⁸ Svensson, *Debating Human Rights in China*, 252 and Kinzelbach, “Will China’s Rise Lead to a New Normative Order?” 326-327. For example, see UN Commission on Human Rights, *Summary Record of the 33rd Meeting*, April 16, 1996, UN. Doc. E/CN.4/1996/SR.33, paragraph 3.

¹²⁹ Ambassador Sha Zukang, “Statement by H.E. Ambassador Sha Zukang, on behalf of the Like-Minded Group, at the 61st Session of the Commission on Human Rights, March 14, 2005,” PRC Statement, UN Commission on Human Rights, Geneva, March 14, 2005, www.china-un.ch/eng/rqrd/t187353.htm.

¹³⁰ Svensson, *Debating Human Rights in China*, 262. Former Chinese diplomat and now International Criminal Court Judge Xue Hanqin noted that “China is of the view that the human rights cause should be promoted in line with each State’s social and economic development.” Xue, *Chinese Contemporary*

argued that protections of human rights “are constrained by the country’s political system, economic relations, cultural traditions, habits and customs, and many other factors. Thus, there is... no universally applicable... model of human rights for all of humanity...”¹³¹

Two years later, in its 1991 white paper, the PRC asserted that “differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights.”¹³² Although the PRC failed in its efforts to see these ideas incorporated into the 1993 Vienna Declaration that emerged from the World Conference on Human Rights, it along with other countries, succeeded in gaining acceptance of these concepts at the regional preparatory conference in Bangkok.¹³³

The PRC has continued to espouse these ideas, and in 1996 at the UNCHR stated that “Given the diverse social conditions prevailing in States and their varied historical backgrounds, the implementation of human rights principles could not be divorced from consideration of each country’s specific situation.”¹³⁴ As recently as 2007, China continued to assert that “owing to differences in social systems, levels of development, religious and cultural background as well as historic tradition it is natural for countries to

Perspectives on International Law, 150. A PRC scholar explained that “There are almost two hundred countries in the international community. We must consider differences, especially cultural and religious differences, of these countries.” Interview #47, PRC scholar, June 11, 2012, Beijing, China.

¹³¹ Shi Yun, “Shei shi renquan de zhenzheng hanweizhe?” [Who are the true defenders of human rights?], *Renmin Ribao* (July 7, 1989). For similar PRC scholarly views, see also Li Buyun, “Constitutionalism and China,” in *Democracy and the Rule of Law in China*, ed. Yu Keping (Leiden: Brill, 2010), 217. Liu Hainian, Director of the Institute of Law at the Chinese Academy of Social Sciences asserted that “Human rights are restricted by social, economic and cultural development.” Liu Hainian, “Human Rights Perspectives in Diversified Cultures,” in *Human Rights: Chinese and Dutch Perspectives*, eds. Peter R. Baehr, Fried van Hoof, Liu Nanlai, and Tao Zhenghua (The Hague: Martinus Hijhoff Publishers, 1996), 17.

¹³² Information Office of the State Council, *Human Rights in China 1991*. For similar statement see UN Commission on Human Rights, *Summary Record of the 33rd Meeting*, April 16, 1996, UN doc. E/CN.4/1996/SR.33, paragraph 3.

¹³³ Michael Davis, “Chinese Perspectives on Human Rights,” in *Human Rights and Chinese Values: Legal, Philosophical, and Political Perspectives*, ed. Michael C. Davis (Oxford: Oxford University Press, 1995), 3.

¹³⁴ UN Commission on Human Rights, “Summary Record of the 33rd Meeting,” April 16, 1996, UN doc. E/CN.4/1996/SR.33, paragraph 3.

differ on human rights issues.”¹³⁵ Work by Acharya, writing on Southeast Asian regionalism, and Cortell and Davis on Japan and international trade norms, suggest the importance of local values influencing international behavior, a finding that I endorse in the case of China and human rights.¹³⁶

Chinese concern with international image

I also establish through my empirical analysis in later chapters that Beijing’s posture toward the international human rights regime has been strongly influenced by its concerns with cultivating and maintaining a positive global image.¹³⁷ I argue that this is grounded in a particular world view emphasizing the instrumentalist logic of the global system as well as socio-psychological concerns, involving such ideas as ‘face.’ Image as defined here is very closely related to the concept of reputation, meaning the way in which a state is viewed by other states.¹³⁸

The PRC has been particularly sensitive to statements it perceives as critical of its human rights record, including both verbal statements and written reports. For example, in the UN setting, the PRC has been sensitive to statements expressing concern for Chinese domestic human rights violations by other country delegations and UN human rights

¹³⁵ United Nations General Assembly, “Aide Memoire,” April 13, 2006, <http://www.un.org/ga/60/elect/hrc/china.pdf>.

¹³⁶ Acharya, *Whose Ideas Matter?* and Cortell and Davis, “When Norms Clash.”

¹³⁷ Kim noted that as part of its campaign to enter the UN, China sought to “beautify the PRC’s tarnished image in the international community.” Samuel S. Kim, *China, the United Nations and World Order* (Princeton, New Jersey: Princeton University Press, 1979), 102. For scholarship on PRC image, see Simon Rabinovitch, “The Rise of an Image-Conscious China,” *China Security* 4, no. 3 (Summer 2008): 33-47 and Michael Swaine and Alastair Iain Johnston, “China and Arms Control Institutions,” in *China Joins the World: Progress and Prospects* (New York: Council on Foreign Relations, 1999), 107-9.

¹³⁸ Johnston, *Social States*, 90-91. As noted by Johnston, from the late 1970s and 1980s, the PRC leadership became more sensitive to “how their behavior played publicly in front of largely status quo second and third world audiences that set the agenda in international institutions” and that “the [PRC] leadership became more concerned to project an image of a responsible major power and to enhance its international prestige.”

experts. The PRC's image concerns have not been confined to a particular international audience, and generally includes the developing world. However, expressions of concern regarding China's domestic human rights record have primarily come from UN human rights experts, international NGOs, and countries belonging to the Western European and Others Group, not the developing world. Moreover, a number of developing countries share China's views regarding international human rights. Generally, rather than eliciting norm compliant behavior, such as seeking to earnestly address domestic human rights abuses highlighted by UN experts and other countries, this sensitivity to image led PRC officials to act as public relations managers as they sought to deflect negative attention, including opposing country-specific monitoring. At the same time, image concerns often caused the PRC to moderate its behavior, such as causing it to back away from a controversial or unhelpful position, including its position in the Human Rights Council to thwart the use of country-specific resolutions, a point that is documented in chapter 4.

Other scholars have also observed that image concerns sometimes resulted in restrained PRC behavior.¹³⁹ Along these lines, Elizabeth Economy asserted that "China's concern with its international image, especially among developing countries, has occasionally endangered a more proactive stance in its participation in international

¹³⁹ See for example, Economy and Oksenberg, *China Joins the World: Progress and Prospects*, 21; Margaret M. Pearson, "China in Geneva: Lessons from China's Early Years in the World Trade Organization," in *New Directions in the Study of China's Foreign Policy*, eds. Alastair Iain Johnston and Robert S. Ross (Stanford, California: Stanford University Press, 2006); and Alastair Iain Johnston and Paul Evans, "China's Engagement with Multilateral Security Institutions," in *Engaging China: The Management of an Emerging Power*, eds. Alastair Iain Johnston and Robert S. Ross (New York: Routledge, 1999), 248-249. Swaine and Johnston argued that China's accession to the Nonproliferation Treaty was likely accelerated by a desire to deflect human rights criticism following Tiananmen. Swaine and Johnston. "China and Arms Control Institutions," 109. A PRC scholar noted that because of its concern with image, the PRC is less likely to undertake the costly endeavor of seeking to change "the rules of the game" in the international system. Interviewee #55 PRC scholar, June 8, 2012, Guangzhou, China.

regimes.” She also argued that China signed the Montreal Protocol on Substances That Deplete the Ozone Layer in part because it would enhance China’s image.¹⁴⁰

PRC official remarks further underline the importance of image. On the eve of Party Secretary Mikhail Gorbachev’s visit and as the Tiananmen Square protests were growing, Premier Deng Xiaoping stated that “We have to maintain our international image. What do we look like if the Square is a mess?”¹⁴¹ Although the PRC’s concerns intensified after the 1989 Tiananmen Square crackdown, even in the early 1980s there is evidence that Beijing was attentive to its international image. A PRC Ministry of Foreign Affairs official affirmed the importance of image, noting that China wants to be viewed positively by the majority of the world.¹⁴² As outlined below, there appear to be psychological and cultural reasons for this sensitivity to image.

China’s image concerns appear to reflect both a realist world view and ideational beliefs about human rights and in these senses China’s position underlines the insights that derive from constructivist approaches.¹⁴³ Following the 1989 Tiananmen Square Massacre, China experienced substantial political and economic losses, including a two-year decline in its credit rating, foreign investment, export orders, and tourism; a weakening of its negotiating position on a range of issues, such as trade, resulting in

¹⁴⁰ Elizabeth Economy, “The Impact of International Regimes on Chinese Foreign Policy-Making: Broadening Perspectives and Policies... But Only to a Point,” in *The Making of Chinese Foreign and Security Policy in the Era of Reform, 1978-2000*, ed. David M. Lampton (Stanford, California: Stanford University Press, 2001), 235 and 242.

¹⁴¹ Nathan and Link, *The Tiananmen Papers*, 148.

¹⁴² Interviewee #56 PRC Ministry of Foreign Affairs, June 6, 2012, Beijing, China.

¹⁴³ A PRC scholar noted that Chinese leaders appear to have come to define a positive image as being part of China’s definition of interest, especially after Tiananmen. Interview #48, PRC scholar, July 9, 2012, Beijing, China. Another PRC scholar noted that China’s image concerns were grounded in both material and ideational reasons. Interviewee #53, PRC scholar, May 31, 2012, Shanghai, China. Another scholar noted that it could be that Chinese leaders feel that they can best achieve their goals through a positive image. Interviewee #54, June 8, 2012, Guangzhou, China. Johnston and Evans pointed out that image can have instrumental value, even if the benefits are diffuse and vague. Johnston and Evans, “China and Multilateral Security Institutions,” 251-252.

Chinese concessions on market access and intellectual property rights; diminished opportunities to raise concerns about Taiwan, which weakened the PRC's ability to block arms sales to Taiwan; and the possibility of losing U.S. Most Favored Nation trade status.¹⁴⁴ It has been estimated that China lost \$11 billion in bilateral aid during the four years after Tiananmen.¹⁴⁵ Clearly, the combination of economic and political sanctions hurt Beijing's interests in a number of areas. Thus, Beijing may have learned that its national interests were best served by a positive international image, and that access to foreign resources might be affected by a negative image.¹⁴⁶ The Beijing Olympics showed that China remains vulnerable to image costs as human rights organizations used the event to generate pressure on the government, particularly with regard to its support to Sudan despite credible reports of human rights abuses, especially related to Darfur.¹⁴⁷ Though Beijing has become a stronger state since 1989 and its economy has continued to flourish, Chinese leaders, recalling the damage that resulted after Tiananmen, likely see a link between a positive international image and PRC national interests.

PRC leaders also appear to view international criticism as threatening their continued rule since it has the potential to subvert Chinese Communist Party authority by

¹⁴⁴ According to Ming Wan, "China's need for support over human rights weakened its bargaining leverage regarding other issues. And Beijing's loss in reputation compromised its core value in territorial integrity: a democratizing Taiwan gained diplomatic ground and the Tibetan cause, led by the Dalai Lama, received greater international sympathy." Ming Wan, *Human Rights in Chinese Foreign Relations: Defining and Defending National Interests* (Philadelphia: University of Pennsylvania Press, 2001), 7. Nathan noted that after Tiananmen, Taiwan was hardly discussed with the U.S. until 1995. Moreover, China's need to defend its human rights record weakened its ability to block arms transfers to Taiwan. Nathan, "China and the International Human Rights Regime," 147. On foreign investment, see James Seymour, "Human Rights in Chinese Foreign Relations," in *China and the World: Chinese Foreign Policy Faces the New Millennium*, ed. Samuel S. Kim (New York: Westview Press, 1998): 225.

¹⁴⁵ Rosemary Foot, "China and the Tian'anmen Bloodshed of June 1989," in *Foreign Policy: Theories, Actors, Cases*, 2nd edition, eds. Steve Smith, Amelia Hadfield and Tim Dunne (Oxford: Oxford University Press, 2012), 339. Similar connection between image and PRC interest in continued foreign economic linkages. Interviewee #55 PRC scholar, June 8, 2012, Guangzhou, China.

¹⁴⁶ Nathan, "Human Rights in Chinese Foreign Policy," 636-37.

¹⁴⁷ See Andrew Nathan, "China and International Human Rights: Tiananmen's Paradoxical Impact," in *The Impact of China's 1989 Massacre*, eds. Jean-Philippe Beja (New York: Routledge, 2010), 218.

weakening its legitimacy and possibly emboldening domestic opposition.¹⁴⁸ For example, in response to the U.S. State Department's annual worldwide human rights report, in 2003 the PRC Embassy in Washington DC responded with a strident message that alleged that the U.S. Government used "distortions" to "interfere with China's internal affairs under the pretext of human rights, which of course, will cause discontent [among Chinese citizens] in the Chinese Government..."¹⁴⁹ In similar vein, in response to Secretary Clinton's remarks raising concern about human rights in China, the PRC responded that this was an attempt to foster unrest in China and "alleged that U.S. human rights concern was intended to split and suppress China."¹⁵⁰ More recently, according to an August 2013 *New York Times* article, Communist Party cadres were warned that Western-inspired notions such as universal human rights, constitutional democracy, media independence and civic participation were subversive and could threaten the CCP hold on power.¹⁵¹

Beijing's desire for a positive image is also driven by a concern with the idea of status. Aside from concrete benefits, the Chinese leadership has come to value the intrinsic worth of a positive image. This may reflect the significance of "face" or "recognition" in Chinese culture.¹⁵² As one interview subject put it, "This may be related to Chinese culture. Chinese people value 'face'... and image and reputation mean

¹⁴⁸ Interviewee #54 PRC scholar, May 26, 2012, Chengdu, China and Interviewee #62 Chinese scholar, June 9, 2012, Macau, China.

¹⁴⁹ "US Report Distorts Human Rights Status in China," PRC Embassy in the US, news release, October 10, 2003, www.china-embassy.org/eng/zt/zgrq/t36687.

¹⁵⁰ "China Hits Out at US Human Rights Comments," *People's Daily Online*, May 14, 2011, english.people.com.cn/90001/90776/90883/7379780.html.

¹⁵¹ Chris Buckley, "China Takes Aim at Western Ideas," *New York Times*, August 19, 2013.

¹⁵² A number of PRC interview subjects suggested that the PRC government sees an inherent value to a positive image, even linking it with the Chinese concept of 'face.' Interview #44, July 12, 2013, Beijing, China and Interview #49, June 2, 2012, Shanghai, China. Another PRC scholar noted that because of China's political system, PRC leaders are not used to criticism. They are not comfortable with or accustomed to scrutiny. Thus, they react strongly when criticized by the international community. Interviewee #48, PRC scholar, July 9, 2013, Beijing, China.

everything. As a result, as a nation, China is very concerned about how other people look at it...”¹⁵³ More recently, Chinese ambitions go beyond a benign image, and China now aspires to be seen as a “responsible great power” and appears to perceive inherent value in attaining a positive international image.¹⁵⁴

PRC leaders have come to consider being in good standing in international regimes as critical to a positive international image.¹⁵⁵ Consequently, since the early 1980s, China has consistently sought to project an image as a reputable, cooperative, and participatory member of international regimes. In the human rights regime, the PRC has sought to portray itself as a compliant, norm-abiding international citizen that is engaged with the regime, as demonstrated by its participation and its acceptance of a high number of international human rights treaties.¹⁵⁶ For example, the 1991 white paper noted that “The

¹⁵³ Interview #47, PRC scholar, June 11, 2012, Beijing, China.

¹⁵⁴ See, for example Samuel S. Kim, “Chinese Foreign Policy Faces Globalization Challenges,” in *New Directions in the Study of China’s Foreign Policy*, eds. Alastair Iain Johnston and Robert S. Ross (Stanford, California: Stanford University, 2006), 293; Alastair Iain Johnston, “International Structures and Chinese Foreign Policy,” in *China and the World: Chinese Foreign Policy Faces the New Millennium*, 4th edition, eds. Samuel S. Kim (Boulder, Colorado: Westview, 1998), 77; and Pichamon Yeophantong, “Governing the World: China’s Evolving Conceptions of Responsibility,” *Chinese Journal of International Politics* 6, no. 4 (Winter 2013): 329-64.

¹⁵⁵ According to Rosemary Foot, since the 1980s this status of a responsible great power has come to include being in “good standing in the international regimes that made up the substance of international life.” Rosemary Foot, “Chinese Power, and the Idea of a Responsible State,” *The China Journal* 45, (2001): 8. Jack Donnelly noted that since the late 1980s international society has added to the list of expectations for member states respect for human rights. Donnelly, “Human Rights: A New Standard of Civilization?,” 18 and 21. Johnston and Evans argued that “... in interview after interview arms control specialists, a common response was that China had to join such and such a treaty or process because it was part of a world historical trend, because it was part of China’s role as a responsible major power, because it would help improve China’s image, and, more concretely, help China to break out of the post-June 4 attempts by some Western states to isolate China diplomatically.” Johnston and Evans, “China and Multilateral Security Institutions,” 252-253.

¹⁵⁶ A Chinese scholar affiliated with the CCP also emphasized that China has acceded to a high number of international human rights conventions. Interview #45, PRC scholar, June 13, 2012, Beijing, China. Foot also noted that “a number of Chinese statements suggested that Beijing deserved to be commended for its active role in the international human rights movement, and it started to draw attention to the fact that it had signed more international conventions than Washington...” Foot, *Rights Beyond Borders*, 106. See also *Beijing Review*, April 10-16, 1989. This point was also reiterated by Interviewee #56 PRC Ministry of Foreign Affairs official, June 6, 2012, Beijing China and Interviewee #45 PRC Central Party School scholar, June 13, 2012, Beijing, China.

Chinese government has always submitted reports on the implementation of the related conventions, and seriously and earnestly performed the obligations it has undertaken.”¹⁵⁷

In 2004, China’s human rights white paper pointed out that “to date, [the PRC has] acceded to 21 international human rights conventions, and has taken every measure to honor its obligations under those conventions.”¹⁵⁸ Even more recently, the Ministry of Foreign Affairs account of China’s Foreign Relations in 2010 noted that “China further enhanced cooperation with UN treaty bodies and took active steps to honor its obligations under the relevant conventions.”¹⁵⁹

Yet, even as Beijing has sought to burnish its image as an engaged, cooperative, and active regime participant, it has also sought to shape the regime in ways that would make it easier for it to appear to be in good standing in the regime, as will be shown in later chapters of this thesis. As a result, Beijing has voiced a strong preference for promoting human rights through cooperative measures, such as capacity-building, as opposed to more public forms of censure, especially country-specific resolutions. For example, as outlined in chapter 4, in the Human Rights Council, during the Institution-Building process, China sought to thwart the use of country-specific resolutions. Yet, Beijing has sought to do so subtly, without making its agenda too obvious.

¹⁵⁷ Information Office of the State Council, *Human Rights in China 1991*, Section X, Active Participation in International Human Rights Activities.

¹⁵⁸ Information Office of the State Council, *Progress in China’s Human Rights Cause in 2003* (Beijing: Information Office of the State Council, March 2004), www.english.gov.cn/official/2005-07/28/content_17972.htm, section VIII. The PRC representative to the UN Third Committee pointed out that China had become party to 21 international human rights instruments and that the “Chinese government has been scrupulously fulfilling its treaty obligations.” La Yifan, “Statement by Mr. La Yifan, Alternate Representative to the Chinese delegation,” United Nations General Assembly, New York, October 25, 2004, www.china-un.org/eng/zghlbg/jjhshsw/rqwt/t167002.htm. Similar points made by PRC diplomat and scholar, Nianlong Han, *Diplomacy of Contemporary China* (Hong Kong: New Horizon Press, 1990), 471.

¹⁵⁹ PRC Foreign Ministry Research Policy Office, *China’s Foreign Affairs 2011*, 379. See also Information Office of the State Council, *Progress in China’s Human Rights Causes in 2003*, section VIII.

Degree of familiarity with the regime

The Chinese government's familiarity with the regime, which increased over time, has also influenced its posture. This explanatory factor also relates to Beijing's substantive understanding of human rights concepts and the functioning of the regime, including its experiences with various human rights mechanisms and procedures, such as UNCHR resolutions, human rights treaty bodies, and the special procedures. As China became more familiar it began to branch out, playing roles other than that of a regime taker.

In the early 1980s, when China began participating in the international human rights regime, it had been isolated from the international system for nearly a generation. As a result, Chinese officials were inexperienced and unfamiliar not only with the human rights regime but with international regimes in general. China's own words support this point. As Premier Zhou Enlai stated in 1971, "We do not have too much knowledge about the United Nations and are not too conversant with the new situation which has arisen in the United Nations... it means that caution is required and that we must not be indiscreet and haphazard."¹⁶⁰ Being a novice and having very little familiarity with the human rights regime, China was initially inclined to accept the regime and act as a taker.¹⁶¹ As China's familiarity with the regime increased, it became more capable and interested in playing

¹⁶⁰ Quoted in Kent, *Beyond Compliance*, 48-49. These sentiments were echoed by Chinese diplomats. Ambassador Ch'en Ch'u at his debut in the First Committee stated, "As we begin to participate in the work of the UN there will be a period of learning for us, so that we may understand the actual workings of the UN." Expressing similar sentiments, Ambassador Fu Hao in the Special Political Committee said that China "hoped for the assistance and co-operation of its colleagues" because it "was not yet familiar with the procedures in the UN." Quoted in Kim, *China, the United Nations and World Order*, 110.

¹⁶¹ For example, Kent observed that "Following its entry into the United Nations in 1971, China was generally content to adopt a passive, learning, observer role..." Kent, "China and the International Human Rights Regime," 7.

particular roles. Further, the diplomatic skills that the PRC had gained over time allowed it to be more effective and subtle in its various roles.

The importance of familiarity as an influence on Chinese behavior, particularly the link between lower levels of familiarity and an inclination to act as a taker, is consistent with other scholarly findings.¹⁶² Johnston suggested that novice states lack skill and experience, and may therefore initially turn to mimicking, which he introduced as a micro-process of socialization.¹⁶³ In similar vein, Oksenberg and Economy argued that “In the early 1970s China adopted a low profile in the regimes that it joined... But by the late 1980s and early 1990s the Chinese had become more assertive and tougher in their negotiation positions.”¹⁶⁴

Scope Condition: The PRC government’s ability and willingness to work with other countries

I argue that, in addition to the above explanatory variables, the PRC’s ability and willingness to cooperate with other countries has acted as a scope condition. Unlike the variables outlined above, this factor did not determine the PRC’s posture but rather influenced its conduct and the way it carried out its role, including its tactics, level of visibility, the energy it has put into promoting its positions, and the degree to which it has

¹⁶² Kim noted that “In general, China during the first years of her participation assumed the low-profile posture of a diligent apprentice who was preoccupied in learning a new trade...” Kim, *China, the United Nations and World Order*, 109.

¹⁶³ Johnston, *Social States*, 45-70.

¹⁶⁴ Michel Oksenberg and Elizabeth Economy, *Shaping U.S.-China Relations: A Long-Term Strategy* (New York: Council on Foreign Relations Press, 1997), 40.

played its particular roles.¹⁶⁵ The countries that China cooperated with were primarily non-western, developing world countries that held similar human rights views.¹⁶⁶

This scope condition has had a variety of divergent influences on PRC behavior. First, the existence of other countries, such as Egypt, Cuba, Pakistan and others, that espoused similar human rights views, appears to have reinforced some PRC positions, such as defending state sovereignty and asserting that human rights are contingent and based on differing conditions. At the same time and in contrast to this first influence, this scope condition has also moderated PRC behavior. More specifically, when China knew other countries were taking similar positions, it acted in a more subdued, less visible manner. For example, as demonstrated in Chapter 3, during the negotiations over the Optional Protocol to the Convention against Torture when other countries such as Cuba sought to block progress, China did not have to take a prominent leadership role. Similarly, as detailed in Chapter 4, because other countries such as Russia and Pakistan were already blocking efforts to introduce membership criteria for the UN Human Rights Council, the successor body to the UN Commission on Human Rights, PRC diplomats adopted a more modest stance.

Finally, this scope condition meant that the PRC sometimes used its participation in the human rights regime to support countries with views similar to its own or to bolster its reputation as a defender of the developing world. Beijing has long referred to itself as the

¹⁶⁵ Interviewee #53 PRC scholar, May 31, 2012, Shanghai, China noted that in cases that the PRC felt international rules should be changed, it would not do so unilaterally but rather by working with other countries. Interviewee #53 suggested that the PRC did not have the ability to effect change on its own and that working with others also showed that the PRC was not seeking a revolutionary change of the system.

¹⁶⁶ A PRC scholar affiliated with the Chinese-government organized China Society for Human Rights observed that China's identification with developing countries on human rights issues began at the 1993 Vienna World Conference on Human Rights. Interviewee #47, PRC scholar, June 11, 2012, Beijing, China.

world's "largest developing country," and in the UN human rights bodies clearly associated itself with these countries, even championing developing country issues. For example, in the case of the ILO Conference Committee on the Application of Standards, this scope condition meant that even as the PRC acted as a taker, it also used this venue to support friendly nations being reviewed for potential lapses in meeting obligations under ratified conventions.

The existence of other countries asserting similar human rights views may have eased normative human rights pressure on China. Some scholars have observed that the position and influence of other states can shape a state's posture toward a regime.¹⁶⁷ For example, according to Finnemore and Sikkink, as an increasing number of states adopt a norm, a tipping point is reached in which the norm begins to cascade through the remaining states.¹⁶⁸ Johnston noted that "social influence rests on the influenced actor having some prior identification with the relevant reference group."¹⁶⁹ Thus, China may identify less with the Western European and Others Group (WEOG) and more strongly with the countries sharing similar human rights views, who together were able to form their own "reference group."

Research Design and Methods

¹⁶⁷ According to Krasner, Britain "coerced, badgered, cajoled, and threatened other countries, notably Portugal and Brazil, into accepting an end to the slave trade..." Krasner, "Sovereignty, Regimes, and Human Rights."

¹⁶⁸ These authors suggested that the motivation for acceptance of a norm during this stage varies but likely involves a combination of pressure to conform, desire to enhance international legitimacy, and leadership interest in enhanced self-esteem. Finnemore and Sikkink "International Norm Dynamics and Political Change."

¹⁶⁹ Johnston, *Social States*, 80.

In order to explain China's behavior toward the international human rights regime (the dependent variable), this thesis applies a qualitative approach. This approach allows for the kind of fine-grained analysis needed to discern the PRC's role in the regime. It draws on semi-structured interviews, archival work, and documentary research.

Case studies covering a period from the 1980s through the 2000s are presented chronologically. This chronological approach is intended to reveal shifts over time and any evolution in China's behavior toward the regime. By covering the period through 2011, this thesis is also attentive to China's rising power and covers the periods before and after the 1989 Tiananmen Square crackdown.¹⁷⁰ This event marked the beginning of greater international attention being focused on China's human rights record and stronger application of the international human rights regime to the PRC.¹⁷¹ It also sharpened China's responses to and perspectives on the international human rights regime.

This time frame additionally allows us to assess the relationship between greater Chinese experience with the human rights regime and its interest in shaping the regime. In another policy area—the arms control regime—the PRC's growing involvement in negotiations “primarily taught it to use the arms control arena more effectively for its state-centric purposes rather than promoting a reconsideration of how best to attain security.”¹⁷² This finding is worth investigating in relation to human rights and will be returned to in the Conclusion of this thesis.

¹⁷⁰ According to this scholar, since the financial crisis beginning in 2008, China may be playing less of a low-profile. Interviewee #55, June 8, 2012, Guangzhou, China. Hongying Wang indicated PRC openness to international norms was popular through the 1990s and peaked in the early 2000s, but has since waned. Wang also noted that China has been less accepting of norms governing political and military issues, as well as, social policy, drawing attention to China's “near total rejection of Western ideas of democracy and concepts of human rights [and this] does not seem to bode well for Chinese endorsement of these ideas in the foreseeable future.” Wang, “Linking Up with the International Track: What's in a Slogan?,” 11-20 and 22.

¹⁷¹ See for example, Nathan, “China and the International Human Rights Regime.”

¹⁷² Oksenberg and Economy, *Shaping U.S.-China Relations: A Long-Term Strategy*, 19.

The cases chosen for study in this thesis cover China's behavior with regard to a range of human rights issues and organizations, including an individual right to be safe from torture that falls under the rubric of civil and political rights and a peremptory norm; institutional reform of a multilateral venue to address human rights in the UN; and labor rights, considered to be a collective right. These diverse cases also represent varied institutional settings ranging from a drafting group comprised mainly of interested states, high-profile negotiations involving UN member states, and labor rights monitoring process open to International Labour Conference attendees. While public statements and speeches will be referenced, the focus will be on China's actions, including its voting record, its contributions to drafting human rights documents, and its officially articulated policy positions on various human rights issues.

This work draws primarily on English language sources but is also complemented by some Chinese language sources. In particular, I have utilized official UN and ILO documents, including records from drafting meetings for the Convention Against Torture and the Optional Protocol to the Convention Against Torture; sessions of the UN Commission on Human Rights and the UN Human Rights Council, including position papers submitted by China; and over 25 years of reports from the ILO Conference Committee on the Application of Standards. The records of a variety of non-governmental organizations (NGOs) have also proven to be indispensable. I was extremely fortunate that Amnesty International's New York office allowed me to access its records on the establishment of the UN Human Rights Council. These documents, which are not generally available to the public, tracked state positions on various issues relating to the proposed Council, and were especially helpful in identifying China's positions during the

early phase of the Human Rights Council negotiations. The Geneva-based NGO, International Service for Human Rights, has also kept detailed publicly available records on the institution-building process of the UN Human Rights Council. These have also provided me with extremely useful information on state positions during these negotiations.

PRC sources in both the Chinese and English languages, including government documents, such as white papers on human rights, government statements, press releases, and other public documents, have also been accessed. In addition, news reports from *Renmin Ribao* and *Xinhua* have proven to be useful sources. Scholarly works in Chinese, including journals, books, and memoirs, have provided me with a greater understanding of PRC positions and motivations. For example, the memoir of former PRC Foreign Minister Qian Qichen, *Ten Episodes in China's Diplomacy*, is a valuable source of Chinese views.

These sources have been supplemented by interviews and correspondence with over ninety interview subjects, including UN and ILO officials who served in relevant human rights organizations, foreign diplomats, human rights NGO representatives, and Chinese academics and policy-makers. These interviews were conducted between 2010 and 2012. I benefitted from especially good access to diplomats from North America and Western Europe, which does raise particular issues of possible bias for my findings. However, I was able to interview numerous diplomats from other regions, including the Middle East, South Asia, and East Asia. Although these kinds of interviews can be difficult to obtain, I had good access to representatives of countries that typically aligned and cooperated with China, allowing me to gain further insight into PRC behavior, especially in non-public venues. During the summer of 2012 I traveled to China, where I

was able to complete interviews with a variety of Chinese interview subjects, including scholars affiliated with government affiliated think tanks, such as the Chinese Academy of Social Sciences and the Central Party School, as well as scholars at China's leading universities in Beijing, Shanghai, Guangzhou, Hong Kong and Macau. Several of these scholars are also affiliated with the China Society for Human Rights, a government-affiliated NGO. I was particularly fortunate in gaining good access to a handful of government officials, including a former ambassador and two officials at the deputy director-general level.

Despite my strenuous efforts to access all available sources, there are some limitations. PRC Ministry of Foreign Affairs records, such as internal policy documents, for the time period under investigation are not available. Further, although I was able to interview a handful of Chinese government officials and a number of scholars, given the political environment in China, these interviewees were likely cautious and avoided revealing sensitive political information. In the absence of more direct evidence, I scrutinized existing scholarship, publicly available documents, and the additional sources noted above to reach an informed understanding of key explanatory factors.

Structure

This dissertation is comprised of six chapters. Following this introduction, chapter two provides an overview of China's general posture toward international regimes as it transitioned from a so-called pariah state to a member of the United Nations and other multilateral organizations. It traces the PRC's growing participation in international

regimes, highlighting its shift from a tepid and uncertain newcomer to an engaged and important actor.

Chapter three is the first of my case studies. It examines China's role in the drafting and adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention against Torture. This chapter provides insight into China's behavior within a more intimate group working toward consensus to establish the first international convention aimed at combatting torture and a second working group established to create a preventive UN monitoring mechanism with extensive visiting powers. By covering the drafting of two different international agreements, this chapter illuminates China's evolving posture as it shifted from a novice to a more experienced regime participant.

The second case study forms the basis of chapter four and examines China's role during the process of establishing a new UN human rights body to replace the UNCHR. It also investigates China's posture in the UNCHR, which it joined in 1982.¹⁷³ I examine Beijing's positions in reforming the UN human rights body and replacing the Commission with the Council. To a limited extent, I also address China's role in the Council since 2006.

The fifth chapter analyzes China's participation in the International Labour Organization's Conference Committee on the Application of Standards. PRC representatives first began attending the annual sessions of the International Labour Conference in 1984, and that same year joined the Conference Committee on the

¹⁷³ Dingding Chen, "China's Participation in the International Human Rights Regime: A State Identity Perspective," *Chinese Journal of International Politics* 2, no. 3 (2009): 401.

Application of Standards. This chapter illuminates PRC behavior in a public body comprised of member states responsible for holding their peers accountable to their commitments under ratified international labor conventions.

The concluding chapter reviews Beijing's various roles and parses the variables on Chinese behavior and their relative explanatory weight. It discusses the implications for understanding the five state roles toward regimes and reinforces international relations work that argues material interests on their own are not sufficient for understanding state behavior, at least in the case of China. Ideas, social status, and social learning matter a great deal. Moreover, China demonstrated that it often feared that material sanctions could result in damage to its interests and that this damage could result from a negative image in relation to its human-rights related behavior. Throughout the period of this study, and on the basis of this reasoning, it showed a sensitivity to its international image. However, Beijing also showed a fidelity to its own beliefs about human rights. It was these twin concerns that largely shaped its posture toward the international human rights regime.

Chapter 2

China's Evolving Posture Toward International Regimes: 1949-2011

China's evolution from eschewing to embracing international regimes can be divided into a number of distinct phases that reflect changed domestic and international variables. Beijing went from calling for a "revolutionary United Nations" and disparaging this important international organization to joining almost every significant international regime. This chapter outlines China's approach toward international regimes, focusing especially on critical turning points, the catalysts for change, and key influences on its behavior. Because China's disposition toward international regimes is closely connected to its relationship with the United Nations and associated intergovernmental bodies, this chapter will focus on its entry into and subsequent conduct within those bodies.¹⁷⁴ This chapter also examines China's interactions with the human rights regime. By doing so, it illuminates areas of continuity and divergence between Beijing's posture toward international regimes in general and the human rights regime in particular.¹⁷⁵ This chapter provides the broader context for the empirical chapters that follow.

Alienation Under Mao: 1949-1971

Under Chinese Communist Party (CCP) Chairman Mao Zedong, the newly-established PRC experienced a period of protracted international isolation.¹⁷⁶ Over

¹⁷⁴ This point has also been made by two former PRC diplomats. See Han, ed. *Diplomacy of Contemporary China*, 19 and Xue, *Chinese Contemporary Perspectives on International Law*, 18.

¹⁷⁵ Although China's behavior appears to vary among regimes, some general patterns and PRC motivations. See "The Impact of International Regimes on China's Foreign Policy Making," 235.

¹⁷⁶ For an account of this period, see Yongjin Zhang, *China in International Society since 1949: Alienation and Beyond* (New York: Palgrave MacMillan, 1998), 17-58. For a documentary record of PRC efforts to

roughly two decades Beijing aspired to UN membership, but could not gain the international support needed to replace the Republic of China (ROC). Due in part to its frustrated ambition for entry into the UN, for a brief period in the 1960s, the PRC advocated some defiant positions antithetical to the status quo.¹⁷⁷ Nonetheless, China persisted in seeking UN recognition because it believed that this would enhance its internal and external legitimacy and enable it to gain an upper hand in its diplomatic struggle with Taiwan.¹⁷⁸

During this period, despite being persistently rebuffed, Beijing—with one notable short period of rejection—pursued membership in the United Nations.¹⁷⁹ After the CCP's victory and the establishment of the PRC in 1949, Chinese leaders approached the UN Secretariat and the administrative leadership of other international bodies requesting admission.¹⁸⁰ While China enjoyed support from the Soviet bloc and parts of the Third World, the U.S. viewed China's admission as part of the Cold War contest with the Soviet-led communist movement, and therefore, vociferously opposed PRC membership.¹⁸¹ The PRC's entry into the Korean War in 1950 on the side of the North Korean regime and

gain admission, see Jerome Alan Cohen and Hungdah Chiu, *People's China and International Law: A Documentary Study* (Princeton, New Jersey: Princeton University Press, 1974), 268-88.

¹⁷⁷ Zhang, *China in International Society Since 1949*, 60. Zhang described the PRC during this short time period as a "revolutionary and dissatisfied power."

¹⁷⁸ After the CCP's victory, its rival in the civil war fled to the island of Taiwan, where the Kuomintang (Nationalist Party) established the Republic of China in exile. The PRC and ROC engaged in a long-running struggle over diplomatic recognition.

¹⁷⁹ As Kent noted, the PRC's alienation during this time "was due less to the policies of the newly established communist government and more to the rejection by UN members of its efforts to become the official representative of 'China.'" Kent, *Beyond Compliance*, 34. A similar point made by Xue, *Chinese Contemporary Perspectives on International Law*, 66.

¹⁸⁰ As noted by PRC scholar Wang Yizhou, the newly-established PRC submitted applications for entry to the World Health Organization, World Meteorological Organization, International Civil Aviation Organization, International Labor Organization, International Monetary Fund, International Bank for Reconstruction and Development and the Universal Postal Union. Wang Yizhou, "Briefing Multiple Perspectives on Relation between China and International Organizations," in *Construction within Contradiction: Multiple Perspectives on the Relationship Between China and International Organization*, ed. Wang Yizhou (Beijing: Zhongguo Fazhan Chubanshe, 2003), 25.

¹⁸¹ For analysis of the U.S. policy on non-recognition, see A. Doak Barnett, *Communist China and Asia: A Challenge to American Policy* (New York: Vintage Books, 1960), 430-58.

against U.S.-led forces hardened American enmity, and the U.S. devoted considerable energy toward rallying support to bar the PRC from the UN. The excesses of China's domestic and foreign policies during this period, including its support of revolution abroad and its autarkic economic system, reinforced its outcast status.¹⁸²

There were minor exceptions to Maoist China's aspiration to join the UN and related international regimes. In the mid-1960s, during the tumult of the Cultural Revolution, when domestic politics further fueled isolationism, there was a brief interregnum in the PRC's push to gain entry into the world's most prominent multilateral organization.¹⁸³ Beijing went so far as to propose a "revolutionary" United Nations and applauded Indonesia's withdrawal from the UN.¹⁸⁴ China also supported Third World calls for reform of the international economic system and dismissed the International Monetary Fund (IMF) and World Bank "as dominated by the Western capitalist countries, especially the United States."¹⁸⁵ Maoist China also espoused antagonism toward the arms control regime, publicly denouncing the Partial Nuclear Test Ban Treaty and the Non-Proliferation Treaty (NPT).¹⁸⁶ Nonetheless, Beijing's pursuit of membership conveyed

¹⁸² Lieberthal noted that the CCP "banned all Western investment in the PRC on the assumption that such investment would be used solely to exploit the country's resources, drain off profits, and subvert the political system." Kenneth Lieberthal, *Governing China: From Revolution Through Reform* (New York: W.W. Norton and Company, Inc., 1995), 150.

¹⁸³ The Cultural Revolution momentarily dimmed Beijing's prospects for entry as the political excesses of the campaign left many states with an image of the PRC as a dangerous actor. Kent, *Beyond Compliance*, 46.

¹⁸⁴ Nancy Bernkopf Tucker, *Taiwan, Hong Kong, and the United States, 1945-1992: Uncertain Friendships* (New York: Twayne Publishers, 1994), 50. Kim noted that because the international community denied China the legitimization of UN membership, the PRC's posture briefly gave way to a 'system-transforming' approach. Kim, "China and the United Nations," 45.

¹⁸⁵ Lieberthal, *Governing China*, 150. As Jacobson and Oksenberg noted, until the late 1970s, the PRC's political leaders and mass media criticized the key international economic organizations as facilitating "imperialist exploitation and domination of the world." Harold K. Jacobson and Michel Oksenberg, *China's Participation in the IMF, the World Bank, and GATT: Toward a Global Economic Order* (Ann Arbor, Michigan: The University of Michigan Press, 1990), 10.

¹⁸⁶ Zhang, *China and International Society since 1949*, 154. For a description of PRC views toward arms control and nonproliferation, see Yeshe Choedon, *China and the United Nations* (New Delhi: South Asian Publishers, 1990), 21-53.

that it acknowledged the UN's authority or at least its capacity to confer a form of legitimation on a newly-established government.

Explaining China's Behavior

China's campaign for admission to the UN can be attributed to domestic and international factors, including the competition with Taiwan for diplomatic recognition, the struggle to secure its international standing as a legitimate government, and a desire to enhance its domestic legitimacy. The cumulative influence of these factors inclined the PRC to pursue UN membership, and generally to recognize the UN's authority. Beijing's persistence, despite its unenviable position of supplicant, speaks to the strength of these influences.

Beijing viewed UN membership through the lens of its conflict with the Republic of China. During this period, one of Beijing's foremost goals was unseating the ROC as the recognized representative of China in the UN, which would help the PRC isolate Taiwan diplomatically and choke off support.¹⁸⁷ The PRC's insistence that the ROC be dismissed from the UN and other international bodies and its refusal to tolerate a two-Chinas solution suggest that Beijing's pursuit of UN membership was part of its effort to gain an upper hand in its rivalry with the Nationalist-led government.¹⁸⁸

In addition, UN membership was viewed as boosting the new regime's domestic and international legitimacy. As a government that had fought a protracted civil war only

¹⁸⁷ As Tucker noted, "Isolating Taipei from international forums, it would inevitably lead to a precipitous drop in the number of nations with which Taipei could maintain diplomatic relations or from which it could expect military support. Economic strangulation would accompany political exile." Tucker, *Taiwan, Hong Kong and the United States*, 48.

¹⁸⁸ Beijing was not willing to compromise on Taiwan's representation and insisted that the Republic of China be expelled. Byron S. Weng, "Some Conditions of Peking's Participation in International Organizations," in *China's Practice of International Law: Some Case Studies*, ed. Jerome A. Cohen (Cambridge: Harvard University Press, 1972), 328.

to face an unreceptive international environment, the PRC likely saw itself as being in a tenuous situation. From the Chinese perspective, entry into the UN would ease hostility and confer legitimacy on it.¹⁸⁹ As Jerome Cohen and Hungdah Chiu observed, China's diplomatic isolation "did not merely affect the prestige of the regime at home and abroad, but also symbolized the persistence of a hostile environment that threatened its independence, its integrity, and even its very survival."¹⁹⁰

Nascent Engagement: 1971-1977

After more than twenty years, Beijing's efforts finally bore fruit and it was received into the world's most prominent multilateral organization. In 1971, the PRC took up its seat in the United Nations, including a place in the Security Council as one of the five permanent members.¹⁹¹ Beijing assuaged the international community's fears of a "rogue China," that would be a disruptive presence, by adopting a modest posture rather than that of a revisionist and unruly power.¹⁹² Although Maoist ideology strongly shaped Chinese foreign policy and the PRC voiced some grievances with the system, its actual behavior was low-profile and Chinese diplomats avoided disrupting or paralyzing the work

¹⁸⁹ Also highlighting legitimacy, Rosemary Foot noted that "Beijing clearly saw membership in the United Nations as a matter to be taken seriously and as a significant mark of its legitimacy as the proclaimed new government of China." Rosemary Foot, *The Practice of Power: US Relations with China since 1949* (Oxford: Clarendon Press, 1995), 25. Similar point on legitimacy made by Zhang, *China in International Society since 1949*, 18-19.

¹⁹⁰ Cohen and Chiu, *People's China and International Law*, 205. See also Choedon, *China and the United Nations*, 11.

¹⁹¹ For an account of the budding U.S.-China relationship and the changing U.S. position on UN representation, see Robert S. Ross, *Negotiating Cooperation: The United States and China, 1969-1989* (Stanford: Stanford University Press, 1995), 42-44. In the late 1960s, shifts in Beijing's foreign policy and other states' perceptions of China opened the way for the PRC to become a UN member state. Moreover, as increasing numbers of Third World countries gained UN representation, the PRC's support in the General Assembly grew. China also stepped up its efforts to win membership, including increasing its foreign aid and campaigning for votes.

¹⁹² See Samuel S. Kim "International Organizations in Chinese Foreign Policy," *The Annals of the American Academy of Political and Social Science* 519 (January 1992): 141 and Kim, *China, the United Nations and World Order*, 159-60.

of the UN. The description of the PRC as taking an unassuming and low-profile posture is not meant to convey that it failed to play its due role, but rather that it sought primarily to be supportive, or non-obstructive, rather than troublesome. At the same time, the PRC's engagement remained shallow as it avoided involvement in certain UN matters. The primary explanatory factors for Beijing's low organizational profile was the legacy of Maoist ideology and its lack of familiarity with the UN and related international regimes, which will be discussed in a later section.

Beijing's voting and speaking patterns in the UN demonstrates this unassuming profile.¹⁹³ Relying on interview data, Samuel Kim found the PRC's verbal profile in the UN General Assembly (GA) to be "low and passive when measured by the frequency and length of speeches or statements."¹⁹⁴ Moreover, from 1971-1976, its voting record in the GA accorded with the majority 65 percent of the time and it was sparing in casting negative votes as it registered only 30 "no" votes.¹⁹⁵ This contrasts with 104 no votes by the U.S., 67 by the United Kingdom, 52 by France, and 44 by the Soviet Union.¹⁹⁶ China displayed similar behavior in the Security Council, where it adopted a "low-profile and apprentice-like posture"¹⁹⁷ and exercised "extreme caution in the use of the veto."¹⁹⁸ As Huang Hua, China's first permanent representative to the UN, recounted in his memoir,

¹⁹³ As Rosemary Foot noted, "For the rest of the decade, its attitude was modest and cautious and its role generally passive." Foot, *The Practice of Power*, 48. Similar points made in Kent, *Beyond Compliance*, 34 and Zhang, *China in International Society since 1949*, 82. For a Chinese account of PRC participation in the UN, see Xue Mouhong et al, *Dangdai Zhongguo Waijiao* [Contemporary Chinese Diplomacy] (Beijing: Zhongguo Shehui Kexue Chubanshe [Chinese Social Sciences Publishing House], 1988), 319-31. As Samuel Kim described, during these early years China played a "modest" and "self-effacing role." Kim, *China, the United Nations and World Order*, 161.

¹⁹⁴ Kim, *China, the United Nations and World Order*, 117.

¹⁹⁵ Ibid., 123.

¹⁹⁶ Ibid., 125.

¹⁹⁷ Ibid., 196.

¹⁹⁸ Ibid., 210.

“We adopted a very cautious attitude toward the exercise of our veto right.”¹⁹⁹ Elaborating on this point, Kim observed that from 1971-1976 in comparison with the other permanent members the PRC was restrained in using the veto, exercising it only twice. In contrast, the other permanent members’ use of the veto was as follows: 17 by the US, 9 by the United Kingdom, 5 by the Soviet Union, and 4 by France.²⁰⁰

However, there were limits to China’s cautious posture and in some instances it espoused provocative views. Even after China gained UN membership, it did not completely abandon its support for Third World complaints regarding the unjust international system and appeals for a New International Economic Order.²⁰¹ In his 1974 speech before the UN General Assembly, Deng Xiaoping expressed these sentiments, arguing that

The two superpowers, the United States and the Soviet Union, are vainly seeking world hegemony. Each in its own way attempts to bring the developing countries of Asia, Africa and Latin America under its control and, at the same time, to bully the developed countries that are not their match in strength... The Third World countries strongly demand that the present extremely unequal international economic relations be changed.²⁰²

This skeptical attitude extended to the arms control regime and “during the 1970s, Beijing disparaged and refused to participate in arms control treaties.”²⁰³ This stance was reified

¹⁹⁹ Huang Hua, *Huang Hua’s Memoirs* (Beijing: Foreign Language Press, 2008), 266. He noted that “up to the end of the last century, the US had used this right in the Security Council 81 times, while the Soviet Union/Russia had used it 116 times. From 1971, when China’s lawful rights in the UN were restored, to 2000, the Chinese delegation exercised the veto right four times, the first two in the 1970s.” He recounted that as the first PRC delegation was preparing to leave for New York, Premier Zhou Enlai “reiterated that China should refrain from abuse of its veto power in the Security Council.” *Ibid.*, 254.

²⁰⁰ Kim, *China, the United Nations, and World Order*, 201.

²⁰¹ For a description of the New International Economic Order, see Jacobson and Oksenberg, *China’s participation in the IMF, World Bank, and the GATT*, 41.

²⁰² *Speech by Chairman of the Delegation of the People’s Republic of China, Teng Hsiao-ping, at the Special Session of the U.N General Assembly* (Beijing: Foreign Languages Press, 1974).

²⁰³ Eric Croddy, “China’s Role in the Chemical and Biological Weapons Disarmament Regime,” *Nonproliferation Review* 9, no. 1 (Spring 2002), 29. Similar points are also offered in Jing-Dong Yuan, “The New Player in the Game: China, Arms Control, and Multilateralism,” in *China Turns to Multilateralism*:

in China's failure to ratify the Biological Weapons Convention in 1972.²⁰⁴ These positions reflected Maoist China's ongoing suspicion of international regimes and its view of the UN as serving the interests of the super-powers.²⁰⁵ Yet, China remained committed to raising its grievances within the context of the system rather than undermining it, and its overall behavior was restrained rather than obstructive.²⁰⁶

During this early period, the PRC's involvement was selective as it declined to participate in certain parts of the UN and the associated agencies that formed the backbone of international regimes, including the human rights regime.²⁰⁷ In contrast to the Deng-era, when Chinese participation became more extensive, Maoist China joined only eight of the UN's 17 specialized agencies and limited its involvement to organizations that were primarily technical, scientific and educational.²⁰⁸ This shallow and incomplete participation contrasts with the post-Mao period, when China not only assumed fuller participation, but also came to have a more vested interest in the international system, especially as it began to profit economically from external economic links and the international economic regime.

Foreign Policy and Regional Security, eds. Guoguang Wu and Helen Landsdowne (New York: Routledge, 2008), 56.

²⁰⁴ Croddy, "China Role in the Chemical and Biological Weapons Disarmament Regime," 34.

²⁰⁵ Robert G. Sutter, *Chinese Foreign Relations: Power and Policy Since the Cold War* (New York: Rowman & Littlefield Publishers, Inc., 2008), 114 and Zhang, *China in International Society since 1949*, 103. Mao's words to Qiao Guanhua, the head of the PRC delegation, as the delegation was preparing to attend the UN General Assembly suggested Mao's ongoing suspicion of the international system and his approach of working from within the system. Mao quoted a Chinese proverb: "How can you catch a tiger's cubs if you do not enter tiger's lair." Quoted in Zhang, *China and International Society Since 1949*, 97. Huang Hua, China's Foreign Minister, gives a slightly different account of Mao's words. See Huang, *Huang Hua Memoirs*, 254.

²⁰⁶ As Zhang noted, "...in the 1970s the China challenge was mostly represented from within the existing system." Zhang, *China in International Society since 1949*, 60.

²⁰⁷ Kim, writing in 1979, described China's engagement with UN functional bodies as, "deliberately low-key, passive, [and] selective." Kim, *China, the United Nations and World Order*, 402. Further, Kim noted that China's participation in the UN functional bodies was "slow and methodical." Ibid., 496.

²⁰⁸ Kim, "China and the United Nations," 45 and Kent, *Beyond Compliance*, 51.

Non-Engagement with Human Rights

During this period, the PRC eschewed involvement with UN human rights issues, remained detached from the regime and restricted domestic discussion of human rights. Maoist China did not join the UN Commission on Human Rights, the primary international human rights body, or accede to any human rights conventions. In the General Assembly, when resolutions on the creation of a UN Human Rights Commissioner and the human rights situations in Chile and El Salvador were considered, China absented itself.²⁰⁹ Mirroring this external posture, domestically there was little discussion of human rights except to dismiss the concept as bourgeois and antithetical to Marxism.²¹⁰ Given this context, PRC representative Wang Junsheng's 1972 statement affirming human rights as "an important issue for the Economic and Social Council" was surprising, and possibly unique for that period.²¹¹

Explaining China's Behavior

China's limited familiarity with the UN and international regimes and its misgivings about the international system which were grounded in Maoist ideology help explain both the shallowness of its participation and its reserved role.²¹² Both of these

²⁰⁹ Kent, *China, The United Nations, and Human Rights*, 42, and Kim, *China, the United Nations, and World Order*, 126.

²¹⁰ According to Zhu, until the late 1970s the term "human rights" was rarely used in China. Zhu, "China and International Human Rights Diplomacy," 223. Similar point made by Svensson, *Debating Human Rights in China*, 233; Hungdah Chiu, "Chinese Attitudes Toward International Law of Human Rights in the Post-Mao Era," in Victor C. Falkenheim, ed., *Chinese Politics from Mao to Deng* (New York: Paragon House, 1989), 239 and Zhou, "The Study of Human Rights in the People's Republic of China," 84. For a summary of the debate in the late 1970s, see "Guonei baokan guanyu renquan wenti de taolun zongshu" [A Summary of the Debate on the Issue of Human Rights in Domestic Magazines], *Shehui kexue* [Social Sciences], no. 3 (1979).

²¹¹ Quoted in Kim, *China, the United Nations, and World Order*, 485.

²¹² Even in 1979, the PRC stated that it was declining to participate in the UN Disarmament Commission because it needed more time to prepare. Kent, *Beyond Compliance*, 70.

explanatory factors served to limit the extent of Beijing's participation in international regimes and temper its conduct.

Due to Beijing's lack of expertise and familiarity, it purposely adopted a modest posture as it turned its attention to learning about the functioning of the UN.²¹³ As Samuel Kim noted, "China assumed the low profile posture of a diligent apprentice who was preoccupied in learning a new trade, rather than the high-profile posture of a revolutionary challenger attempting to impose her own concept of how the United Nations should be operated."²¹⁴ In a number of ways, the PRC's behavior resembled Alastair Iain Johnston's definition of mimicking in which "a novice initially copies the behavioral norms of the group in order to navigate through an uncertain environment."²¹⁵ Premier Zhou Enlai acknowledged in a 1971 interview that:

We do not have too much knowledge about the United Nations, and we are not too conversant with the new situation which has arisen in the United Nations. We must be very cautious. This does not mean, however, that we do not have self-confidence; it means that caution is required and that we must not be indiscreet and haphazard.²¹⁶

²¹³ A number of scholars attributed the PRC's stance to its unfamiliarity. See Wan, *Human Rights in Chinese Foreign Relations*, 108 and Sutter, *Chinese Foreign Relations*, 114. As further evidence of the PRC's unfamiliarity (and surprise at the outcome of the vote), Foot noted that after the PRC won admission in 1971, during initial meetings with UN officials, it was clear that Chinese representatives were not familiar with UN practices and its positions on a number of questions were unformed. Foot, *The Practice of Power*, 46. Further, China's limited knowledge and lack of experienced staff appeared to have caused some Chinese officials to hesitate in accepting the 1971 invitation to send an official delegation to the UN. Zhang, *China in International Society since 1949*, 75 and 95. According to a CASS scholar, during this period China was "like a student" and "didn't know the game and the rules" to participate effectively. Therefore, China "stood aside to observe and determine how people were behaving." Interview #44, Chinese Academy of Social Sciences scholar, July 12, 2013, Beijing, China.

²¹⁴ Kim, *China, the United Nations and World Order*, 110. At times, the PRC noted that it had to study the issue further. Ibid., 126.

²¹⁵ Johnston, *Social States*, 23.

²¹⁶ Quoted in Blythe Foote Finke, *China Joins the United Nations* (New York: SamHar, 1973), 12. In his memoirs, China's first permanent representative (and later Foreign Minister) Huang Hua recalled that Premier Zhou Enlai specifically told the Chinese "to be modest and prudent." Huang, *Huang Hua's Memoirs*, 254. The words of Qiao Guanhua, head of the Chinese delegation, further point to limited familiarity. Qiao told the President of the General Assembly that the PRC delegation would not participate immediately in all activities because UN affairs "were new to its [delegation] members." Zhang, *China in International Society since 1949*, 81. Similarly, a Chinese diplomat noted that "China was not familiar with the procedures and inner working of the UN" and that "China was... a student learning to be an influential

Beijing also had limited familiarity with the human rights regime, much of which was erected during China's banishment from the UN.²¹⁷ In Beijing's own words "...the Universal Declaration of Human Rights...had been adopted... prior to the founding of the People's Republic of China. It was therefore necessary for [the Chinese] Government to examine its contents."²¹⁸

China also likely restricted its participation in international regimes because it retained some lingering doubts. The continued influence of Maoist ideology translated into a near absolutist view of sovereignty.²¹⁹ For example, due to these misgivings, it limited its participation in arms control regime.²²⁰ According to Swaine and Johnston, the PRC criticized arms control as "sham disarmament or as efforts by the superpowers to institutionalize their hegemony."²²¹ A similar skepticism also appeared to have guided the PRC's attitude toward the human rights regime. According to John F. Copper, "...Mao was, like his Soviet counterparts, basically suspicious of and even antagonistic to the concept of human rights. According to both Soviet and Chinese leaders, Westerners ascribe too much emphasis to civil and political rights and not enough to economic and

permanent member." Quoted in Wan, *Human Rights in Chinese Foreign Relations*, 108. A high-ranking UN official relayed to scholar Samuel Kim that the PRC delegation "asked a lot of procedural and technical questions." Kim, *China, the United Nations and World Order*, 113. Likewise, Ambassador Chen stated that "As we begin to participate in the work of the UN there will be a period of learning for us, so that we may understand the actual working of the UN. The representative of the PRC is ready to listen and to note the opinions and viewpoints of other delegations." Quoted in Kim, *China, the United Nations and World Order*, 110-11.

²¹⁷ A Chinese Academy of Social Sciences scholar noted, "China was never part of making the [human rights] system." Interview #44, Chinese Academy of Social Sciences scholar, July 12, 2013, Beijing, China.

²¹⁸ Quoted in Kim, *China, the United Nations and World Order*, 485.

²¹⁹ On sovereignty, Allen Carlson noted that "Through the mid-1970s, China's stance was absolutist, unyielding, and stood in sharp contrast to the changes beginning to take shape in the international arena at the time." *Unifying China, Integrating the World*, 2.

²²⁰ Johnston and Evans, "China's Engagement with Multilateral Security Institutions," 247.

²²¹ Swaine and Johnston, "China and Arms Control Institutions," 100.

social rights.”²²² As a result, the PRC engaged selectively, which meant that it avoided the human rights regime.

Incremental Participation Under Deng Xiaoping: 1978-1988

After 1978, as China emerged from the Mao-era and adopted the reform and opening policies associated with Deng Xiaoping, Chinese leaders expanded and deepened their engagement with international regimes and pursued policies that translated into fuller participation. The PRC gradually dropped its earlier selective participation as it became a more participatory and involved regime member and began to benefit from existing regime arrangements. Further, the emerging focus on economic development and external economic relationships inclined China toward greater international involvement. Yet, Beijing exercised caution in entering into high-cost regime commitments, signifying some hesitance as Beijing weighed the benefits and costs of particular obligations, especially when international regimes were perceived as encroaching on state sovereignty.²²³

The PRC’s participation rates in international organizations illustrate the extent of these changes.²²⁴ As noted in a PRC scholarly account, before the Deng-era of reform and opening, China was a member of roughly 20 international organizations and party to only about 30 multilateral international conventions.²²⁵ Yet, the reform and opening period ushered in greater receptivity to international engagement, and by the end of 1986 it had

²²² Yuan-li Wu, Ta-ling Lee, Franz Michael, Maria Hsia Chang, John F. Copper, and A. James Gregor, *Human Rights in the People’s Republic of China* (Boulder, Colorado: Westview Press, 1988), 11-15.

²²³ Guoguang Wu and Helen Landsdowne, eds. *China Turns to Multilateralism* (New York: Routledge, 2008), 7.

²²⁴ Kim, “China and the United Nations,” 46-47. For PRC participation rates, see Johnston, “Is China a Status Quo Power?” The early 1980s was a turning point, see Han, *Diplomacy of Contemporary China*, 469 and Zhang, *China in International Society since 1949*, 158-164.

²²⁵ Wang Zonglai and Hu Bin, “China’s Reform and Opening-up and International Law,” *Chinese Journal of International Law* 9, no. 1 (March 2010): 194.

joined nearly 400 international organizations and ratified and acceded to over 130 conventions.²²⁶ Further, in contrast to its tepid Mao-era posture, China entered nearly all the specialized institutions in the UN.²²⁷ China showed the most enthusiasm for organizations in which membership entailed lower costs while also providing a number of benefits and some influence. As part of this trend, in 1980, the PRC joined the World Bank and International Monetary Fund, both organizations that the PRC previously castigated under Mao in the 1970s.²²⁸ In the security realm, it dropped its opposition and entered the United Nations Disarmament Commission in 1979, and continued involvement with the successor body, the Conference on Disarmament, which allowed Beijing to have a say in arms control discussions.²²⁹ This was followed by the PRC's entry into the International Atomic Energy Agency in 1984.²³⁰ Reflecting this more engaged posture, Premier Zhao Ziyang's report to the National People's Congress declared that: "In keeping with the purposes and principles set forth in the United Nations Charter, China supports the work undertaken by the United Nations in the spirit of the Charter..."²³¹

However, this did not amount to a wholehearted embrace of international regimes and the majority of these organizations required only minimal participation costs. For

²²⁶ PRC scholar Nianlong Han noted that "By the end of 1986, China's presence was seen in almost all the important areas of inter-governmental multilateral diplomacy. It had joined nearly 400 international organizations, and ratified and acceded to over 130 conventions... and had in China 10 offices of the United Nations and its specialized agencies." Han, *Diplomacy of Contemporary China*, 469-70.

²²⁷ Kent, *Beyond Compliance*, 51.

²²⁸ See Pearson, "China's Integration into the International Trade and Investment Regime," 161. China also became an observer of GATT in 1982 and applied for membership in 1986. China's top leaders, particularly Deng Xiaoping and Zhao Ziyang, played an "indispensable part" in encouraging Chinese bureaucrats to cooperate with the IMF and the World Bank. Jacobson and Oksenberg, *China's Participation in the IMF, the World Bank and GATT*, 19. Choedon noted that in the late 1970s, China's skepticism of the international economic system gave way to economic openness. Choedon, *China and the United Nations*, 147.

²²⁹ The UN Disarmament Commission was renamed the Conference on Disarmament in 1984 and served as a forum to discuss arms control efforts.

²³⁰ Yongjin Zhang noted that from 1981 to 1992, China went from being party to only one of the 8 major arms control treaties to being party to six. Zhang, *China in International Society since 1949*, 152-153.

²³¹ Quoted in Han, *Diplomacy of Contemporary China*, 469.

example, the International Monetary Fund, and thereby the World Bank, required only that China share information related to its financial, fiscal, economic, and exchange policies and pledge to pursue policies that encourage employment and international trade to the benefit of the global community.²³² Although Chinese officials were somewhat hesitant to share this information, this concession was not as significant as agreeing to inspections or other more intrusive forms of monitoring. As Margaret Pearson noted, “the formula for participation in the regime was to gain the benefits of trade and investment but at the same time guard against the perceived negative impact of such interaction.”²³³ In keeping with Beijing’s approach of maximizing benefits and minimizing costs, Samuel Kim observed that within three years of joining the World Bank and IMF, it had “acquired the largest number (200) of multilateral technical aid projects.”²³⁴ Further, involvement in the UN Disarmament Commission and the Conference on Disarmament (CD) involved no costs beyond participation.²³⁵ According to Johnston and Evans, involvement also served other PRC interests, especially because the CD was discussing issues of particular interest to Beijing.²³⁶

²³² “Obligations and Benefits of IMF Membership,” International Monetary Fund, http://www.imf.org/external/np/exr/center/mm/eng/mm_bnfts.htm. See also “Member Countries,” World Bank, <http://www.worldbank.org/en/about/leadership/members>.

²³³ Pearson, “China’s Integration into the International Trade and Investment Regime,” 165. Pearson noted that “In joining the World Bank, International Monetary Fund (IMF), and General Agreement on Trade and Tariffs (GATT), reformers stood to gain funds, advice, and (through GATT) reciprocal MFN treatment that would enhance China’s exports.”

²³⁴ Kim, “China and the United Nations,” 66. He further noted that by 1989, the PRC surpassed India to become the world’s biggest recipient of multilateral aid.”

²³⁵ These entities have been key bodies for discussing disarmament issues, and the cost of involvement is mainly attendance and participation. This contrasts with other parts of international regimes that have more extensive requirements, such as accepting monitoring or sanctions. See “United Nations Disarmament Commission,” United Nations Office of Disarmament Affairs, <http://www.un.org/disarmament/HomePage/DisarmamentCommission/UNDiscom.shtml> and “Disarmament,” United Nations Office in Geneva, <http://www.unog.ch/80256EE600585943/%28httpPages%29/BF18ABFEFE5D344DC1256F3100311CE9?OpenDocument>. Johnston and Evans describe the CD as primarily involving participation. Johnston and Evans, “China’s Engagement with Multilateral Security Institutions,” 240-44.

²³⁶ Ibid., 240.

It was only gradually, and in some cases grudgingly, that China began shedding its Mao-era beliefs and began to enter into more costly commitments.²³⁷ Over the course of this decade, China softened its opposition to UN peacekeeping as it became a supporter, including paying peacekeeping dues.²³⁸ In the security realm, Johnston and Evans observed that during the 1980s Beijing eventually signed treaties that “required some potential sacrifice of, or constraints on, military options,” such as ratifying the Conventional Weapons Convention in 1982 and the Biological Weapons Convention (BWC) in 1984.²³⁹

Yet, PRC hesitance was evident when China asserted that although it had acceded to the BWC it was not bound to it if other countries were to violate it.²⁴⁰ Moreover, in some instances, the PRC appeared more focused on using multilateral fora to rail against the superpowers. For example, during the 1983 UN disarmament talks, “China reiterated its consistent view that the rivalry between the super-Powers constituted the root cause of the tense and turbulent international situation and the absence of progress in disarmament.”²⁴¹ Noting these kinds of positions, scholar Yongjin Zhang cautioned that

²³⁷ Feeney argued even after Mao’s death China’s behavior in the UN General Assembly, including voting positions, remained largely unaltered. William R. Feeney, “Chinese Global Politics in the United Nations General Assembly,” in *China in the Global Community*, eds. James C. Hsiung and Samuel S. Kim (New York: Praeger Publishers, 1980). Beijing did not abandon its rhetorical support for a New International Economic Order. In 1988 Deng expressed the view that: “Two things have to be done at the same time. One is to establish a new international political order; the other is to establish a new international economic order.” Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin Under the Central Committee of the Communist Party of China, Deng Xiaoping, *Selected Works of Deng Xiaoping (1983-1992)*, Vol. III (Beijing: Foreign Language Press, 1994), 275.

²³⁸ Zhang, *China in International Society since 1949*, 139. For a PRC scholarly view of China’s posture toward peacekeeping, see Tang Yongsheng, “China’s Participation in UN Peacekeeping Regime,” in *Construction within Contradiction*, ed. Wang Yizhou (Beijing: China Development Press, 2003).

²³⁹ Johnston and Evans, “China’s Engagement with Multilateral Security Institutions,” 247.

²⁴⁰ Croddy, “China’s Role in the Chemical and Biological Weapons Regimes,” 34.

²⁴¹ Department for Disarmament Affairs, *The United Nations Disarmament Yearbook Volume 8: 1983* (New York: United Nations, 1984), p. 51. China lambasted the U.S. and the Soviet Union during the 1979 discussions, and “blamed the arms race on the super-Powers holding that the super-Power which was advocating disarmament and détente was the very Power which had been frenziedly expanding arms and was going all out to achieve military superiority.” Department for Disarmament Affairs, *The United Nations*

despite fuller participation, it “would be hazardous... to conclude that China was a status quo power in the 1980s...”²⁴²

At the same time, although it occasionally made acerbic statements, China did not mount a challenge to existing regimes. Further, its reservations eased as it adopted a more pragmatic foreign policy approach and came to enjoy the benefits of the existing capitalist international order. Deng clearly linked China’s foreign policy with domestic economic growth, stating in 1979 that:

...to realize the four modernizations, we must follow the correct foreign policy of opening to the outside world. Although we rely primarily on our own efforts... it would be impossible for us to achieve this objective without international cooperation. We should make full use of advanced scientific and technological achievements from around the world and also of potential funding from abroad so that we can accelerate the four modernizations.²⁴³

Thus, Beijing’s economic and foreign policy reorientation triggered a shift from a “system reforming” approach toward a “system maintaining,” and even “system exploiting” posture.²⁴⁴ At this time, the PRC was still economically fragile and in need of external resources, including financing, technology and advice, and sought to benefit from existing international institutions, particularly in the economic arena.²⁴⁵ Thus, in the mid-

Disarmament Yearbook Volume 4: 1979 (New York: United Nations, 1980), p. 19. For similar statements, in 1987, see for example, Department for Disarmament Affairs, *The United Nations Disarmament Yearbook Volume 12: 1987* (New York: United Nations, 1988), 104, 113, 129, 142, 162, 312, and 316. In PRC press reporting, China expressed dissatisfaction with the talks largely because the Soviet Union and the U.S. were not taking responsibility for their primary role in arms control. See for example, “The United Nations Disarmament Commission Session Ends,” *Renmin Ribao*, August 20, 1979, and “Busy with Nothing,” *Renmin Ribao*, February 12, 1982.

²⁴² Zhang, *China in International Society Since 1949*, 106.

²⁴³ Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin Under the Central Committee of the Communist Party of China, *Selected Works of Deng Xiaoping (1975-1982)*, Vol. II (Beijing: Foreign Language Press, 1984), 237.

²⁴⁴ As Kim put it, China’s focus shifted to “what the U.N system could do for China’s modernization and less interested in what China could do to reform the United Nations.” Kim, “China and the United Nations,” 46.

²⁴⁵ For an account of some China’s economic challenges at that time, see Nai-Ruenn Chen, “China’s Foreign Trade in Global Perspective,” in *China and the Global Community*, eds. James C. Hsiung and Samuel S. Kim (New York: Praeger Publishers, 1980).

1980s, the PRC began receiving assistance from the UN Development Programme, UN Fund for Population Activities, United Nations Children's Fund and other agencies.²⁴⁶

China also began receiving World Bank assistance, including financial support for projects, technical assistance, and advice in the early 1980s and began borrowing from the IMF in the mid-1980s.²⁴⁷ This marked a turning point that Samuel Kim described as follows:

post-Mao China is concerned less and less with the making of new rules, new norms, and new principles for a more just international order. Rather, it is more and more concerned with the stability of the existing capitalist world system as a sine qua non for fueling its modernization drive. Having redefined its foreign policy challenge in this way, post-Mao China has joined many global economic and security institutions that were regarded antagonistically during the Maoist period.²⁴⁸

In tandem with this shift, the PRC offered statements affirming the United Nations.²⁴⁹ The PRC's attitude was reflected in Premier Zhao Ziyang's words at the UN in 1985 that "In world history it is rare for a political international organization to have such enduring vitality like that of the United Nations, whose universality and importance grow with the passage of time."²⁵⁰

Initial Entry into the Human Rights Regime

²⁴⁶ Han, *Diplomacy of Contemporary China*, 474. China received technical assistance totaling roughly US\$800 million in seven years for about 600 projects.

²⁴⁷ Jacobson and Oksenberg, *China's Participation in the IMF, the World Bank and the GATT*, 78. By the early 1990s China had become the largest recipient of World Bank loans and projects. See David Shambaugh, *China Goes Global: The Partial Power* (Oxford: Oxford University Press, 2013), 134. On the IMF, see Judith F. Kornberg and John R. Faust, *China in World Politics: Policies, Processes, Prospects* (Boulder, Colorado: Lynne Reiner, 2005), 227-28.

²⁴⁸ Kim, "Thinking Globally in Post-Mao China," 193.

²⁴⁹ Deng noted that "China is aware of its responsibilities as a permanent member of the Security Council of the United Nations." Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin, *Selected Works of Deng Xiaoping*, Vol. II, 407.

²⁵⁰ Zhao Ziyang, "Work Together for a Better World," *Beijing Review* 28 (November 4, 1985): 15.

During this period, China made its first foray into the human rights regime beginning with participation in the UN Commission on Human Rights, which served as the UN's primary human rights body. It then cautiously extended its engagement by becoming a party to a handful of human rights treaties, which is captured in table 1, below. Even as China expanded its involvement in the regime and voiced support for human rights internationally, it simultaneously contested particular aspects of the regime and the government permitted little space for discussion of human rights, which it dismissed as 'bourgeois.'²⁵¹

Beijing's first formal interaction with the regime began with the UN Commission on Human Rights, which it attended as an observer in 1979 before becoming an elected member in 1982.²⁵² Several scholarly accounts note that Beijing's attendance in 1979 was driven by its desire to use the Commission as a venue to condemn Vietnam's invasion of Cambodia, a PRC ally. PRC scholar Tian Peizeng noted that "as a UNCHR observer, the Chinese delegation stressed at the meeting that foreign invasion is the most brutal human rights violation of Cambodia people."²⁵³ China's participation continued and in 1984 a Chinese representative joined the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.²⁵⁴

²⁵¹ See for example, Xu Bing, "Renquan lilun de changsheng he lishi fazhan" [The rise and historical development of human rights theory], *Faxue Yanjiu* [Legal Research] 3 (1989), 1. Even though the late 1980s witnessed some political liberalization, few scholars felt comfortable openly advocating for human rights. Zhou, "The Study of Human Rights in the People's Republic of China," 85. Svensson pointed out that prior to 1989 only a handful of articles had been written on human rights. Svensson, *Debating Human Rights in China*, 1-2 and 255.

²⁵² Wu Jianmin, *Waijiao Anli* [Case Studies in Diplomacy] (Beijing: Renmin Daxue Chubanshe [People's University Press], 2007), 222.

²⁵³ Tian Peizeng, ed., *Gaige Kaifang yilai de Zhongguo Waijiao* [China's Diplomacy since Reform and Opening] (Beijing: Shijie Zhishi Chubanshe [World Affairs Press], 1993), 569.

²⁵⁴ Representatives to the Sub-Committee technically serve in their personal capacity as experts. However, in practice a number of the Sub-Committee members based their positions on the interests of their home state, and some experts had governmental affiliations.

Table 1: China's Involvement with the Human Rights Regime

Body/Treaty	Date
Convention on the Elimination of All Forms of Discrimination against Women	Ratified on November 4, 1980 (signed on July 17, 1980)
Convention on the Elimination of all Forms of Racial Discrimination	Ratified on December 29, 1981
UN Human Rights Commission	Elected as member 1982 (attended as observer starting in 1979)
Convention relating to the Status of Refugees	Accession on September 24, 1982
Protocol Relating to the Status of Refugees	Accession on September 24, 1982
Convention on the Prevention and Punishment of the Crime of Genocide	Ratified on April 18, 1983 (signed on July 20, 1949)
International Convention on the Suppression and Punishment of the Crime of Apartheid	Ratified on April 18, 1983
UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities	A Chinese expert elected in 1984
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Ratified on October 4, 1988 (signed on December 12, 1986)
Convention on the Rights of the Child	Ratified on March 2, 1992 (signed on August 29, 1990)
International Covenant on Economic, Social and Cultural Rights	Ratified on March 27, 2001 (signed on October 27, 1997)
Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	Ratified on August 8, 2002
International Covenant on Civil and Political Rights	Not yet ratified (signed on October 5, 1998)
Optional Protocol to the Convention of the Rights of the Child on the involvement of Children in Armed Conflicts	Not yet ratified (signed March 15, 2001)
UN Convention on the Rights of Persons with Disabilities	Ratified on August 1, 2008 (signed March 30, 2007)

255

As captured by the table above, the PRC's entry into the UNCHR was followed by its accession to select human rights treaties. Even though China ratified only nine

²⁵⁵ "United Nations Treaty Collection," United Nations, <http://treaties.un.org/>.

treaties during this period, this represented higher-cost involvement as it voluntarily put itself under the scrutiny of the regime and incurred obligations.²⁵⁶ Not only did Chinese officials commit to abiding by these treaties, but they were now required to submit reports and answer to expert monitoring as party to these treaties.²⁵⁷

These steps still did not necessarily reflect a dramatic sea change in PRC views on human rights. First, these accessions were limited to issues that already fell into easy alignment with PRC human rights conceptions, such as racism, discrimination, and genocide, and the mandates of these treaty bodies were limited to monitoring primarily through state reporting. As Allen Carlson noted, “none of these agreements required Beijing to make any real compromise in becoming a signatory...”²⁵⁸ Second, the PRC used reservations in a number of instances to limit its requirements. For example, with regard to Article 8 of the International Convention on Economic, Social and Cultural Rights, which recognizes the right of workers to form or join a trade union and their right to strike, China made a reservation that this article had to be implemented in a manner consistent with its constitution.²⁵⁹ Third, while Beijing acceded to the Convention against Torture, its failure to sign or even ratify other treaties related to civil and political rights suggests lingering reservations with parts of the regime. Tellingly, China urged that more attention be placed on economic, social and cultural rights over civil and political rights, and its support for civil and political rights during this phase was “selective and erratic.”²⁶⁰ Fourth, Beijing continued to resist aspects of the regime, including intrusive human rights

²⁵⁶ Zhang, *China in International Society since 1949*, 190.

²⁵⁷ The monitoring mechanisms are referred to as treaty bodies. Chapter 3 touches on China’s interactions with the treaty body established under the Convention against Torture. For a discussion of higher versus lower cost commitments, see Johnston and Evans, “China’s Engagement with Multilateral Security Institutions,” 248.

²⁵⁸ Carlson, *Unifying China, Integrating with the World*, 152.

²⁵⁹ “United Nations Treaty Collection,” United Nations, <https://treaties.un.org/>.

²⁶⁰ Kent, *China, United Nations, Human Rights*, 47.

monitoring and the idea of the universality of human rights. Beijing still exhibited discomfort when it perceived that the regime encroached too much on state sovereignty and preferred monitoring through state reporting because this allowed it to retain a degree of control.²⁶¹

Despite these reservations, the PRC stepped up its rhetorical support for human rights in international fora. In 1986, at the UN General Assembly, the Chinese Foreign Minister, referring to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, stated that “the two covenants have played a positive role in realizing the purposes and principles of the UN Charter concerning respect for human rights. The Chinese government has consistently supported these purposes and principles.”²⁶² In 1988, on the 40th anniversary of the Universal Declaration of Human Rights, the PRC praised the declaration as having “exerted a far-reaching influence on the development of the post-war international human rights activities and played a positive role in this regard.”²⁶³

China’s growing endorsement of international human rights was to a certain extent matched by supportive actions.²⁶⁴ For example, in the mid-1980s in the UNCHR, China voted in favor of resolutions on the appointment of a rapporteur on Afghanistan and an examination of the human rights situation in Chile.²⁶⁵ Signaling China’s growing involvement, the Ministry of Foreign Affairs’ annual survey of China’s foreign relations in

²⁶¹ Ibid., 46.

²⁶² Information Office of the State Council, *Human Rights in China 1991*, Section X, Active Participation in International Human Rights Activities.

²⁶³ Ibid.

²⁶⁴ Kent, *China, the United Nations, Human Rights*, 44-45.

²⁶⁵ Wan, *Human Rights in Chinese Foreign Relations*, 109. China began to participate in voting on human rights resolutions in the General Assembly and the UN Commission on Human Rights. Kent, *China, the United Nations, and Human Rights*, 43.

1988 included, for the first time, a section on China's international human rights activities.²⁶⁶

Beijing's domestic human rights discourse, particularly government statements and scholarly discussion, gradually shifted from hostility to limited receptivity. At the outset of this period, Chinese scholars and policy-makers were unfamiliar with the international human rights regime and expressed a degree of suspicion of human rights, viewing the concept through a Marxist angle.²⁶⁷ Deng's 1979 words denigrated human rights, complaining that:

... [some domestic groups] have raised such sensational slogans as "Oppose Hunger" and "Give us human rights", inciting people to hold demonstrations and deliberately trying to get foreigners to give worldwide publicity to their words and deeds. There is a so-called China Human Rights Group which has gone so far as to put up big-character posters requesting the President of the United States to "show concern" for human rights in China. Can we permit such an open call for intervention in China's internal affairs?²⁶⁸

Likewise, a 1979 article in Red Flag (*Hongqi*), the official party journal, asserted that:

"Human Rights" reflect the bourgeois demands for economic and political power at the time of nascent capitalism... it is not hard to see that "human rights" is always a bourgeois slogan. In society at present there are some with ulterior motives who

²⁶⁶ PRC Ministry of Foreign Affairs Policy Research Office, *Zhongguo Waijiao Gailan* 1988 [Survey of China's Foreign Relations] (Beijing: *Shijie Zhishi Chubanshe*, 1988). According to the Ministry of Foreign Affairs, this annual publication served as a white paper on China's diplomacy. PRC Ministry of Foreign Affairs, "The Launch Ceremony of China's Foreign Affairs (2004 Edition) Held in Beijing," news release, June 1, 2004, www.fmprc.gov.cn/eng/wjb/zzjg/zcyjs/xgxw/t125765.shtml.

²⁶⁷ Zhou Wei noted that prior to 1989 "few scholars dared to study and discuss" human rights and that some government authorities had a negative attitude toward human rights scholarship. Zhou, "The Study of Human Rights in the People's Republic of China," 83. Chen noted that "the area of human rights had long been regarded as highly sensitive politically and few scholars dared tread upon it." Albert H.Y. Chen, "Developing Theories of Rights and Human Rights in China," in *Hong Kong, China and 1997*, ed. Raymond Wacks (Hong Kong: Hong Kong University Press, 1993), 134. More negatively, Svensson noted that through the 1980s, "human rights also remained a taboo subject in official discourse." Svensson, *Debating Human Rights in China*, 261.

²⁶⁸ Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin, *Selected Works of Deng Xiaoping*, Vol. II, 182.

energetically praise the bourgeois slogan of human rights; not only do they lack a Marxist spirit but their sense of patriotism has also disappeared into thin air.²⁶⁹

In the early 1980s, although the environment remained restrictive for domestic human rights scholarship, some scholars began expressing greater receptivity.²⁷⁰ For example, in 1982 a PRC article stated that “socialism and human rights are one.”²⁷¹ These views coexisted with scholarship that took a more critical approach to human rights diplomacy, such as a 1984 article other scholars decried the use of “human rights” by super-powers to intervene in the internal affairs of another state, and specifically excoriated the US government’s use of human rights.²⁷² Although PRC human rights views were clearly not static, they evolved haltingly.²⁷³

Explaining the PRC’s Behavior

During this period, several factors strongly shaped China’s posture toward international regimes, including the human rights regime: a burgeoning concern with its international image; the post-Mao era focus on economic growth, which entailed building

²⁶⁹ Xiao Weiyun, Luo Haocai, Wu Xieying, “Makesi zenmeyang kan ‘renquan’ wenti” [How Marxism Views the Human Rights Question], *Hongqi* [Red flag], no. 5 (1979).

²⁷⁰ In the late 1980s, some liberal voices emerged, including, for example Yu Keping, “Renquan yinlun: jinian Faguo ‘Ren yu gongmin quanli xuanyan’ xiang shi 200 zhounian” [An Introduction to Human Rights: Commemorating the 200th Anniversary of the French ‘Declaration of the Rights of Man and Citizen’], *Zhengzhixue yanjiu* [Political Science Research], no. 3 (1989): 30-35. Chiu noted that in the late 1980s, the Chinese government’s negative attitude toward human rights had become somewhat more open. Chiu, “Chinese Attitudes Toward International Law of Human Rights in the Post-Mao Era,” 261.

²⁷¹ Shen Baoxiang, Wang Chengquan, and Li Zerui, “Guanyu guoji lingyu de renquan wenti” [On the Question of Human Rights in the International Arena], *Hong Qi* [Red Flag] 8 (1982): 47-48. Chinese scholar Li Zerui encouraged greater study of human rights. See Li Zerui, “A Theoretical Study of International Human Rights Law,” in *Zhongguo Guojifa Niankan* [Chinese Yearbook of International Law] (Beijing: China Translation and Publishing Corp, 1983), 96-97.

²⁷² Liu Fengming, “Human Rights Law and Its International Implementation,” *Zhongguo Fazhi Bao* [Chinese Legal System Paper] July 18, 1984, 4.

²⁷³ Even on the eve of Tiananmen, scholars noted some areas of divergence with the human rights regime. See, for example, Tian Jin, “Guoji renquan huodong de fazhan he cunzai zhengyi de wenti,” [The development of international human rights activities and some controversial issues] *Guoji wenti yanjiu* [Journal of International Studies], no. 1 (January 1989): 4-7.

foreign economic and political relationships; a careful analysis of the costs and benefits of participation; and PRC views on sovereignty. The introduction of new variables signifies the extent of change ushered in during the Deng-era and reflected the waning of Maoist ideology as a more pragmatic foreign policy approach took hold. Yet, the PRC's ideas about human rights remained influenced by Marxist and Maoist-era thinking, accounting for its tepid engagement with this regime.

Deng-era China became more conscious of and concerned with its international image, particularly demonstrating that it was an engaged and agreeable regime participant.²⁷⁴ Its desire to cultivate a positive international image caused it to increase its involvement, such as signing arms control treaties, and to adopt an unassuming (rather than disruptive) posture within regimes.²⁷⁵ The PRC's use of statements and news articles to highlight its participation in the security regime implied a public relations motivation to its engagement.²⁷⁶ For example, *Renmin Ribao* news articles announcing China's decision to join the Biological Weapons Convention stressed China's positive role, including pointing out that it has "never developed or intended to develop" biological weapons, and describing it as a "peace-loving country," with a non-aggression commitment.²⁷⁷ In the human rights regime, Chinese press articles and official statements conveyed a sense that the PRC ratified the Convention against Torture in part to promote its image as an active

²⁷⁴ As Oksenberg and Economy noted, "Especially in the U.N. General Assembly, China shows considerable concern for its image..." Oksenberg and Economy, *Shaping US China Relations*, 19.

²⁷⁵ Johnston and Evans, "China's Engagement with Multilateral Security Institutions," 247. Johnston and Evans noted that China started with low-cost arms control treaties.

²⁷⁶ As Croddy noted, "Outwardly at least—and with considerable diplomatic effort—China broadcasts its commitment to both the CWC [Chemical Weapons Convention] and the BWC [Biological Weapons Convention]." Croddy, *The Nonproliferation Review* (Spring 2002), 16.

²⁷⁷ See "Qian Qichen xiang liu jie quanguo rendachangweihui diqicahuiyizuo, guanyu jianshi woguojiaru," [Qian Qizhen explains the proposal to join the Biological Weapons Conventions to the seventh meeting during the Sixth National People's Congress (NPC) Standing Committee] *Renmin Ribao*, September 16, 1984 and "Wu xue jiazhiyu meiguowuqingxici jianming zhongguo jiaru jianzhi shengwuqi gongyue de lichang," [Wu Wrote to George P. Shultz, the U.S. Secretary of State to Clarify China's Stance in Joining the Biological Weapons Treaty] *Renmin Ribao*, November 17, 1984.

and engaged regime member.²⁷⁸ The PRC's 1991 white paper, a document targeted primarily at the international community, highlighted China's "active part in drafting and formulating international legal instruments on human rights within the UN," and specifically cited its involvement in the drafting of the Convention against Torture. Despite the growing importance of image, it was at times subordinate to other explanatory variables, such as the necessity of fostering economic growth.

China's recognition of the benefits of external economic relationships further pushed it toward expanded international involvement. As noted previously, in order to spur economic development and growth, the post-Mao leadership opened "the door to foreign economic investment, technology transfer, trade and training."²⁷⁹ In a 1982 speech at the 12th National Congress of the CCP, Deng Xiaoping stated that "We shall unswervingly follow a policy of opening to the outside world and increase our exchanges with foreign countries..."²⁸⁰ Earlier, in a 1979 speech, he declared that we "have initiated a new diplomatic pattern for our country [that has] provided us with rather favorable international conditions for our four modernizations..."²⁸¹ PRC economic policies spurred it toward greater involvement not only in the trade and investment regimes but other regimes as well.

²⁷⁸ "Zhongguo deng 37 guo pizhun jinzhi kuxing gongyue," [China and 37 Other Countries Ratifies the Convention Against Torture] *Renmin Ribao* [People's Daily], November, 11 1988 and Information Office of the State Council of the People's Republic of China, *Human Rights in China 1991*, paragraphs 4-5.

²⁷⁹ Robinson, "Chinese Foreign Policy from the 1940s to the 1990s," 568. See also, Harry Harding, *China's Second Revolution: Reform After Mao* (Washington DC: Brookings Institution Press, 1987), 132.

²⁸⁰ Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin, *Selected Works of Deng Xiaoping*, Vol. III, 15. For similar statements, see *Ibid.*, 43, 119, 264 and 308.

²⁸¹ Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin, *Selected Works of Deng Xiaoping*, Vol. II, 248. Deng made the case that a peaceful international environment and stable bilateral relationships were conducive to uninterrupted economic development. He remarked in 1984, "I have stated on many occasions that we Chinese are no less concerned about international peace and stability than are people in other countries. We need at least twenty years of peace to concentrate on our domestic development." Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin, *Selected Works of Deng Xiaoping*, Vol. III, 60. For similar statement see, *Ibid.*, 231. For similar point, see Wang, "Briefing Multiple Perspectives on Relations between China and International Organizations," 28.

Rather than reflexively rejecting international regimes as the PRC often had under Mao, PRC leaders weighed the costs and benefits of participation, and determined that in a number of instances national interests were best served through participation.²⁸² China was most open to regimes that entailed fewer costs while giving them a voice. For example, according to Wendy Frieman the Chinese leadership realized “that, absent major superpower competition, arms control is going forward with or without Chinese participation. Therefore, it is probably wiser to accept that fact and try to influence the process rather than remain aloof from it and hope for the best.”²⁸³ As a Chinese Academy of Social Sciences scholar noted with regard to the human rights regime, China realized that “it must go into this field to protect our interests.”²⁸⁴ Beijing was more cautious and circumspect when participation was more costly, such as ceding access to international monitors or increasing transparency. In this vein, as recounted by Huang Hua, the PRC sought to take advantage of World Bank lending but had to first become a member of the International Monetary Fund, which required the PRC to disclose its international reserves. Although PRC officials were initially resistant and considered China’s international reserves to be “top secret,” they acquiesced in order to gain access to World Bank financing.²⁸⁵

The PRC’s inclination toward a Westphalian definition of sovereignty tempered its openness toward international regimes. In contrast to its economic policies and its concern with image, China’s views on sovereignty drew it in the opposite direction toward

²⁸² For related point, see Kim, “International Organizations in Chinese Foreign Policy,” 141.

²⁸³ Wendy Frieman, “New Members of the Club: Chinese Participation in Arms Control Regimes 1980-1995,” *The Nonproliferation Review* 3, no. 3 (Spring/Summer 1996): 26. A PRC scholar conjectured that China appeared to have determined that it was better to join regimes even if it did not agree with the entirety of the regime. After joining, China might then push its particular positions. Interview #49, Chinese scholar, June 1, 2012, Shanghai, China.

²⁸⁴ Interview #44, Chinese Academy of Social Sciences scholar, July 12, 2013, Beijing, China.

²⁸⁵ Huang, *Huang Hua’s Memoirs*, 278.

resistance and caution. Even during China's first appearance before the UN General Assembly in 1971, PRC representative Qiao Guanhua stressed sovereignty, expressing the view that "All peoples have the right to choose their own social system according to their own will, and the right to maintain their independence, sovereignty, and territorial integrity... The affairs of a given country must be handled by its own people..."²⁸⁶ While China's sovereignty views have not been completely impervious to change and the PRC could yield on this issue to suit other purposes, the PRC has consistently preferred to limit the scope and authority of international regimes in favor of preserving state sovereignty.²⁸⁷ On peacekeeping, even as China shifted from opposition to a more supportive attitude, it argued in favor of intervention only when the host country requests it.²⁸⁸ The PRC's views on sovereignty also came to the fore during the Chemical Weapons Convention negotiations, when it "resisted procedures for... inspections proposed by Western countries that they believed were too intrusive."²⁸⁹ PRC officials took a similar stance on the Biological Weapons Convention, seeing it as too intrusive and expressing concern over preventing "abusive inspection measures."²⁹⁰ China's views on human rights, especially

²⁸⁶ Quoted in Huang Huang Hua's *Memoirs*, 255.

²⁸⁷ Kent, *Beyond Compliance*, 70. On PRC's flexibility, Kim noted that "Clearly, the classical Westphalian notion that how each state mistreated its own citizens was not part of international concern became progressively less compelling in Chinese thinking." Kim, "International Organizations in Chinese Foreign Policy," 145. See also Tok, *Managing China's Sovereignty in Hong Kong and Taiwan*.

²⁸⁸ See M. Taylor Fravel, "China's Attitude Toward UN Peacekeeping Operations Since 1989," *Asian Survey* 36, no. 11 (November 1996): 1102-21; Michael Fullilove, "China and the United Nations, The Stakeholder Spectrum," *The Washington Quarterly* 43, no. 3 (Summer 2011): 68-72; and Tang Yongsheng, "China's Participation in UN Peacekeeping Regime," in *Construction within Contradiction*, ed. Wang Yizhou (Beijing: China Development Publishing House 2003).

²⁸⁹ Croddy, "China's Role in the Chemical and Biological Weapons Regimes," 32 and Pan Zhenqiang, ed., *Guoji Caijun yu Junbei Kongzhi* [International Disarmament and Arms Control] (Beijing: National Defense University Press, 1996), 167. Swaine and Johnston, "China and Arms Control Institutions," 111 and Wendy Frieman, "New Members of the Club: Chinese Participation in Arms Control Regimes 1980-1995," *The Nonproliferation Review* 3, no. 3 (Spring/Summer 1996): 23.

²⁹⁰ See Croddy, "China's Role in the Chemical and Biological Weapons Regimes," 35 and Pan, *Guoji Caijun yu Junbei Kongzhi*, 192.

limiting the scope of international mechanisms, can largely be attributed to its statist conception of sovereignty.²⁹¹

The vestiges of Maoist ideology further explain Beijing's tepid posture toward the human rights regime. Due to the period of international isolation, the PRC had not been familiar with this regime. Yet, after being exposed to the regime, Beijing did not accept all aspects of it and was uncomfortable with some of the content and mechanisms, such as strong international oversight and robust civil and political rights. These views contributed to China's combative reaction to international opprobrium following the June 1989 Tiananmen Square crackdown, which will be discussed in the next section.

Active Mature Participation: 1989-2011

The Chinese government's use of violence to put down protests in June 1989 threatened the PRC's budding relationship with international regimes. However, because a number of key variables propelled China toward expanded involvement, the overall trend of growing integration resumed by the early 1990s and during the remainder of this period China became an active and engaged regime participant in virtually every policy area. China's behavior was influenced by a concern with improving its international image, defending sovereignty, and fostering economic growth. The combination of these diverse variables produced behavior that was at times contradictory as some influences drew China toward increased and more cooperative involvement while others caused it to resist international regimes, which sometimes resulted in reformist impulses toward certain

²⁹¹ For PRC scholarly views on human rights and peacekeeping that closely align with the Chinese government's positions, see United Nations Association of China, *United Nations: Towards a Harmonious World* (Sichuan: Sichuan People's Publishing House, 2008).

aspects of international regimes, especially in instances where the PRC believed the regime could harm its interests or infringe on state sovereignty.²⁹²

As noted previously, the 1989 protests momentarily halted the trend of China's increasing openness and caused China's leaders to briefly reexamine domestic and international policies, including Beijing's openness to the outside world.²⁹³ Some PRC leaders attributed the turmoil to the reformist economic growth model²⁹⁴ and foreign influences.²⁹⁵ The imposition of economic sanctions, including the move by international lending agencies to freeze loans, was a significant loss for China as it was scheduled to borrow \$2.3 billion from the World Bank during 1989-1990.²⁹⁶ According to a PRC scholar, Tiananmen and the resulting stigma, also frustrated negotiations over entry into the World Trade Organization.²⁹⁷ Given these setbacks and the suspicions of some leaders, Deng Xiaoping's leadership was pivotal in maintaining policies favoring external economic ties and growing foreign interaction. Just days after the crackdown, Deng stated that "...adherence to policies of reform and opening to the outside world with the

²⁹² Economy, writing in 2001, argued that even as a more engaged participant, China remains ambivalent. Economy, "The Impact of International Regimes on Chinese Foreign Policy-Making" 232. Other contributors to this edited book, *The Making of Chinese Foreign and Security Policy in the Era of Reform: 1978-2000*, drew similar conclusions, particularly Bates Gill and Thomas Moore and Dixia Yang. On China's reformist impulses, see Gregory Chin and Ramesh Thakur, "Will China Change the Rules of Global Order?" *The Washington Quarterly* 33, no. 4 (September 2010) and Economy, "The Game Changer." According to Kent, during the 1990s, the PRC "maintained a weak version of the system-reforming approach of the 1970s." Kent, *Beyond Compliance*, 55.

²⁹³ Suisheng Zhao, "Beijing's Perception After the Tiananmen Incident," in *Chinese Foreign Policy: Pragmatism and Strategic Behavior*, ed. Suisheng Zhao (New York: M.E. Sharpe 2004), 143-45.

²⁹⁴ John F. Copper, "Peking's Post-Tiananmen Foreign Policy: The Human Rights Factor," *Issues and Studies* (October 1994): 49-73.

²⁹⁵ Foot, "China and the Tiananmen bloodshed of June 1989," 333-37, and Nathan and Link, ed. *The Tiananmen Papers*, 334.

²⁹⁶ David Zweig, "Sino-American Relations and Human Rights: June 4 and the Changing Nature of a Bilateral Relationship," in *Building Sino-American Relations: An Analysis for the 1990s*, ed. William T. Tow (New York: Paragon House, 1991), 70-71 and 75. During the previous year Beijing borrowed \$1.3 billion from the World Bank. China also lost access to Asian Development Bank lending. Mann, *About Face*, 197.

²⁹⁷ Song Hong, "China and WTO A Process of Mutual Learning, Adapting and Promoting," in *Construction within Contradiction: Multiple Perspectives on the Relationship Between China and International Organization*, ed. Wang Yizhou (Beijing: Zhongguo Fazhan Chubanshe, 2003), 173.

modernization construction as the central task for the Party are all correct and should be firmly carried forward.”²⁹⁸ Several months later, in September 1989, Deng urged that

...we should continue to carry on genuine reform and to open wider to the outside. Without those policies, China would have no future. How did we achieve what we did over the past ten years? Through reform and opening to the outside. As long as we pursue those policies... China will have a tremendous influence.²⁹⁹

These arguments prevailed and the reform and opening policies were cemented after Deng’s southern tour in 1992.³⁰⁰ As Thomas Robinson noted, PRC leaders appeared to adopt an approach that could be summarized as “Whatever appeared good for China’s domestic economic development became Beijing’s foreign policy.”³⁰¹

Thus, China resumed its opening to the outside world and involvement with international regimes. Alastair Iain Johnston, who analyzed PRC participation rates relative to other countries, concluded that during the 1990s, China “became overinvolved in international organizations for its level of development.”³⁰² Beijing’s participation not only spanned nearly all issue areas, its integration also deepened as it made some commitments that were increasingly costly. It also showed an occasional willingness to be more flexible on the matter of its own sovereign autonomy, such as allowing monitoring or permitting constraints to be imposed on PRC actions.³⁰³ For example, after extensive internal debates and consideration over the costs and benefits of accession, China acceded

²⁹⁸ Deng Xiaoping, “Deng Hails Armymen,” *Beijing Review*, June 12-25, 1989. Deng’s speech was made on June 9, just five days after Tiananmen.

²⁹⁹ Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin, *Selected Works of Deng Xiaoping*, Vol. III, 310.

³⁰⁰ Ezra Vogel, *Deng Xiaoping and the Transformation of China* (Cambridge: The Belknap Press, 2011), 674-76.

³⁰¹ Robinson, “Chinese Foreign Policy 1940s-1990s,” 568.

³⁰² Johnston, “Is China a Status Quo Power?” 13.

³⁰³ Lardy, focusing on the economy, and Johnston and Evans, writing on the security arena, described the 1990s as being a period of deepening PRC engagement. Nicholas Lardy, *Integrating China into the Global Economy* (Washington, DC: Brookings Institution Press, 2002), 8, and Johnston and Evans, “China’s Engagement with Multilateral Security Institutions,” 247.

to the Nuclear Non-Proliferation Treaty in 1992.³⁰⁴ Beijing also ratified the Convention on Conventional Weapons in 1993 and the Chemical Weapons Convention in 1997, even though this required it to agree to compliance inspections.³⁰⁵ As a result, Johnston and Evans noted that in the 1990s the PRC acceded to “the most restrictive treaties it is eligible to sign and to treaties or treaty proposals that it was most vociferously opposed to prior to the 1990s...”³⁰⁶ Margaret Pearson also noted that in order to accede to the World Trade Organization, the PRC made concessions that involved opening up the economy because it assessed that membership would confer greater advantages.³⁰⁷

Yet, despite this trajectory, there were limits to China’s embrace of international regimes and evidence of some PRC misgivings.³⁰⁸ At times Beijing expanded its participation while also seeking to limit the regime’s reach. For example, Beijing prolonged the ratification process for the Chemical Weapons Convention and sought to restrict the use of inspections by insisting that requests for inspections should be “reasonable, specific, and precise.” It supported inclusion of a procedure to halt any inspection that was “frivolous, abusive, or outside the scope of the convention.”³⁰⁹ The

³⁰⁴ Medeiros, *Reluctant Restraint*, 71.

³⁰⁵ Bates Gill, “Two Steps Forward, One Step Back: The Dynamics of Chinese Nonproliferation and Arms Control Policy-Making in an Era of Reform,” in *The Making of Chinese Foreign and Security Policy in the Era of Reform: 1978-2000*, ed. David M. Lampton (Stanford: Stanford University Press, 2001), 261. For background on the CWC and China see, Croddy, “China’s Role in the Chemical and Biological Weapons Conventions,” 31.

³⁰⁶ Johnston and Evans, “China’s Engagement with Multilateral Security Institutions,” 247.

³⁰⁷ Margaret Pearson, “The Case of China’s Accession to the GATT/WTO,” in *The Making of Chinese Foreign and Security Policy*, ed. David M. Lampton (Stanford, California: Stanford University Press, 2001), 224. The PRC acceded to the WTO in 2001, after fifteen years of negotiations. See Pearson, “The Major Multilateral Economic Institutions Engage China,” 221-224 and Song, “China and WTO: A Process of Mutual Learning, Adapting and Promoting.”

³⁰⁸ Harding and Shambaugh remarked that “Chinese leaders will continue to view international regimes with suspicion, especially those whose rules they did not help write.” Harry Harding and David Shambaugh, “Conclusion,” in *China’s Cooperative Relationships: Partnerships and Alignments in Modern Chinese Foreign Policy* (Washington, DC: Brookings Institution, 1990), 2.

³⁰⁹ Swaine and Johnston, “China and Arms Control Institutions,” 111. This was the first arms control treaty China signed that called for on-site inspections.

PRC is also wary of moving from its 1996 signature of the Comprehensive Nuclear-Test Ban Treaty (CTBT) to ratification, because the PRC perceives it to be a costly treaty.³¹⁰ In the environmental area, the PRC refused to sign the Montreal Protocol (along with India) unless it received financial support and technology transfers to offset the financial implications of accession,³¹¹ and it adopted position that differentiated its obligations from those of the developed world and expressed suspicion towards international verification. During the 2009 Copenhagen climate change negotiations, “China and other high-emitting developing states opposed the principle of international verification, agreeing only to ‘international consultations and analysis.’”³¹² Thus, while China generally tended toward a cooperative and low-profile posture, in some instances it was wary, ambivalent and occasionally resistant to international regimes.

Yet, Deng Xiaoping’s admonition to “hide brightness, nourish obscurity” (*taoguang yanghui*), which meant that PRC diplomats adopted a low-profile international role, inclined the PRC toward caution.³¹³ It continued to be reluctant to use the veto in the UN Security Council.³¹⁴ Moreover, as China also enjoyed high growth rates and became a

³¹⁰ China felt that seeking to delay or dilute the CTBT would hurt its image. Ibid., 107.

³¹¹ Economy, “The Impact of International Regimes,” 242. See also Gørild Heggelund, “China’s Climate Change Policy: Domestic and International Developments,” *Asian Survey* 31, no. 2 (2007): 175.

³¹² Fullilove, “China and the United Nations: The Stakeholder Spectrum,” 64. See Mark Lynas, “How do I know China wrecked the Copenhagen deal? I was in the room,” *The Guardian*, December 22, 2009, www.guardian.co.uk/environment/2009/dec/22/copenhagen-climate-change-mark-lynas. Similarly, Chinese representatives sought changes to the Montreal Protocol before acceding to the agreement in 1991. Oksenberg and Economy, *Shaping US-China Relations*, 40.

³¹³ Han, *Diplomacy of Contemporary China*, 20. A former PRC Ambassador remarked that “properly translated Deng’s words means China should pursue a low-profile policy.” Ambassador Chen Jian (former PRC Ambassador to the UN and former UN Under Secretary-General of the United Nations), interview by author, June 11, 2012, Beijing, China. Similarly, a PRC scholar suggested that this posture was rooted in the Chinese saying *qiang da chutou niao* or “the bird that stands out from the flock is the first to get shot.” Interview #49, PRC Scholar, June 1, 2012, Shanghai, China. Two PRC scholars indicated that although the PRC’s capabilities were increasing, China did not yet have the capacity to play a highly assertive role that challenged significant aspects of the international system. Interviewee #49 PRC scholar, June 11, 2012, Shanghai, China and Interviewee #56 PRC Ministry of Foreign Affairs scholar, June 6, 2012, Beijing, China.

³¹⁴ Fullilove, “The Stakeholder Spectrum,” 72. A CCP scholar suggested that Deng’s words were a warning to “avoid taking the lead.” Interviewee #50, CCP Central Party School professor, June 14, 2012, Beijing,

beneficiary of existing regime arrangements, it developed a vested interest in the status quo rather than pursuing revisionism.³¹⁵

Whether that has begun to change as China's relative material power has grown and it has shifted to more reformist impulses is still under debate. In 2010 Elizabeth Economy argued that Chinese leaders determined that a "go out" strategy to remake global norms and institutions would best serve their national interests, especially the priorities of economic growth and political stability.³¹⁶ PRC scholar Wang Yizhou acknowledged that China appears to have begun pursuing a strategy of "gradually altering the nature of the old international regimes during the process of involvement."³¹⁷ However, other scholars contend that these actions were defensive in nature and China has generally confined these reformist tendencies to instances when it perceived that its interests were in jeopardy.³¹⁸ Moreover, the PRC generally has an aversion to outright opposition. For example, although China remains uncomfortable with some aspects of the "Responsibility to Protect

China. Shambaugh noted that "the primary pattern of China's Security Council voting in recent years has been that of a partner, rather than a spoiler." Shambaugh, *China Goes Global*, 137.

³¹⁵ As PRC scholar Song Hong noted, "the main goal of China is to maintain the basic rules and the normal operation of the WTO. China needs a stable and transparent environment created by such an organization. Therefore, firstly, we should show ourselves as a firm defender for the 'present international economic order.'" Song, "China and WTO A Process of Mutual Learning, Adapting and Promoting," 194. Suisheng Zhao observed that "China acted more and more within the UN charter system rather than trying to reform or transform the system." Zhao, "Beijing's Perception After the Tiananmen Incident," 148.

³¹⁶ Economy, "The Game Changer," 143-144. Job and Shesterinina described the PRC as a norm-shaper with regard to the responsibility to protect. Brian L. Job and Anastasia Shesterinina, "China as a Global Norm-Shaper: Institutionalization and Implementation of the Responsibility to Protect," in *Implementation in World Politics: How Norms Change Practice* eds. Alexander Betts and Phil Orchard (Oxford: Oxford University Press, 2014): 144-159. A CASS scholar suggested that in fact, China has continued to be suspicious that the international system was controlled by the West and intended only for their benefit. Interview #44, Chinese Academy of Social Sciences scholar, July 12, 2013, Beijing, China.

³¹⁷ Wang, "Briefing Multiple Perspectives on Relations between China and International Organizations," 30. Under China's third generation leaders there has been an emphasis on more expansive participation and having greater influence. *Ibid.*, 29.

³¹⁸ Sutter, *Chinese Foreign Relations*, 91. Some scholars argue that China is not likely to take a more assertive leadership role. See Orville Schell, "China Reluctant to Lead," *Yale Global*, March 11, 2009 and Zhao, "Chinese Foreign Policy under Hu Jintao," 357-78.

(R2P),” especially given China’s sensitivity to infringement of state sovereignty, it has endorsed R2P in principle while often remaining reluctant to invoke it.³¹⁹

China’s Human Rights Offensive

The Tiananmen Square crackdown marked a decisive turning point in China’s posture toward the human rights regime, and the beginning of a more strained relationship between Beijing and the regime.³²⁰ After Tiananmen, the Chinese government continued its participation and offered rhetorical support for the human rights regime while also controlling domestic discussion of human rights.³²¹ As with other regimes, even while intensifying its engagement, the PRC also resisted and challenged some aspects of the human rights regime. A *Renmin Ribao* article published in July 1989 captured this tension in the PRC’s approach as it endorsed the UN’s human rights work, while also challenging the universality of human rights and describing Western concern as interference in China’s internal affairs.³²² Premier Deng Xiaoping also responded to the repercussions following Tiananmen defiantly, stating that “China will never accept interference by other countries in its internal affairs..... The only solution is peaceful coexistence and cooperation of all countries with different social systems..., not interference in other countries’ internal affairs and provoking disorders...”³²³

³¹⁹ Fullilove, “China and the United Nations: The Stakeholder Spectrum,” 72 and Shambaugh, *China Goes Global*, 138.

³²⁰ For a description of the PRC’s evolving human rights posture, see Allen Carlson, *Unifying China, Integrating with the World*, 146-148.

³²¹ Deng, *China’s Struggle for Status*, 70. Kinzelbach concluded that from 2000-2010, “China hardly ever challenges the validity of universal human rights norms.” Kinzelbach, “Will China’s Rise Lead to a New Normative Order?,” 306.

³²² Shi Yun, “*Shei shi renquan de zhensheng hanweizhe?*” [Who are the true defenders of human rights?], *Renmin Ribao*, July 7, 1989.

³²³ Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin, *Selected Works of Deng Xiaoping*, Vol. III, 348-49.

This period began with Beijing facing international opprobrium in response to its use of force to end the Tiananmen demonstrations in June 1989. In addition to diplomatic and economic sanctions, Beijing felt the sting of censure when other countries used UN human rights bodies to raise concerns about China's human rights practices. As noted in the previous section, seeing the need to maintain the course of international engagement and using external ties to foster economic growth, the PRC launched a campaign to restore its international standing. Marina Svensson suggested that this marked the beginning of China's "human rights offensive."³²⁴ As she elaborated, "It was the harsh critique that the PRC faced in 1989 that convinced its political leadership that it had to take a more proactive approach to human rights issues, both in order to ward off foreign criticism and with the more long-term goal of launching a systematic view of its own."³²⁵ As part of this effort, the PRC leadership used Chinese scholarship to support government positions, engaged in more vigorous advocacy to advance PRC positions, and tried to cultivate a positive international image.³²⁶

In an attempt to mend its image, PRC diplomats made a concerted effort to demonstrate that it was a cooperative, supportive, active and compliant regime participant.³²⁷ This was a recurrent theme in a number of Chinese government statements and publications, including the PRC Ministry of Foreign Affairs annual publication

³²⁴ Svensson, *Debating Human Rights in China*, 1.

³²⁵ Ibid., 1. See also Ibid., 265.

³²⁶ Zhou, "The Study of Human Rights in the People's Republic of China," 86.

³²⁷ As Simon Rabinovitch put it, "In the reform era (1978-present), the PRC has been more intent on being recognized as a cooperative and responsible player in the international system." Rabinovitch, "The Rise of an Image-Conscious China," 33. For an example of a government statement intended to portray China in a positive light, see "FM Spokesman on China's Efforts to Promote Human Rights," *People's Daily*, November 21, 2000, www.china.org.cn/english/2000/Nov/4323.htm.

“China’s Foreign Affairs.”³²⁸ The 1993 version began the section on China and the human rights regime with “China respects and supports the UN’s universal efforts to promote human rights and fundamental freedoms, and actively participates in the UN’s human rights activities.”³²⁹ Some 18 years later, the 2011 edition underscored that “China continued to take an active and constructive part in the work of UN human rights bodies...”³³⁰ This theme was repeated in other Chinese governmental publications, such as the 2003 government-issued white paper on human rights, which asserted that “China has all along been supportive of and actively participated in activities in the field of human rights sponsored by the United Nations.”³³¹ Another highlighted theme was the breadth of the PRC’s engagement, particularly pointing to the number of PRC treaty commitments and its good record on compliance.³³² For example, at the UNCHR in 1996, PRC representative Zhang Yishan stressed that China “fulfilled its convention obligations to the full. In 1995, it had submitted three reports on the implementation of human rights

³²⁸ A Former Vice Foreign Minister makes similar points. Han, *Diplomacy of Contemporary China*, 405-06. For the section on human rights, see *Ibid.*, 470-71.

³²⁹ PRC Ministry of Foreign Affairs Policy Research Office, *Zhongguo Waijiao Gailan 1993* [Survey of China’s Foreign Affairs 1993] (Beijing: Shijie Zhishi Chubanshe, 1993), 494. The 2003 edition similarly noted “China always supported the UN’s efforts in achieving those purposes and principles, and actively participated in activities in the field of UN human rights.” PRC Ministry of Foreign Affairs Policy Research Office, *Zhongguo Waijiao 2003*, 344.

³³⁰ PRC Ministry of Foreign Affairs Policy Research Office, *China’s Foreign Affairs 2011*, 376. The section on China and the United Nations in the human rights area continued to emphasize that China was “active” and “constructive.”

³³¹ Information Office of the State Council, *Progress in China’s Human Rights Cause in 2003*, Section VIII International Exchanges and Cooperation in Human Rights. See, also, for example, Information Office of the State Council, *Progress in China’s Human Rights in 2009* (Beijing: Information Office of the State Council, September 2010), www.china.org.cn/e-white/7/7-L.htm, VII Exchanges and Cooperation with Other Countries in the Realm of Human Rights.

³³² Information Office of the State Council, *Progress on Human Rights in 2004* (Beijing: Information Office of the State Council, April 2005), english.gov.cn/official/2005-07/28/content_18115.htm, Section VII International Exchanges and Cooperation in the Field of Human Rights. The 1997 PRC survey of China’s Foreign Affairs noted that “the Chinese government conscientiously fulfills its legal obligations under the conventions.” PRC Ministry of Foreign Affairs Policy Research Office, *Zhongguo Waijiao Gailan 1997* [Survey of China’s Foreign Affairs 1997] (Beijing: Shijie Zhishi Chubanshe, 1997), 714.

conventions.”³³³ In a similar vein, the National Human Rights Action Plan listed all the international human rights obligations that it had met.³³⁴

In the post-1989 period, PRC scholars were charged with devising arguments to counter Western criticism of the country’s human rights record and developing China’s own theories of human rights in order to challenge Western arguments.³³⁵ Toward this end, the government sponsored conferences, seminars and research on human rights.³³⁶ Much of the early scholarship asserted that human rights reflected bourgeois ideology, using a Marxist lens to do that; defended state sovereignty; and drew attention to China’s

³³³ UN Economic and Social Council, *Commission on Human Rights Fifty-second session, Summary Record of the 16th Meeting*, April 2, 1996, UN Doc. E/CN.4/1996/SR.16, para 16. The MFA’s annual publication similarly reiterated that China “further enhanced cooperation with UN human rights treaty bodies and took active steps to honor its obligation under the relevant conventions.” PRC Ministry of Foreign Affairs Policy Research Office, *China’s Foreign Affairs 2011*, 379.

³³⁴ Information Office of the State Council, *National Human Rights Action Plan of China 2012-2015*, (Beijing: Information Office of the State Council, June 2012), www.china.org.cn/e-white/7/7-L.htm, Section V Fulfillment of Obligations to International Human Rights Conventions, and Exchanges and Cooperation in the Field of International Human Rights. At times, the PRC’s efforts to cultivate a positive image led to hyperbole. For example, Beijing boasted that the Human Rights Council “verified and approved the [Universal Periodic Review] report reviewing China’s human rights record.” Information Office of the State Council, *Progress in China’s Human Rights in 2009*, Section VII Exchanges and Cooperation with Other Countries in the Realm of Human Rights. Although the Council’s review leads to an outcome document that is adopted by HRC members, this does not actually involve verification or approval. See “Basic Facts about the UPR,” UN Human Rights Council, www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx. Moreover, the outcome document generally includes recommendations. See, for example, UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, China*, October 5, 2009, A/HRC/11/25.

³³⁵ Zhou, “The Study of Human Rights in the People’s Republic of China,” 86. For an example of the government’s use of scholarship, see Dong Yunhu, “Zhongguo renquan fazhan de yige zhongyao lichenbei” (An Important Milestone in China’s Human Rights Development), *Ren Quan* [Human Rights], no. 1 (2002): 25. As Weatherley put it, “by controlling what is published so that it conforms to and expands upon the official position, the government has been able to show foreign observers that there is widespread academic backing for its ‘unique’ understanding of human rights.” Weatherley, “The Evolution of Chinese Thinking on Human Rights in the Post-Mao Era,” 20.

³³⁶ Zhou, “The Study of Human Rights in the People’s Republic of China,” 83. The PRC’s 1995 Human Rights white paper acknowledged that “The Chinese government actively supports and aids financially the study of human rights.” Further, “since 1991 China has held over a dozen largescale national theoretical symposiums on human rights and over a hundred discussions, forums, and reports on human rights.” Information Office of the State Council, *Progress of Human Rights in China 1995* (Beijing: Information Office of the State Council, December 1995), www.china.org.cn/e-white/7/7-L.htm, Section IX. Developing the Study of Human Rights and Popularizing the Knowledge of Human Rights.

achievements.³³⁷ Although not all scholarship during this period conformed to the government's positions, most scholars were cautious and inclined to be deferential to governmental views.³³⁸ Moreover, the Chinese government has used repression, including arrests, interrogations and harassment, to intimidate or silence Chinese scholars and activists who have been critical of the government's human rights performance or who advanced human rights views that the government perceived as threatening.³³⁹

The PRC also became more proactive in advancing its arguments and human rights views.³⁴⁰ In 1991, the government began publishing white papers on human rights, and in 1993 it established the China Society for Human Rights Studies as a government-organized NGO, where scholars have advocated government positions, such as the importance of taking differing conditions into account, specifically that: "Owing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and the practice of human rights."³⁴¹ This sentiment was echoed in later PRC government statements,³⁴² such as

³³⁷ Zhou, "The Study of Human Rights in the People's Republic of China," 83 and 86. This was especially the case with articles published shortly after 1989. See for example, Meng Chunyan, "*Jianchi Makesizhuyi renquanguan, fandui zichan jieji renquanguan*" [Insist on the Marxist View of Human Rights, Oppose the Bourgeois View of Human Rights], *Renmin Ribao* [People's Daily], September 17, 1990 and Guangbo Zhang, "*Jianchi Makesizhuyi renquanguan*" [Insisting on the Marxist View of Human Rights] *Zhongguo Faxue* [Chinese Legal Science] 4, no. 10 (1990).

³³⁸ On the evolution of PRC scholarship see, Zhou, "Human Rights in the People's Republic of China," 88-91.

³³⁹ See for example, U.S. State Department, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices 2013, China*.

³⁴⁰ Kent, *China, the United Nations, and Human Rights*, 234 and Svensson, *Debating Human Rights in China*, 267-68 and 270-71. According to Ming Wan, in 1990 in response to a letter from a group of leading foreign scientists threatening to sever scientific exchanges due to human rights abuses, President Jiang Zemin called for an organized response that included the establishment of the China Society for Human Rights (CSHR). Wan, *Human Rights in Chinese Foreign Relations*, 19. The links between CSHR and the Chinese government are so close that some of the CSHR staff are Ministry of Foreign Affairs officials. In response to author's email to previous CSHR staff, several respondents noted that they were now serving in various diplomatic positions.

³⁴¹ Information Office of the State Council, *Human Rights in China 1991*, Section X, Active Participation in International Human Rights Activities. The 1995 White Paper, similarly noted that "It is normal for countries to have different understanding and practice of human rights owing to varied historical, social,

Ambassador Li Baodong's 2008 statement at the UN Human Rights Council that reiterated China's oft-heard sentiments that "We are living in a world of great diversity with differing national circumstances, varying levels of development, diverse religious and cultural traditions and uneven progress in the field of human rights."³⁴³ Beijing also championed a right to development and prioritized economic, social and cultural rights over civil and political rights. The PRC Ministry of Foreign Affairs' 1993 annual report declared that "China emphasizes a right to development, and considers that the right to development is an inalienable right, and that promoting the realization of the right to development is a long term responsibility of international society."³⁴⁴ Beijing also upheld the primacy of state sovereignty, which also translated into endorsing the principle of non-interference.³⁴⁵ For example, the 1991 PRC white paper stated that:

China is opposed to interfering in other countries' internal affairs on the pretext of human rights and has made unremitting efforts to eliminate various abnormal phenomena and strengthen international cooperation in the field of human rights.³⁴⁶

economic and cultural conditions." Information Office of the State Council, *The Progress of Human Rights in China 1995*, Section X Working Hard to Promote the Healthy Development of International Human Rights Activities.

³⁴² Premier Li Peng proclaimed that "A country's human rights situation should not be judged in total disregard of its history and national conditions." UN Security Council, *Provisional Verbatim Record of the Three Thousand and Forty-sixth Meeting*, January 31, 1992, UN Doc. S/PV.3046, 92-93.

³⁴³ Li Baodong, "Statement by H.E. Ambassador Li Baodong, Head of the Chinese Delegation at the General Debate on the 7th Session of the Human Rights Council," PRC Ministry of Foreign Affairs, news release, March 11, 2008, www.mfa.gov.cn/eng/wjb/zwjg/zwbd/t413885.htm.

³⁴⁴ PRC Ministry of Foreign Affairs Policy Research Office, *Zhongguo Waijiao Gailan* 1993, 495. The 1998 version stated that "As a developing country, China emphasizes economic, social and cultural rights and the right to development and recognizes that these are fundamental human rights. PRC Ministry of Foreign Affairs Policy Research Office, *Zhongguo Waijiao* 1998 [China's Foreign Affairs 1998] (Beijing: Shijie Zhishi Chubanshe, 1998), 727. China supported a legally binding instrument on the right to development. See UN Commission on Human Rights, *Summary Record of the 16th Meeting*, March 30, 2004, UN Doc. E/CN.4/2004/SR.16, paragraph 53 and UN Commission on Human Rights, *Summary Record of the 16th Meeting*, November 8, 2005, UN Doc. E/CN.4/2005/SR.16, paragraph 36.

³⁴⁵ For a description of these efforts, see Deng, *China's Search for Status*, 86-87.

³⁴⁶ Information Office of the State Council, *Human Rights in China*, November 1991, Section X, Active Participation in International Human Rights Activities.

Chinese diplomats skillfully appealed to developing countries on this issue. For example, the PRC's permanent representative to the UN protested that the U.S. 2001 draft resolution on China's human rights practices "amounted to interference in the internal affairs of developing countries and undermined their development efforts under the pretext of concern for human rights."³⁴⁷ After Tiananmen, the PRC has also objected to country-specific resolutions and procedures. For example, Ambassador Sha Zukang complained that "Tabling of resolutions on country situations had therefore become a privilege of the strong and powerful, and it was not surprising, therefore, that those who had found themselves in the dock were often developing countries."³⁴⁸

These Chinese views, then, reflect the limitations on the PRC's embrace of the international human rights regime. In concrete terms, this has meant, for example, that although the PRC signed the International Covenant on Civil and Political Rights (ICCPR) in 1998, it along with a group of less than 30 countries has not yet ratified it.³⁴⁹ China purported to support civil and political rights, yet Beijing's failure to ratify the ICCPR is evidence of its discomfort with this group of internationally defined rights.³⁵⁰ The PRC also harbors a distrust of outside efforts to monitor or raise human rights concerns, labeling this "a pretext for ulterior motives" and referring to UNCHR resolutions on China's human

³⁴⁷ UN Commission on Human Rights, *Summary Record of the 62nd Meeting*, April 23, 2001, UN Doc. E/CN.4/2001/SR.62, paragraph 58. For another similar PRC statement, see UN General Assembly, Third Committee, *Summary Record of the 32nd Meeting*, February 9, 2011, UN Doc. A/C.3/65/SR.32, paragraph 62 and UN General Assembly, Third Committee, *Summary Record of the 31st Meeting*, December 31, 2010, UN Doc. A/C.3/65/SR.31, paragraph 85.

³⁴⁸ UN Commission on Human Rights, *Sixty-first session, Summary Record of the 20th Meeting*, April 8, 2005, UN Doc. E/CN.4/2005/SR.20.

³⁴⁹ "United Nations Treaty Collection," United Nations, <http://treaties.un.org/>. In contrast, roughly 167 countries have ratified this Convention. A PRC scholar noted that China has sought to restrict knowledge of ICCPR among PRC citizens. Interviewee #54 PRC scholar, June 8, 2012, Guangzhou, China.

³⁵⁰ For example, Ambassador Li Baodong claimed that China while was "committed to the realization of economic, social and cultural rights, it attached great importance to civil and political rights." UN Commission on Human Rights, *Summary Record of the 31st Meeting*, October 25, 2000, UN Doc. E/CN.4/2000/SR.31, paragraph 14.

rights record as “anti-China” resolutions.³⁵¹ As the Ministry of Foreign Affairs’s 1997 survey of China’s Foreign Relations pronounced, “It is completely politically motivated for western countries to engage in anti-China motions in the UNCHR... What they care about is not China’s human rights situation but their own power politics and hegemony.”³⁵² Sounding a similar note of suspicion and hostility, in 2005 Ambassador Sha Zukang alleged that

Since the end of the Cold War, the Commission had adopted over 100 country-specific resolutions that had almost all been directed against developing countries... Although the promotion and protection of human rights was a shared objective and responsibility of all countries, some countries tried to seek political gains under the pretext of human rights, and discussions of country situations had long been plagued by political confrontation.³⁵³

As with other international regimes, the PRC resisted ceding too much authority to the regime, and insisted on several occasions that its interaction with the regime was conducted on the basis of “equal footing,” effectively challenging the regime’s authority over it.³⁵⁴

These views have formed the basis of the PRC efforts to resist, and in some cases, to reshape the regime. One of the earliest examples of this was the PRC’s attempt to influence the 1993 Vienna World Conference. At the Bangkok regional preparatory

³⁵¹ Kinzelbach, “Will China’s Rise Lead to a New Normative Order?” 322. In China’s words, “To interfere in other countries’ internal affairs in the name of protecting human rights in order to advance one’s own political agenda is simply to blaspheme and betray the human rights cause.” UN General Assembly, *12th plenary meeting*, September 13, 2000. UN Doc. A/55/PV.12, page 7. By some accounts, China views universal values, such as human rights with suspicion. Chris Buckley, “China Takes Aim at Western Ideas,” *New York Times*, August 19, 2013, <http://www.nytimes.com/2013/08/20/world/asia/chinas-new-leadership-takes-hard-line-in-secret-memo.html?hp>. A CASS scholar indicated that there is still suspicion of the regime and that the West uses the guise of international human rights standards as a “tool to block China’s rise and suppress them.” Interview #44, Chinese Academy of Social Sciences scholar, July 12 2013, Beijing, China.

³⁵² PRC Ministry of Foreign Affairs Policy Research Office, *Zhongguo Waijiao* 1997, 713.

³⁵³ UN Commission on Human Rights, *Sixty-first session, Summary Record of the 20th Meeting*, April 8, 2005, UN Doc. E/CN.4/2005/SR.20, paragraph 14-16.

³⁵⁴ See for example, UN General Assembly, *Third Committee, Summary Record of the 36th Meeting*, October 26, 2000, UN Doc. A/C.3/55/SR.36, paragraph 43. Kinzelbach noted that the PRC sought to relegate parts of the regime to an advisory role. Kinzelbach, “Will China’s Rise Lead to a New Normative Order?” 316.

meeting, Beijing met with some success as it and other countries secured the inclusion of a defense of sovereignty, an emphasis on the right to development, and an affirmation of the importance of “national and regional particularities and various historical, cultural and religious backgrounds” in the regional statement.³⁵⁵ However, in the final denouement, China failed to win support for inclusion of these views in the Vienna Declaration and Programme of Action, which affirmed the universality of human rights.³⁵⁶ Nonetheless, the PRC continued to proactively advance its human rights views. As PRC official Dong Yunhu stated in 2004, “We must boldly propagate our country’s viewpoint regarding human rights, democracy, and freedom and the true circumstances of our protection of human rights and practice of democracy. We must hold the banner of human rights, democracy and liberty in our own hands.”³⁵⁷ Beijing’s reformist efforts in the UN Commission on Human Rights also sharpened after the mid-1990s.³⁵⁸ Chapter 4 details these efforts, including blocking a proposal for emergency sessions, opposing country-specific approaches, and supporting changes to make the regime more deferential to states, such as giving states greater oversight over the Office of the High Commissioner for Human Rights (OHCHR).³⁵⁹

³⁵⁵ See Fried van Hoof, “Asian Challenges to the Concept of Universality: Afterthoughts on the Vienna Conference on Human Rights,” in *Human Rights: Chinese and Dutch Perspectives*, eds. Peter Baehr, Fried van Hoof, Liu Nanlai and Tao Zhenghua (The Hague: Martinus Nijhoff Publishers, 1996), 4-10.

³⁵⁶ See James T.H. Tang, ed., *Human Rights and International Relations in the Asia-Pacific Region* (London: Pinter Publishers, 1995), 215. For China’s behavior at the Vienna conference, see Kent, *China, the United Nations, and Human Rights*, 170-93.

³⁵⁷ Dong Yunhu, “*Renquan Ruxian: Zhongguo Renquan fazhan de zhongyao lichengbei*,” [Human Rights enters the constitution: an important milestone in the development of human rights in China] *Renmin Ribao*, March 15, 2004.

³⁵⁸ After 1995, when China almost lost the no-action motion and barely defeated a UNCHR resolution, the PRC appeared to have become particularly interested in shaping the regime. Kent, *China, the United Nations, and Human Rights*, 74 and Foot, *Rights Beyond Borders*, 183.

³⁵⁹ This often meant Beijing blocked country-specific approaches, including the use of resolutions and the appointment of rapporteurs. See, Andrew J. Nathan and Andrew Scobell, “Human Rights and China’s Soft Power Expansion,” *China Rights Forum*, no. 4 (2009), <http://www.hrichina.org/content/3174>.

Yet, because of the persistence and standing of the regime and because it may have behooved the PRC to appear to be supportive, at times it verbalized endorsement of the regime.³⁶⁰ For example, when the PRC sought membership in the Human Rights Council in 2006, it affirmed the authority of the regime. On this occasion and unlike other instances when it stressed the importance of taking national conditions into account, China stated that “it respects the universality of human rights and supports the UN in playing an important role in the protection and promotion of human rights.”³⁶¹ This affirmation of universality may have been intended to improve the PRC’s candidacy for a seat on the Human Rights Council before an audience that consisted of the General Assembly. Second, Beijing also indicated support for the regime by progressively expanding its participation in the regime. For example, it signed (1997) and ratified (2001) the International Covenant of Economic, Social and Cultural Rights; accepted four visits by the UN Special Procedures, which involved investigative trips; and submitted reports and appeared before international treaty bodies.³⁶² The combination of reformist impulses along with actions supportive of the regime demonstrates the varied explanatory factors at work, which sometimes pulled the PRC in contradictory directions.

Explaining China’s Behavior

³⁶⁰ These steps may have been calculated compromises to try to deflect human rights criticism. Carlson, *Unifying China, Integrating the World*, 147-48. See for example, “FM Spokesman on China’s Efforts to Promote Human Rights,” *People’s Daily*, November 21, 2000, www.china.org.cn/english/2000/Nov/4323.htm.

³⁶¹ United Nations General Assembly, “Aide Memoire,” April 13, 2006, www.un.org/ga/60/elect/hrc/china.pdf. For PRC positions, see Ann Kent, “The Universal Declaration of Human Rights and China: Breaker or Shaper of Norms,” *China Rights Forum* (Fall 1998), 5.

³⁶² China allowed visits by the UN Working Group on Arbitrary Detention (1997), Special Rapporteur on Education (2003), Working Group on Arbitrary Detention (2004), Special Rapporteur on Torture (2005), Special Rapporteur on Food (2010). China has been hesitant in accepting these visits and has not responded to pending visit requests by other UN Special Procedures.

During the post-Tiananmen period China's posture toward international regimes, including the human rights regime, was influenced by five main factors: PRC views on sovereignty, international image concerns, the importance of continued economic growth, a calculation of the costs and benefits of regime membership and greater familiarity with regimes. The first three explanatory factors had a particularly strong influence in guiding PRC behavior, while the remaining two—a calculation of costs and benefits of regime membership and its greater familiarity with the regime, were weaker influences. These countervailing influences often pulled Beijing in different directions and account for some of the inconsistent tendencies described previously.

Although PRC views on sovereignty evolved somewhat from its near absolute conception of sovereignty during the Mao-era, it has continued to resist regimes that constituted what it perceived to be unacceptable infringement of state sovereignty.³⁶³ Underlining the importance of sovereignty, Elizabeth Economy argued in 2001 that with regard to the Framework Convention on Climate Change "...China's concerns about the infringement of Chinese sovereignty through monitoring requirements," led it to express reservations about the proposed agreement.³⁶⁴ On peacekeeping, despite a transformation from opposition to support and even participation, China's preference for host-country consent suggested that it continued to place primacy on the principle of sovereignty.³⁶⁵ Even on the issue of development, Beijing asserted that

³⁶³ For China's evolving views on sovereignty, see Carlson, *Unifying China, Integrating the World*, 146-183. The 1972 words of scholar Byron S. Weng that "Peking clearly favors restricting the powers of international organizations" generally continued to hold true. Weng, "Some Conditions of Peking's Participation in International Organizations," 337.

³⁶⁴ Despite Economy's observation, China signed (1992) and ratified (1993) the treaty. Economy, "Impact of International Regimes," 235.

³⁶⁵ Fullilove, "China and the United Nations: The Stakeholder Spectrum," 72. See also Bates Gill and Ching-hao Huang "China's Expanding Peacekeeping Role," Stockholm International Peace Research Institute, <http://www.sipri.org/media/newsletter/essay/jan09>. As Hirono and Lanteigne noted, China "is still regarded

The principles of sovereign equality and non-interference in each other's internal affairs should be upheld. The affairs of a country should be up to its own people to decide, and developing countries should have the right to choose... a development path tailored to their specific national characteristics.³⁶⁶

For example, in 2000, President Jiang Zemin stated that

Dialogue and cooperation in the field of human rights should be undertaken on the basis of respect for state sovereignty... As long as borders continue to exist in the world and people continue to exist in the world and people continue to live separately within their own states, the protection of each state's independence and sovereignty is the highest interest of the government and people of each state. Without sovereignty, there are no human rights to speak of.³⁶⁷

These views resulted in PRC hesitance in making international human rights commitments, such as ratifying treaties, especially where it felt that an international regime's authority was too extensive. In this vein, PRC scholar Mo Jihong argued that Beijing prefers state reporting to other forms of monitoring that might be more intrusive, such as investigative trips.³⁶⁸ Katrin Kinzelbach also argued that "China repeatedly refuted the notion that treaty bodies were mandated to monitor State compliance; rather, China portrayed them as advisory bodies to States."³⁶⁹ Yet, PRC leaders were occasionally flexible on sovereignty,

as 'conservative,' particularly in relation to the principle of the host state's consent to a UN mission." Miwa Hirono and Marc Lanteigne, "Introduction: China and UN Peacekeeping," *International Peacekeeping* 18, no. 3 (June 2011): 251.

³⁶⁶ UN General Assembly, *Twenty-fourth special session, 6th meeting*, June 28, 2000, UN Doc. A/S-24/PV.6, page 6. See also Ambassador Li Baodong, "Statement by Ambassador Li Baodong at the Security Council Open Debate on Women and Peace and Security," PRC Statement, UN Security Council, New York, April 17, 2013, www.china-un.org/eng/gdxw/t1034955.htm.

³⁶⁷ Jiang Zemin, "Zai Lianheguo Qiannian shounao huiyi shang de jiang hua 2000," *Renmin Ribao*, September 7, 2001.

³⁶⁸ Mo Jihong elaborated that the PRC was not comfortable responding to individual human rights complaints and the prescriptions on abolishing the death penalty as outlined in the Optional Protocol to the ICCPR. Mo Jihong, "A New Perspective on Relations between Human Rights' Covenants and China," in *Construction within Contradiction: Multiple Perspectives on the Relationship Between China and International Organizations*, ed. Wang Yizhou (Beijing: China Development Publishing House, 2003), 212.

³⁶⁹ Kinzelbach, "Will China's Rise Lead to a New Normative Order?," 316.

even cooperating with mechanisms that required investigative trips.³⁷⁰ For example, China acceded to the Chemical Weapons Convention in 1997 even though Chinese Foreign Ministry officials still believed the inspection provisions were too far-reaching.³⁷¹ Despite the enduring importance of sovereignty, other factors, including international image further described below, sometimes moderated Beijing's behavior and tilted it toward a more participatory and flexible posture.

Chinese concern with image was a persistent explanatory factor that inclined the PRC toward greater involvement in regimes.³⁷² Beijing's concern with image, specifically a desire to portray itself as a respected and responsible member of the international community, has been especially acute since the 1989 Tiananmen Square crackdown,³⁷³ and drove the PRC toward greater participation. For example, since all other declared nuclear states had either signed the Non-Proliferation Treaty or announced an intention to sign it, China was likely concerned that it would be seen as the only holdout.³⁷⁴ Similarly, Swaine and Johnston noted that with increasing numbers of countries signing the CTBT, China faced pressure to join as well in order to preserve its image in the world.³⁷⁵ In a number of instances, image concerns carried sufficient import that they outweighed other factors. For

³⁷⁰ This point addressed in Oksenberg and Economy, *Shaping US-China Relations*, 233 and Fravel, "China's Attitude toward U.N. Peacekeeping Operations since 1989," 1105-1106.

³⁷¹ Croddy, "China's Role in the Chemical and Biological Weapons Regimes," 32.

³⁷² For example, China continued its participation in the Conference on Disarmament in order to "portray itself as a responsible major power." Johnston and Evans, "China and Multilateral Security Institutions," 240. See also Zhu, "China and International Human Rights Diplomacy," 225.

³⁷³ Zhao, "Beijing's Perception After the Tiananmen Incident," 145.

³⁷⁴ Medeiros, *Reluctant Restraint*, 74. According to Medeiros, "In early 1990, Beijing was trying to rebuild its image as a respected and responsible member of the international community." At this time, only France and China had not ratified the NPT and early in the year France announced that it would be signing the NPT, which left China as the only nuclear state that had not signed or announced an intention to sign.

³⁷⁵ Swaine and Johnston, "China and Arms Control Institutions," 108. Gill and Medeiros argued that China signed the CTBT to preserve its international image. Bates Gill and Evan S. Medeiros, "Foreign and Domestic Influences on China's Arms Control and Nonproliferation Policies," *The China Quarterly* 161 (2000): 69-70 and 90. Similar points made in Bates Gill, "Two Steps," 262 and Jing-Dong Yuan, "The New Player: China, Arms Control, and Multilateralism," 64.

example, on the Conventional Weapons Convention, China agreed to limits on the use and export of land mines after PRC officials became convinced that the potential damage to its image outweighed the costs of converting production.³⁷⁶ In the human rights regime, China repeatedly drew attention to its active and constructive participation as well as to the number of treaties it had signed.³⁷⁷ China's persistence in drawing attention to this implied a strong public relations motivation to its participation. Participation also provided an opportunity for the PRC to counter criticism of its record. As Andrew Nathan has argued, the PRC's presence in the regime served its interests because it "could better manage attacks on its reputation by being in the regime than outside of it."³⁷⁸ Similarly, Allen Carlson asserted that "retaining membership in the main UN Charter-based bodies of the international human rights regime provided the Chinese with a high-profile platform for confronting Beijing's human rights critics."³⁷⁹

The priority of economic growth was also among the most important influences on the PRC's posture toward international regimes. Economic growth was a high-priority because the CCP-led government's legitimacy had become linked with its ability to deliver economic growth and to provide continued employment opportunities for its burgeoning population. PRC leaders likely recall that widespread unhappiness because of slowing economic growth, fueled the social instability that climaxed in the Tiananmen Square

³⁷⁶ Swaine and Johnston, "China and Arms Control Institutions," 115. Some scholars see image as carrying less explanatory weight, with sovereignty and economic growth outweighing image concerns. Economy, "Impact of International Regimes," 235.

³⁷⁷ Kinzelbach noted that China was careful to use public statements to endorse the human rights regime. Kinzelbach, "Will China's Rise Lead to a New Normative Order?," 306. The point on the high number of PRC ratifications was also made by Interviewee #56 PRC Ministry of Foreign Affairs official, June 6, 2012, Beijing, China and Interviewee #45 PRC Central Party School scholar, June 13, 2012, Beijing.

³⁷⁸ Nathan, "China's Rise and International Regimes," 5.

³⁷⁹ Carlson, *Unifying China, Integrating the World*, 159. Similar points on participation giving the PRC a voice made by Interviewee #56 PRC Ministry of Foreign Affairs official, June 6, 2012, Beijing, China and Interviewee #49 PRC scholar, June 11, 2012, Beijing, China.

demonstrations in 1989.³⁸⁰ China's leaders determined that increased international involvement would benefit the PRC's external economic relationships, which were seen as critical to maintaining high levels of growth.³⁸¹ In the economic realm, expanded involvement allowed it to benefit from access to technical expertise, foreign aid, outside capital, markets and information to further economic development. Signifying the importance of this access, as a condition for allowing dissident and astro-physicist Fang Lizhi to leave the confines of the U.S. Embassy, Beijing demanded the resumption of World Bank lending and the resumption of exports of high-technology products.³⁸² Yet, due to concerns about the economic impact of certain international regimes, Beijing was at times hesitant to enter into some international commitments. For example, PRC leaders were concerned that the Montreal Protocol and the Framework Convention on Climate Change would impede PRC economic growth.³⁸³

The perception of Chinese leaders of the potential benefits and costs of joining a regime was another factor. At times, Chinese leaders determined that the PRC would benefit from further engagement with international regimes, but occasionally the costs were deemed too great. China was most enthusiastic about regime commitments that involved little or no cost and displayed hesitance in agreeing to high-cost commitments.³⁸⁴ For example, PRC leaders pursued WTO membership because they determined that China

³⁸⁰ Ambassador Chen noted that they were aware of the possibility of a crisis that could hurt social stability, and result in "a problem." Chen, interview.

³⁸¹ Interviewee #56 PRC Ministry of Foreign Affairs official, June 8, 2012, Beijing China noted that the current international arrangements are beneficial to China, and that Mao era isolation hurt China.

³⁸² Kim, "International Organizations in Chinese Foreign Policy," 153; Nicholas D. Kristof, "Storm Signals Flying on U.S.-China Relations," *New York Times*, March 4 1990 and Robert Pear, "China Ties New Demand to Dissidents Fate," *New York Times*, April 4, 1990. Fearing arrest, dissident Fang Lizhi, fled to the U.S. Embassy shortly after the 1989 Tiananmen Crackdown, where he was given refuge until the U.S. could negotiate his departure.

³⁸³ Economy, "Impact of International Regimes," 251 and Heggelund, "China's Climate Change Policy: Domestic and International Developments," 176.

³⁸⁴ Oksenberg and Economy, *Shaping US-China Relations*, 24.

would reap economic benefits, even though this required them to submit to membership terms, such as opening domestic markets.³⁸⁵ Scholar Eric Croddy described a similar cost-benefit analysis as PRC leaders determined “that it could live without [Chemical Weapons] and at the same time obtain the security and economic dividends that would accrue from Chinese participation in the CWC.”³⁸⁶ Although the advantages of joining the human rights regime may be less obvious, participation enabled Beijing to use its participation to defend itself and its interests,³⁸⁷ and to promote its own views.³⁸⁸

The PRC’s degree of familiarity with the regime also influenced its posture. As the PRC grew increasingly familiar with international regimes it became more comfortable participating in them, including expressing more fully formed views and advancing its positions more adeptly. In contrast to the Mao-era when the PRC merely used international fora to vilify the super-powers, Beijing later offered specific and detailed positions that reflected a more nuanced understanding of regime requirements. Consequently, in contrast to its more tepid behavior during earlier periods, China gradually became more proactive on specific issues and was able to use regimes to its benefit.³⁸⁹ Thus, even while remaining within existing international regimes, China occasionally exhibited tendencies that suggested it might be willing to attempt to reshape them.

Conclusion

³⁸⁵ Pearson, “China and Major Economic Institutions,” 218 and 220. Nathan and Scobell also showed that PRC leaders carefully weighed the costs and benefits of participation in the arms control regime. Andrew Nathan and Andrew Scobell, *China’s Search for Security* (New York: Columbia University Press, 2012), 311.

³⁸⁶ Croddy, “China’s Role in the Chemical and Biological Weapons Regimes,” 29.

³⁸⁷ Carlson, *Unifying China, Integrating with the World*, 147.

³⁸⁸ Interviewee #50, CCP Central Party School professor, June 14, 2012, Beijing, China.

³⁸⁹ Shambaugh, *China Goes Global*, 136.

China underwent a transformation from an insular and isolated pariah state to being active in nearly every international regime. The contours of Beijing's evolving posture demonstrated the interplay of diverse factors that sometimes pulled the PRC in opposing directions. Although the explanatory factors outlined in this chapter at times conflicted with one another and had varying influences on PRC behavior, the factors that drew the PRC toward enhanced participation were ultimately, more powerful. Thus, overall, China's trajectory has been one of expanding participation.

A number of the considerations outlined in this chapter as important drivers of PRC behavior influenced its posture toward the parts of the human rights regime that are examined in the case studies that follow. Significantly, however, close and detailed attention to particular cases helps us to assess the relative explanatory weight of the various influences that have been discussed so far or perhaps discover additional influences. The next chapter examines these influences in the context of Beijing's participation in the process of drafting and adopting two human rights treaties related to torture.

Chapter 3

China, the Convention against Torture, and the Optional Protocol to the Convention against Torture: 1982-2002

A comparison of China's conduct in two cases—first in the drafting and adoption of the Convention against Torture (CAT or the Convention) and later the Optional Protocol to the Convention against Torture (OPCAT or the Optional Protocol)—illustrates the PRC's evolving posture towards the international human rights regime. In the decade spanning 1982, when the drafting of CAT began, to 1992, the year OPCAT was adopted, the PRC shifted from a taker acting cautiously to a regime maker, albeit one acting with restraint.

The change from a more passive role to a more assertive one can be attributed to changes among the explanatory variables and their relative weight. As China gained familiarity with the regime, it went from being inclined toward the safe role of taker, to having the experience and knowledge needed to play other roles. Another important influence was the PRC's existing ideas about human rights, which remained surprisingly static and showed little of the evolution that might be expected from extended participation in the regime. Beijing's concern with cultivating a positive global image was also a consistent theme, and in this case it generally moderated PRC behavior. As noted earlier, the explanatory weight of image and Chinese human rights ideas underscores the salience of constructivist theorizing. This chapter also details the emergence of Beijing's ability to work with other countries as a scope condition that influenced its behavior.

The Convention and the Optional Protocol are worthy of examination because they help us understand China's behavior in reference to what has been regarded as a peremptory norm involving harm to the person. In addition, they are important pillars of the international movement against torture, and resulted from years of vigorous advocacy and prolonged negotiations. The Convention against Torture was hailed as affirming that torture was "no longer acceptable in the eyes of the international community."³⁹⁰ Created nearly two decades later, the Optional Protocol complemented the Convention against Torture by establishing a body of independent experts that would conduct inspection visits to places of detention.³⁹¹ Both instruments were created through processes that began with negotiations over a draft in open-ended working groups and culminated in adoption by the UN General Assembly.³⁹² The working groups, comprised of between 20 to 30 country representatives, operated on the basis of consensus, meaning that votes were rarely taken and the discussions were intended to reach broad agreement.³⁹³ Following the working group negotiations, the draft was then considered by a series of UN bodies where state delegations could offer support, propose changes, or oppose adoption. The UN preference

³⁹⁰ UN General Assembly, "93rd Plenary Meeting," December 11, 1984, UN Doc. A/39/PV.93, p.11. For an analysis of CAT, see Andrew Byrnes, "The Committee against Torture," in *The United Nations and Human Rights: A Critical Appraisal*, ed. Philip Alston (Oxford: Clarendon Press, 1992), 509-511.

³⁹¹ Malcolm Evans and Claudine Haenni-Dale, "Preventing Torture? The Development of the Optional Protocol to the UN Convention against Torture," *Human Rights Law Review* 4, no. 1 (2004): 20.

³⁹² J. Herman Burgers (Chairperson-Rapporteur of the Working Group 1982-1984), interview by author, August 31, 2010, The Hague, Netherlands and Evans and Haenni-Dale, "Preventing Torture?," 20. The working group can also be referred to as the drafting group.

³⁹³ Evans and Haenni-Dale, "Preventing Torture?," 26; J. Herman Burgers and Hans Danelius, *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (London: Martinus Nijhoff Publishers, 1988), 26 and 32; and Burgers, interview. When the group could not reach consensus, the chairperson reported to the UNCHR the views expressed by participants. Burgers and Danelius, *The United Nations Convention against Torture*, 32. Drafting by consensus allowed states that were resistant to the proposed treaty to put forward their views without having to vote in opposition. Debra Long and Nicola Boeglin Naurnovic, *Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention* (San Jose/Geneva: Inter-American Institute of Human Rights and the Association for the Prevention of Torture, 2005), 52.

to adopt human rights instruments by consensus, which is thought to convey broad international legitimacy and wide-spread acceptance, meant that adoption by vote only occurred when consensus was not possible, which was the case with OPCAT.³⁹⁴ During the negotiation and adoption process, in order to gain the support necessary for passage, states in favor of the proposed instrument sometimes had to accept concessions that watered down elements of the original draft.

This chapter examines China's behavior in the drafting and passage of CAT and OPCAT. The first half of the chapter focuses on the Convention against Torture and the second half on the Optional Protocol. Each section begins with a description of the drafting and negotiation process followed by an analysis of China's behavior. It then discusses the explanatory variables and scope condition that shaped PRC conduct.

The Convention against Torture: Origins, Drafting and Adoption

When the UN General Assembly adopted CAT in 1984, human rights NGO activists and supportive states realized their goal of an international legally binding convention prohibiting torture.³⁹⁵ Although the UN had adopted the hortatory Declaration on Torture in 1975, advocates campaigned for an instrument with the force of law.³⁹⁶ In

³⁹⁴ Exceptions to this practice include foundational human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. Long and Naumovic, Optional Protocol, 52.

³⁹⁵ Ann-Marie Bolin Pennegard, "Overview Over Human Rights—the Regime of the UN," in *International Human Rights Monitoring Mechanisms: Essays in honor of Jakob Th. Moller*, eds., Gudmundur Alfredsson, Jonas Grimheden, Bertran G. Ramcharan and Alfred de Zayas (The Hague: Martinus Nijhoff Publishers, 2001). For a discussion of advocacy efforts, see Matthew Lippman, "The Development and Drafting of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," *Boston College International and Comparative Law Review* 17, no. 2 (1994): 275-335; Ann Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton, New Jersey: Princeton University Press, 2001); and Hilde Reiding, *The Netherlands and the Development of International Human Rights Instruments* (Antwerp: Intersentia, 2007).

³⁹⁶ Lippman "The Development and Drafting of the United Nations Convention against Torture," 307-308.

order to work toward this goal, in 1977, at Sweden's initiative, the UN General Assembly convened a UN Commission on Human Rights working group that met for approximately one week on an annual basis prior to the UNCHR meeting.³⁹⁷ The group, using a draft offered by Sweden as the basis for discussions, made some headway during the first several years. However, numerous areas of dispute remained. The Soviet Union and a number of other countries, including Eastern bloc nations and some African and Asian states, contested some of the elements in the draft, including the definition of torture, the kinds of procedures the proposed Committee against Torture would employ, and the Committee's authority.³⁹⁸ In 1984, despite ongoing disagreement, J. Herman Burgers, the Dutch chairperson, decided to move the draft forward to the UNCHR. He did so because he believed that the group had "reached the limits of what it could accomplish in trying to find consensus,"³⁹⁹ and unease was growing among supporters of the Convention that delaying the process further might put the entire instrument in jeopardy or result in a weakened instrument.⁴⁰⁰

As the draft Convention moved through a succession of UN bodies in 1984, a number of states resisted it and pressed for changes. In the UN Commission on Human Rights, the Soviet Union and several other Warsaw Pact countries expressed reservations about articles 19, which addressed the Committee's authority to comment on state reports, and article 20, which outlined the Committee's ability to launch an inquiry. These articles

³⁹⁷ Burgers and Danelius, *The United Nations Convention against Torture*, 31-32. By the time the working group discussions began several drafts were being circulated. To reconcile the different visions, NGOs engaged in consultations in 1978, resulting in aspects of other drafts being incorporated into the Swedish draft. Clark, *Diplomacy of Conscience*, 61.

³⁹⁸ Reiding, *The Netherlands and the Development of International Human Rights Instruments*, 79 and 83-84.

³⁹⁹ UN Commission on Human Rights, 40th Session, "Summary Record of the 32nd meeting," March 6, 1984, UN Doc. E/CN.4/1984/SR.32, paragraph 62-65; and Burgers and Danelius, *The United Nations Convention against Torture*, 100.

⁴⁰⁰ Reiding, *The Netherlands and the Development of International Human Rights Instruments*, 80-85.

addressed the Committee's authority to comment on state reports and launch an inquiry in response to reports of torture respectively.⁴⁰¹ Despite their ongoing concerns, these countries did not oppose moving the draft forward and the UNCHR adopted it by consensus.⁴⁰² In the Third Committee, the Soviet Union, a number of Eastern bloc countries, and some African and Asian States persisted in voicing misgivings about articles 19 and 20.⁴⁰³ The Soviet Union led a number of these countries in proposing several amendments to these articles, including restricting the Committee's ability to put forward prescriptive comments in response to state reports and making the inquiry function voluntary.⁴⁰⁴ In order to break the impasse, CAT supporters agreed to several concessions that limited the Committee's ability to make only general comments in response to state reports and allowed states to opt-out of the inquiry procedure.⁴⁰⁵ Once agreement on these changes was reached, the UN Third Committee adopted the resolution without a vote and the meeting "broke in[to] spontaneous applause."⁴⁰⁶ The earlier compromises paved the way for the General Assembly to adopt CAT by consensus.⁴⁰⁷

The Convention bound state parties to specific responsibilities to prevent and prosecute torture by taking "effective legislative, administrative, judicial or other measures

⁴⁰¹ Burgers and Danelius, *The United Nations Convention against Torture*, 101 and Reiding, *The Netherlands and the Development of International Human Rights Instruments*, 87.

⁴⁰² Burgers and Danelius, *The United Nations Convention against Torture*, 101.

⁴⁰³ Ibid., 102-103. Some Islamic countries expressed concern that the concept of torture restricted the death penalty and other punishment prescribed under Islamic Law.

⁴⁰⁴ Clark, *Diplomacy of Conscience*, 63 and Burgers and Danelius, *The United Nations Convention against Torture*, 103-104.

⁴⁰⁵ There were also minor changes made to the inquiry procedure, including emphasizing the importance of consultation and cooperation with the state party in the inquiry process. Reiding, *The Netherlands and the Development of International Human Rights Instruments*, 87-88. For the official record, see UN General Assembly, *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Report of the Third Committee*, December 7, 1984, UN Doc. A/39/708 and UN General Assembly, "Summary Record of the 44th Meeting," November 19, 1984, UN Doc. A/C.3/39/SR.44-46, paragraphs 48-52, 56 and 60.

⁴⁰⁶ Burgers and Danelius, *The United Nations Convention against Torture*, 106. The Soviet Union was particularly concerned that the Committee not be given the authority to determine non-compliance.

⁴⁰⁷ Ibid. For the official record see UN General Assembly, "93rd Plenary Meeting," December 10, 1984, UN Doc. A/39/PV.93.

to prevent acts of torture in any territory under its jurisdiction.”⁴⁰⁸ The Convention also established a Committee against Torture, comprised of ten experts elected by state parties, which was given responsibility for monitoring implementation of obligations, primarily by reviewing mandatory periodic state reporting.⁴⁰⁹ Under Articles 21 and 22, states were given the option of allowing the Committee to consider inter-state and individual complaints of torture.⁴¹⁰ Another optional procedure outlined in Article 20 empowered the Committee to initiate an inquiry in response to reliable reports of systematic torture.⁴¹¹

China and the Convention against Torture

Chinese officials participated in the final three years of the drafting sessions, from 1982-1984. The PRC delegation was not an active participant, offering few statements and maintaining a low-profile. Their first year in the drafting group also coincided with their debut in the UN Commission on Human Rights. As a newcomer to the international human rights regime, the PRC appeared cautious as it remained silent on a number of issues being debated. J. Herman Burgers, chair of the working group from 1982 to 1984, noted that “China did not play a very active role, either obstructionist or cooperative.”⁴¹² Documentary sources, including the reports of the working group and a detailed account of the drafting process written by the two chairpersons of the working group, confirm this

⁴⁰⁸ Article 2.

⁴⁰⁹ Article 19.

⁴¹⁰ The reporting requirement and the consideration of individual and inter-state complaints were similar to procedures in previous human rights treaties. The inter-state procedure outlined in Article 21 is based on reciprocity.

⁴¹¹ Article 28 allows a state party to declare that it does not recognize the Committee’s competence to undertake an inquiry as outlined in Article 20. This inquiry procedure, which can include an investigative visit if agreed to by the state party, had not been featured in previous human rights instruments.

⁴¹² J. Herman Burgers (Chairperson-Rapporteur of the Working Group 1982-84), e-mail correspondence with author, 8 April 2010.

quiescent role.⁴¹³ For example, during its first two years in the working group, in 1982 and 1983, the PRC did not make any statements or offer support for the positions of other delegations.⁴¹⁴

It was not until the final drafting session in 1984 that the Chinese representative made several statements, including supporting the inclusion of a list of situations under which torture might be likely to occur, including specific reference to apartheid, racial discrimination, and genocide, and more significantly opposing the language on universal jurisdiction.⁴¹⁵ Specifically, the PRC delegate stated that “although he agreed to the final text in a spirit of compromise, he would have preferred the listing of examples in paragraph 2, such as a state policy of apartheid, racial discrimination or genocide.”⁴¹⁶ The PRC may have raised these points because these issues resonated with its allies in the non-western world. In contrast to its more flexible position in favor of an illustrative list of situations in which torture might occur, the Chinese delegation was firmer in its opposition to the proposed language on universal jurisdiction, which placed extensive requirements on

⁴¹³ UN General Assembly, *Report of the Working Group on a Draft Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, March 5, 1982, E/CN.4/1982/L.40; UN General Assembly, *Report of the Working Group on a Draft Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, February 28, 1983, E/CN.4/1983/L.2; and UN Economic and Social Council, *Report of the Working Group on a Draft Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, February 20, 1984, E/CN.4/1984/L.2. Because much of the UN reporting does not refer to country delegations by name, interviews and secondary literature, including *The United Nations Convention against Torture*, a monograph by the two chairpersons, were used to supplement these records. As chairpersons of the working group, the authors’ description of the drafting process can be considered a first-hand account.

⁴¹⁴ For the 1982 session, see the UN General Assembly, “Report of the Working Group on the Draft Convention against Torture,” March 5, 1982, UN Doc. E/CN.4/1982/L.40 and Burgers and Danelius, *The United Nations Convention against Torture*, 77- 84. For the 1983 discussion see UN General Assembly, “Report of the Working Group on the Draft Convention against Torture,” February 28, 1983, UN Doc. E/CN.4/1983/L.2 and Burgers and Danelius, *The United Nations Convention against Torture*, 84-91.

⁴¹⁵ UN General Assembly, *Report of the Working Group on a Draft Convention against Torture*, February 20, 1984, E/CN.4/1984/L.2, paragraph 25 and Burgers and Danelius, *The United Nations Convention against Torture*, 91-99.

⁴¹⁶ UN General Assembly, *Report of the Working Group on a Draft Convention against Torture*, February 20, 1984, E/CN.4/1984/L.2, paragraph 25.

states, including taking action against non-nationals suspected of having committed torture. The PRC representative stated that “it considered the current formulation of the draft articles concerned [on universal jurisdiction] not entirely satisfactory.”⁴¹⁷ Jack Donnelly explains that universal jurisdiction meant that:

State Parties are required to prosecute alleged torturers who are their nationals, who tortured victims who are their nationals, who committed torture in their territory, or who simply are found in their territory and then are not extradited to a State that has established criminal jurisdiction over the offense. And they may hold any torturer pending further proceedings, whatever the circumstances surrounding the offense.⁴¹⁸

According to Burgers and Danelius, “all delegations except the Chinese delegation were prepared to accept the current text.”⁴¹⁹ The PRC was persuaded to accept this clause after informal consultations with the chairperson and the realization that they remained the only hold out.⁴²⁰ Despite its concern with this article, it yielded to avoid being isolated or holding up progress.

As the draft moved through the adoption process, the PRC maintained a low profile, neither blocking nor explicitly supporting it. During debate before the UNCHR and the Third Committee when key compromises were negotiated, China’s representatives did not express positions on a number of controversial and significant issues.⁴²¹ As a

⁴¹⁷ UN General Assembly, *Report of the Working Group on a Draft Convention against Torture*, February 20, 1984, E/CN.4/1984/L.2, paragraph 28.

⁴¹⁸ Jack Donnelly, “The Emerging International Regime against Torture,” *Netherlands International Law Review* 33, no. 1, (Spring 1986): 4.

⁴¹⁹ Burgers and Danelius, *The United Nations Convention Against Torture*, 94-95. See also UN Economic and Social Council, “Report of the Working Group on a Draft Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” E/CN.4/L.2, paragraphs 26-36. Proponents of universal jurisdiction argued that this was essential in order to ensure that there would be no “safe havens” for torturers. See UN General Assembly, *Report of the Working Group on the Draft Convention against Torture*, March 5, 1982, UN Doc. E/CN.C/1982/L.40, paragraph 22.

⁴²⁰ Burgers and Danelius, *The United Nations Convention against Torture*, 95 and Burgers, interview.

⁴²¹ Burgers and Danelius, *The United Nations Convention against Torture*, 101-106; UN General Assembly Third Committee, “Summary Record of the 44th meeting of the Third Committee,” November 19, 1984, UN

group of countries led by the Soviet Union pushed to make the inquiry function optional and limit the kinds of comments the Committee could offer in response to state reports, China did not join the debate and remained on the sidelines of critical discussions.⁴²²

On balance the PRC's posture in the drafting and adoption of the Convention against Torture was that of a cautious taker. Aside from the single instance when it resisted the universal jurisdiction clause, Beijing participated without seeking to shape the outcome. Even when PRC representatives expressed strong views against universal jurisdiction, as soon as it became clear that they were obstructing progress, they retreated. The nature of China's participation reflected that of a non-obstructive regime participant inclined to act as a taker of the regime.

This generally acquiescent, yet guarded posture continued once the Convention became a reality. The PRC further demonstrated its willingness to accept the regime when it ratified CAT in October 1988. At this point, only thirty-four other countries had ratified or acceded to the Convention.⁴²³ Despite its early ratification, there were also limits to the PRC's acceptance of this part of the regime. Beijing exempted itself from key optional provisions. It was one of only nine countries—Afghanistan, Equatorial Guinea, Israel, Kuwait, Mauritania, Pakistan, Saudi Arabia, and Syria—to reject the Committee's competence to initiate a confidential inquiry in response to reports of systemic use of

Doc. A/C.3/39/SR.44; and UN General Assembly, "Record of the 93rd meeting of the 39th session of the General Assembly," December 10, 1984, UN Doc. A/39/PV.93.

⁴²² The PRC was not among the more than thirty countries that submitted comments to the Secretary General on the draft. Burgers and Danelius, *The United Nations Convention against Torture*, 102 and UN General Assembly, *Report of the Secretary General, 39th Session of the General Assembly*, October 2, 1984, UN Doc. A/39/499.

⁴²³ These other countries included Afghanistan, Algeria, Argentina, Austria, Belarus, Belize, Bulgaria, Cameroon, Canada, Chile, Colombia, Denmark, Ecuador, Egypt, France, Greece, Guyana, Hungary, Luxembourg, Mexico, Netherlands, Norway, Panama, Peru, Philippines, Russia, Senegal, Spain, Sweden, Switzerland, Togo, Tunisia, Ukraine, and Uruguay.

torture.⁴²⁴ Further, the Chinese government opted-out of the procedures relating to inter-state and individual complaints of torture.⁴²⁵ The only procedure that China bound itself to was the reporting requirement, the one mandatory provision for state parties.

The PRC's degree of compliance with the Convention provides evidence that it has been a reluctant taker of the regime.⁴²⁶ According to Ann Kent, China's initial reports were considered insufficient and its early interactions with the Committee suggest that it did not fully accept the Committee's authority to question it or request further information.⁴²⁷ China's early appearances before the Committee were "fraught" and occasionally acrimonious.⁴²⁸ While China's reporting has improved to the point that it is considered procedurally compliant, its substantive conformity and implementation of laws combatting torture remain problematic. While the Chinese government has taken several

⁴²⁴ UN General Assembly, *Report of the Committee against Torture, 47th-48th sessions*, UN Doc. A/67/44, Annex II.

⁴²⁵ Aside from China, as of June 2012, eighty-nine states have not accepted the Committee's competence to receive inter-state communications outlined in Article 21. As of June 2012, eighty-five other states have not accepted the Committee's competence to receive communications from individuals as outlined in Article 22. As of June 2012, one hundred fifty countries had signed, ratified or acceded to the Convention against Torture. UN General Assembly, *Report of the Committee against Torture, 47th-48th sessions*, June 2012, UN Doc. A/67/44, Annex 1, II and III. Sceats and Breslin pointed out that this stance applied to other treaty bodies. They note that "To date, China has refused to allow application to China of any of the treaty bodies' stronger enforcement tools. Most importantly, it has not accepted any of the individual complaints or dispute resolution mechanisms provided for in the treaties." Sceats and Breslin, *China and the International Human Rights System*, 36.

⁴²⁶ Kent drew similar conclusions in 1999, describing China's interaction with CAT as "an example of China's conditional acceptance of regimes." Kent, *China, The United Nations, and Human Rights*, 115. Beijing's interactions with the UN Special Rapporteur on Torture suggests conditional acceptance. Although the PRC allowed a visit by the Rapporteur in 2005, it did so only after engaging in prolonged negotiations. During the visit, security officials sought to obstruct or restrict the Special Rapporteur's access. UN, "Special Rapporteur on Torture Highlights Challenges at end of Visit to China," press release, December 2, 2005 and Manfred Nowak (UN Special Rapporteur on Torture) interview by John Kamm and Joshua Rosenzweig of the Duihua Foundation (*Dialogue* Newsletter Winter 2006, issue 22.)

⁴²⁷ Kent, *China, the United Nations, and Human Rights*, 95- 97. States are required to submit periodic reports every 4 years. China submitted its initial report in November 1989, one year after it was due. China submitted the second report, due in November 1993, in December 1995. Its third periodic report, which was due in November 1997, was submitted in May 1999. China submitted its fourth periodic report, due in November 2001, in June 2008 as a report combining its fourth and fifth reports. Its most recent periodic report, due on November 12, 2012, has not yet been submitted. UN General Assembly, *Report of the Committee against Torture, 47th-48th Sessions*, June 2012, UN Doc. A/67/44.

⁴²⁸ Sceats and Breslin, *China and the International Human Rights System*, 35.

important steps to combat torture, including making torture illegal under domestic law, providing legal means to seek compensation in instances of state use of torture, and changing criminal laws to exclude evidence obtained through torture, implementation and enforcement is often weak.⁴²⁹ According to the 2013 annual report by the U.S. Congressional Executive Commission on China,

Despite the Chinese government's continued efforts to address the problem, torture and abuse in police stations, detention centers, prisons, administrative detention facilities, and secret detention remains widespread in China... Torture by police in the course of criminal investigations remains a common problem. The government relies overwhelmingly on confessions as evidence in criminal cases.⁴³⁰

In a similar vein, following a 2006 investigative visit to China, the UN Special Rapporteur on Torture found that "Though [torture is] on the decline, particularly in urban areas... torture remains widespread in China."⁴³¹ He pointed to the necessity of steps, such as broadening the definition of torture under Chinese law to comply with international standards, establishing an independent body to investigate complaints of torture, and making torture by law enforcement officials a specific criminal act under domestic law.⁴³² He also called for procedural safeguards and noted that "The situation is aggravated by lack of self-generating and/or self-governing social and political institutions including a free and investigatory press, citizen-based independent human rights monitoring

⁴²⁹ Kent, China, *The United Nations, and Human Rights*, 96-99.

⁴³⁰ U.S. Congressional-Executive Commission on China, *Annual Report 2013*, 113 Congress, 1st Session, (Washington DC: U.S. Printing Office, October 10, 2013), <http://www.cecc.gov/sites/chinacommission.house.gov/files/AR13DJ.PDF>, 83.

⁴³¹ UN Commission on Human Rights, *Report of the Special Rapporteur on Torture, Manfred Nowak, Mission to China*, March 10, 2006, UN Doc. E/CN.4/2006/6/Add.6.

⁴³² UN Commission on Human Rights, *Report of the Special Rapporteur on Torture, Manfred Nowak, Mission to China*, March 10, 2006, UN Doc. E/CN.4/2006/6/Add.6. Kent, *Beyond Compliance*, 206-207; and UN, "Special Rapporteur on Torture Highlights Challenges at end of visit to China," press release, December 2, 2005.

organizations, independent commissions visiting places of detention, and independent, fair and accessible courts and prosecutors.”⁴³³ Noting the ongoing problem of torture, Katie Lee in 2007 asserted that the PRC’s ratification of CAT “had some impact on China’s de jure compliance but very little, if any, direct impact on de facto compliance.”⁴³⁴

Explaining China’s Behavior

Three primary factors—the PRC’s previous minimal exposure to the regime, its desire to cultivate a positive international image, and the Chinese government’s human rights preferences and beliefs—influenced China’s posture.⁴³⁵ Taken together, they explain China’s overall posture of accepting CAT, its motivation for joining the CAT drafting group, the restrained nature of its participation, and its decision to accede to the Convention. Less significant—but still noteworthy as a scope condition that affected the manner in which the PRC carried out its taker role—was the PRC’s detachment from other countries. This partially reflected what the PRC termed its ‘independent foreign policy’ which disposed China to remain aloof from the disagreements between the primarily western supporters of CAT and the group of resistant countries led by the Soviet Union.

⁴³³ For a list of recommendations see, UN Commission on Human Rights, *Report of the Special Rapporteur on Torture, Manfred Nowak, Mission to China*, March 10, 2006, UN Doc. E/CN.4/2006/6/Add.6.

⁴³⁴ Katie Lee, “China and the International Covenant on Civil and Political Rights: Prospects and Challenges,” *Chinese Journal of International Law* 6, no. 2 (2007): 455-456.

⁴³⁵ The timing of China’s accession and domestic press coverage suggest that accession may also have been intended to signal to domestic audiences the PRC’s willingness to engage with the international regime. There were calls for greater rights protection and student demonstrations demanding freedom and democracy. Hungdah Chiu, “Chinese Attitude Toward International Law of Human Rights,” in *Chinese Politics from Mao to Deng*, ed. Victor C. Falkenheim (New York: Paragon House, 1989), 245. For background on this period, see Merle Goldman, *Sowing the Seeds of Democracy in China: Political Reform in the Deng Xiaoping Era* (Cambridge: Harvard University Press, 1994) and Merle Goldman, “Politically-Engaged Intellectuals in the Deng-Jiang Era: A Changing Relationship with the Party-State,” *The China Quarterly*, no. 145 (1996): 35-52.

PRC relations with the former Soviet Union remained poor at that time and did not begin to improve until later in the 1980s.

The PRC's minimal familiarity with the regime inclined it to accept CAT for reasons I shall explain below. Although the PRC had nearly a decade of experience in the UN since its entry in 1972, the PRC did not begin participating in the full range of international regimes until the period of reform and opening in the late 1970s and for many years its participation remained tepid. It eschewed involvement in the human rights regime at any level until 1979. Thus, in 1982, when it entered the CAT negotiations and became a first time member of the UNCHR, China had little experience with major international regimes, especially the human rights regime. This inclined it to act as a taker in two primary ways. First, this unfamiliarity meant that China was inexperienced, and tended towards the safe and uncontroversial role of taker.⁴³⁶ Second, it was uncertain of the positions to adopt toward CAT because of its minimal first-hand experience and very limited substantive and procedural understanding of the regime.⁴³⁷ Consequently, they made no statements during the first two years and were inactive during the adoption process.

Beijing's interaction with the Committee against Torture after ratification provides further evidence for its unfamiliarity with the regime. It appeared not to understand the nature of its obligations as a state party to the Convention against Torture or the nature of the Committee's authority. Along these lines, Kent noted that the PRC's early appearances before the Committee against Torture revealed its "basic failure to understand and accept

⁴³⁶ According Johnston, mimicking occurs when "a novice initially copies the behavioral norms of the group in order to navigate through an uncertain environment." Johnston, *Social States*, 23.

⁴³⁷ Chiu argued that prior to 1976 not a single article dealing exclusively with human rights had been published. Chiu, "Chinese Attitudes Toward International Law of Human Rights in the Post-Mao Era," 239.

the norms, principles, rules, and obligations flowing from its accession.”⁴³⁸ She described the PRC delegation’s response to questioning before the Committee, noting in particular that:

The Chinese representatives were reported to have been visibly upset by Committee members’ reaction to its report, which was subsequently privately described as ‘completely inadequate.’ They were undoubtedly aware that the request to provide a supplementary report was not a regular occurrence. Their general reaction was astonishment that ten Committee members could question the condition of 1.2 billion Chinese citizens.⁴³⁹

In addition, PRC representatives asked for explanations on procedure and appeared baffled by the Committee’s response to its first report, further revealing its lack of knowledge of the requirements of CAT accession.⁴⁴⁰ Again suggesting lack of familiarity, the PRC’s reporting to the Committee was deemed to be incomplete.⁴⁴¹ Thus, despite its participation in the drafting process, the PRC was not aware of the full ramifications of its accession or the authority granted to the Committee. If the PRC had been more familiar with the regime at the time of drafting, and had a fuller understanding of the issues involved, it may have offered greater resistance, such as joining the other countries seeking to dilute the original draft.

⁴³⁸ Kent, *Beyond Compliance*, 205. In another work, Kent noted that “China appeared to be feeling its way, wishing neither to flout UN conventions nor to conform to any identifiable position on human rights, adopting in preference an ‘evasive position of non-committal’.” Ann Kent, *Between Freedom and Subsistence: China and Human Rights* (Oxford: Oxford University Press, 1994), 101

⁴³⁹ Kent, *China, the United Nations and Human Rights*, 95. In 1990, during the examination of their first report under CAT, Chinese diplomats were unaccustomed to the process and were surprised when the Committee posed questions and requested further information. The official UN reporting, particularly the comments and questions from the Committee, demonstrated the inadequacy of China’s reporting. See United Nations, “Committee against Torture, Fourth Session, Summary Record of the 51st Meeting,” May 4, 1990, UN doc. CAT/C/SR.51, paragraphs 36-52.

⁴⁴⁰ Kent, *China, the United Nations and Human Rights*, 96. The Chinese delegation also asked about the Committee’s use of NGO reporting.

⁴⁴¹ *Ibid.*, 96.

Beijing's desire to cultivate a positive international image also influenced its decision to join the working group, its restrained levels of participation during the drafting sessions, and its ratification of the Convention. Because Beijing was not just a new entrant but one that had previously denounced the UN and called for a "revolutionary United Nations," it likely sought to burnish its image. Beijing appeared eager to shed its pariah status and prove itself not only as being willing to participate in the drafting but also that it was an agreeable participant. In this vein, Chinese press articles and official statements conveyed a sense that the PRC participated in the drafting of CAT in part to demonstrate its active engagement with the regime.⁴⁴² During this period, Vice Premier Deng Xiaoping emphasized the importance of Chinese involvement with the international community, arguing that China's policies related to opening up and economic development should be accompanied by greater international involvement.⁴⁴³ China's reversal on universal jurisdiction (once it was clear that China was the only holdout) and decision to accede to the Convention further demonstrated a desire to project a positive image as an engaged and supportive regime participant. Further suggesting a concern with image, according to Kent, because China did not accept any of the optional procedures, UN officials speculated that Beijing's decision to become a party to the Convention was due to its perceived

⁴⁴² "Zhongguo deng 37 guo pizhun jinzhi kuxing gongyue," [China and 37 Other Countries Ratifies the Convention against Torture] *Renmin Ribao*, November, 11 1988; and Information Office of the State Council of the People's Republic of China, *Human Rights in China 1991*, paragraph 4-5. UN Commission on Human Rights, "Summary Record of the 38th Session," October 30, 1982, UN Doc. E/CN.4/1992/SR.38, paragraph 14. The PRC's 1991 white paper, a document targeted primarily at the international community, highlighted its "active part in drafting and formulating international legal instruments on human rights within the UN," and specifically cited its involvement in the drafting of the Convention against Torture.

⁴⁴³ For example, see Bureau for the Compilation and Translation of Works of Marx, Engels, Lenin and Stalin, *Selected Works for Deng Xiaoping Volume III (1982-1992)*, 86. In October 6, 1984 Deng stated that "While invigorating the domestic economy, we have also formulated a policy of opening to the outside world. Reviewing our history, we have concluded that one of the most important reasons for China's long years of stagnation and backwardness was its policy of closing the country to outside contact. Our experience shows that China cannot build itself behind closed doors and that it cannot develop in isolation from the rest of the world."

“obligations as a large power,”⁴⁴⁴ specifically wanting to be seen as meeting its responsibilities as a permanent member of the UN Security Council.⁴⁴⁵

China’s human rights preferences and beliefs also influenced its taker behavior. Although some parts of CAT, such as universal jurisdiction and the optional clauses that gave the Committee authority to investigate torture and receive individual and intra-state complaints of torture, were incongruous with PRC preferences, the ability to opt-out of most of these articles and the reliance on state-provided reporting increased China’s comfort with this treaty. As noted previously, the only mandatory requirement for state parties was the submission of periodic state reports and appearing before the Committee against Torture. China’s discomfiture with being questioned by an outside entity, which was noted earlier, was superseded by its agreement with the Committee against Torture’s relatively restricted authority under the non-optional clauses, which mandated only that the Committee had authority to review state reports and preside over a session in which government representatives offer a statement and answer questions. These features aligned with Beijing’s preference that states to retain some degree of control over the application of the regime. Beijing’s ability to opt-out of a number of articles meant that the Convention aligned with Chinese preferences that states be able to determine the degree of authority and access to give the Committee. While it was not comfortable with universal jurisdiction, this concern was not significant enough to cause the PRC to impede the Convention’s adoption.

⁴⁴⁴ Kent, *China, the United Nations, and Human Rights*, 91.

⁴⁴⁵ Kent, *Beyond Compliance*, 217. At the time of China’s ratification, only 31 countries had acceded to CAT.

Yet, even as it ratified CAT, Beijing remained circumspect as it limited the Committee's authority by opting out of all voluntary procedures. Chinese diplomats likely reasoned that though they wished to burnish their image by demonstrating their involvement with the regime by acceding to the Convention, the above provisions went too far and the PRC government believed that some aspects of the Convention amounted to interference in internal affairs. These optional provisions, which enabled the Committee to investigate reports or complaints of torture from individuals and other states, likely rankled PRC officials eager to guard Chinese sovereignty.

Finally, although it did not play a determinative role, the PRC's unwillingness and inability to cooperate with other states acted as a scope condition, which influenced the manner in which the PRC acted out its particular role. The PRC's 'independent foreign policy,' which was reflected in the September 1982 12th Communist Party Congress declaration, disposed China toward remaining aloof from the disagreements between the primarily western supporters of CAT and the group of countries led by the Soviet Union that expressed opposition.⁴⁴⁶ Nearly a decade later, variation among these factors contributed to China's assumption of a different posture toward the Optional Protocol to the Convention against Torture, a topic that I turn to next.

The Optional Protocol to the Convention against Torture: Origins, Drafting and Adoption

⁴⁴⁶ The rupture in the Sino-Soviet alliance left residual strains and the PRC had moved outside Moscow's orbit. Alyson J. Bailes, "China and Eastern Europe: A Judgment of the 'Socialist Community,'" *The Pacific Review* 3, no. 3 (1990): 222-42. For U.S.-China ties, see Foot, *The Practice of Power*, 230-234.

The genesis of the Optional Protocol arises from the work of Jean-Jacques Gautier, a Swiss banker and founder of the Swiss Committee against Torture, an NGO. In the mid-1970s, Gautier began calling for the creation of an international body to conduct preventive visits.⁴⁴⁷ As support for a Convention against Torture grew, several competing approaches were proposed, including a draft based on Gautier's vision.⁴⁴⁸ Some other advocates were concerned that including such an ambitious system of visits might complicate and impede passage of the Convention. Following discussions with other groups working to combat torture, Gautier agreed to withdraw his draft with the understanding that a system of preventive visits would form the basis of a separate and complementary Optional Protocol.⁴⁴⁹ Finally, in 1991 the idea for an Optional Protocol was reintroduced at the UNCHR and a working group convened the following year.⁴⁵⁰

The drafting process, which commenced in 1992, involved ten years of prolonged negotiations that were marked by discord and conflict. The Costa Rican draft, which formed the basis of discussions, gave the proposed UN Subcommittee a "near unrestricted

⁴⁴⁷ Evans and Haenni-Dale, "Preventing Torture?" 22 and 25. Gautier's approach was modeled on the International Committee of the Red Cross, which was based on the premise that opening places of detention to inspection prevents torture. Ann-Marie Bolin Pennegard, "An Optional Protocol, Based on Prevention and Cooperation," in *An End to Torture: Strategies for its Eradication*, ed. Bertil Duner (London: Zed Books, 1998), 40-49. The Swiss Committee against Torture later became the Association for the Prevention of Torture.

⁴⁴⁸ Clark, *Diplomacy of Conscience*, 67.

⁴⁴⁹ For accounts of NGO consultations and the decision to delay the Optional Protocol, see Pennegard, "An Optional Protocol, Based on Prevention and Cooperation," 41-43; Clark, *Diplomacy of Conscience*, 61-63; and Reiding, *The Netherlands and the Development of International Human Rights Instruments*, 77-79. In support of the decision to pursue separate treaties in 1980, Costa Rica tabled a proposal for an Optional Protocol based on Gautier's model. However, due to concerns that this would interfere with the passage of CAT, proponents of the Convention urged that consideration of the Optional Protocol be delayed until the Convention was adopted. Pennegard, "An Optional Protocol, Based on Prevention and Cooperation," 42 and 46 and Clark, *Diplomacy of Conscience*, 63. For Costa Rica's proposed 1980 draft, see UN Economic and Social Council, "Note by the Secretariat," April 10, 1980, UN Doc. E/CN.4/1409.

⁴⁵⁰ During the late 1980s, NGO consultations were held to update and expand Costa Rica's 1980 draft. For Costa Rica's 1991 draft OPCAT, see UN Economic and Social Council, "Letter dated 15 January 1991 from the Permanent Representative of Costa Rica to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights," January, 22 1991, E/CN.4/1991/66.

right of access to places of, and persons in, detention.”⁴⁵¹ This novel and fairly intrusive approach provoked discomfort among some nations, which had misgivings about an international entity with extensive visiting authority. This fueled “mounting levels of polarization between States, who supported the establishment of a solid preventive mechanism for visits and those resolved to either weaken its scope or to block it all together.”⁴⁵² These differences resulted in protracted negotiations that pitted countries supportive of a robust international entity against those that sought to limit the scope of the Optional Protocol. By the seventh session, the lack of progress caused the Chairperson to stress “the urgent need to conclude the work on the draft optional protocol without further delay” and the representative for the Association for the Prevention of Torture (APT), a non-governmental organization, to lament that the “enormous mistrust among the delegations had killed all spirit of cooperation as well as the expectations of the international community.”⁴⁵³ It was also at the seventh session in 1999 that Cuba, Algeria, Egypt, Saudi Arabia, Sudan, Syria and China initiated more explicit cooperation in the

⁴⁵¹ Long and Naurnovic, *Optional Protocol*, 44.

⁴⁵² Long and Naumovic, *Optional Protocol*, 44 and 52. Ann-Marie Bolin Pennegard (chairperson of the informal working group 1994-1999), interview by author, August 31, 2010, Brussels, Belgium. From 1994-1999, in an effort to achieve greater progress, the working group also convened an informal group under the leadership of Pennegard. See also Evans and Haenni-Dale, “Preventing Torture?” 26-27. A number of interview subjects stressed that because OPCAT represented an innovative and novel approach, it was not unusual that the drafting spanned ten years. Claudine Haenni-Dale (APT Secretary General 1995-2001), interview by author, June 2, 2010, Geneva, Switzerland and Pennegard, interview. Similarly, Interviewee #26 noted that the “usual suspects” sought to kill this idea because it went too far. This was the “first time there would be an international body with the mandate to undertake visits to prisons and other places of detention.” Interviewee #26, Western European diplomat, June 28, 2011, New York, U.S.

⁴⁵³ For the Chairperson’s remarks see, UN Economic and Social Council, “Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment on its Seventh Session,” March 26, 1999, UN Doc. E/CN.4/1999/59, paragraph 22. For the APT’s statement see, UN Economic and Social Council, “Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment on its Seventh Session, March 26, 1999, UN Doc. E/CN.4/1999/59, paragraph 107. A former APT representative described the negotiations as “stalled,” which left supporters of OPCAT “frustrated.” Cecelia Jimenez (former program officer for the Association for the Prevention of Torture and participant in the Working Group 1998-2002) interview by author, June 2, 2010, Geneva, Switzerland.

form of joint statements and written submissions as a group.⁴⁵⁴ A Western diplomat speculated that these countries may have resorted to stronger cooperation because “things were not moving in their direction, so in order to influence the outcome they had to cooperate more openly against some aspects” of OPCAT.⁴⁵⁵ A former diplomat representing a country in this informal group explained that these countries had an “alternate vision” from the “myopic” view the primarily Western supporters of this group had.⁴⁵⁶ This former diplomat suggested that this informal OPCAT grouping contributed to the development of the Like-Minded Group, a more formal group whose positions in the UN Commission on Human Rights is described in Chapter 4.⁴⁵⁷

As the drafting process entered its ninth year, some proponents of the Optional Protocol had become concerned that further sessions would be fruitless and that the proposed instrument might not be adopted.⁴⁵⁸ At this juncture, Mexico disrupted negotiations by introducing a new draft that gave primacy to a national-level body and a diminished role for the proposed international Subcommittee, which was relegated to providing support and supervision to national-level entities. In a nod to the original version, the Mexican draft gave states the option of allowing the international

⁴⁵⁴ For examples of this group’s position see, UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 2, 1999, E/CN.4/2000/58, paragraph 63. Christian Guillermet speculated that the joint written submission requiring state consent and limiting the places the Subcommittee could visit was drafted by Saudi Arabia. Christian Guillermet (Costa Rican diplomat, who participated in the working group 1998-2002), interview by author, June 8, 2010, Geneva, Switzerland. Another participant noted that these countries unified to improve their chances of disrupting progress with the goal of preventing passage. Interviewee #26 Western European diplomat, New York, U.S., June 28, 2011.

⁴⁵⁵ Pennegard, interview.

⁴⁵⁶ Interviewee #3 former Middle Eastern diplomat, May 25, 2011, Geneva, Switzerland.

⁴⁵⁷ Interviewee #3 former Middle Eastern diplomat May 25, 2011, Geneva, Switzerland also noted that it was during the late 1990s that the LMG first coalesced.

⁴⁵⁸ Long and Naumovic, *Optional Protocol*, 49.

Subcommittee to conduct visits.⁴⁵⁹ The dramatically different proposal disarmed some of the resistant countries, yet it alarmed some of the supporters of the original draft. The latter camp included Sweden, which on behalf of the European Union offered a counter-draft that elevated the importance of the proposed international Subcommittee and granted a more limited role to national counterparts. At this point, the negotiations were “on a knife-edge” and “some [participants] believed that no further progress was possible and the session ended in considerable disarray.”⁴⁶⁰

With the goal of producing a consensus document, toward the end of the tenth session Judge Odio Benito, who had served as chairperson for the first session and had resumed the role of Chairperson at the eighth session, put forward a compromise draft. This version blended national and international approaches by establishing an international body, which took the lead in conducting inspection visits, complemented by independent monitoring by national bodies.⁴⁶¹ Unlike the Mexican draft, there was no opt-in clause for an international visit and acceptance of both international and national mechanisms was compulsory. The Chairperson’s draft met with continued resistance from some countries opposed to an international committee with strong visiting authority.⁴⁶² Despite ongoing

⁴⁵⁹ The introduction of the Mexican draft at the ninth session and the discussion of national mechanisms dovetailed with an emerging realization among some of the supporters of the original draft that a world-wide system of visits might benefit from being complemented with national mechanisms. Under the original model, given capacity and resource constraints, state parties would receive so few international Subcommittee visits that a domestic counterpart might have an important role to play. Haenni-Dale, interview and Jimenez, interview.

⁴⁶⁰ Evans and Haenni-Dale, “Preventing Torture?” 27.

⁴⁶¹ State parties were required to allow international visits and also establish or maintain an independent national body that would also conduct visits. Evans and Haenni-Dale, “Preventing Torture?” 27-28; and Haenni-Dale, Interview.

⁴⁶² Among the most active countries opposing the Optional Protocol were the United States, Egypt, Russia, Saudi Arabia, China, Japan, Cuba, Syria. UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, February 20, 2002, UN Doc. E/CN.4/2002/78, paragraph 44 and Haenni-Dale, interview.

disagreement, Odio Benito believed that “sufficient ideas and proposals had been put on the table over the past ten years” and pressed to move the draft to the Commission.⁴⁶³

In 2002, as the draft made its way through the UN, including the UNCHR, the Economic and Social Council (ECOSOC), Third Committee, and the General Assembly, the countries most opposed to the Optional Protocol attempted to block adoption, forcing a vote rather than the preferred method of adoption by consensus. Table 1 below captures the voting outcomes. When the Commission considered the draft, Cuba led a number of countries seeking to squelch it by calling for continued deliberations and introducing a no-action motion.⁴⁶⁴ This effort failed and the draft survived.⁴⁶⁵ The next hurdle was the Economic and Social Council, where despite a U.S.-led attempt to circumvent progress, states voted in favor of the Optional Protocol.⁴⁶⁶ In the Third Committee, Japan and the U.S. attempted to stymie passage, yet supporters of OPCAT were able to garner sufficient votes for passage.⁴⁶⁷ Finally, in December 2002 the proponents of the Optional Protocol prevailed and the General Assembly voted to adopt OPCAT.⁴⁶⁸

⁴⁶³ UN Economic and Social Council, “Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” February 20, 2002, E/CN.4/2002/78, paragraph 78. Similar comments from Guillermet, interview and Haenni-Dale, interview.

⁴⁶⁴ UN Commission of Human Rights, *Report of the 58th Session*, Supplement No. 3, 18 March 18-April 26, 2002, UN Doc. E/2002/23, paragraph 335.

⁴⁶⁵ Cuba’s no-action motion failed by a vote of 28 against, 21 for, and 4 abstentions. After Cuba’s blocking effort was defeated, OPCAT came up for a vote. Countries that voted against the OPCAT resolution include China, Cuba, Japan, Libya, Malaysia, Nigeria, South Korea, Saudi Arabia, Sudan and Syria. UN Commission on Human Rights, *Report of the 58th Session*, 18 March 18- April 26, 2002, E/2002/23, paragraph 339.

⁴⁶⁶ UN Economic and Social Council, *Summary Record of the 38th Meeting*, November 2002, UN Doc. E/2002/SR.38, paragraph 68-70 and 89. The U.S. sought to block adoption by calling for continued working group sessions.

⁴⁶⁷ UN General Assembly Third Committee, *Report of the 57th Session of the Third Committee of the General Assembly*, October 28, 2002, UN Doc. A/C.3/57/L.30.

⁴⁶⁸ UN General Assembly, Resolution 57/199, *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 18, 2002, UN Doc. A/RES/57/199.

Table 2: UN Voting on the Optional Protocol to Convention against Torture⁴⁶⁹

	For	Against	Abstain
Commission on Human Rights	29	10	14
Economic and Social Council	35	8	10
Third Committee	104	8	37
General Assembly	127	4	42

When the UN General Assembly adopted OPCAT, it established a system of preventive on-site inspections by national and international bodies. The international body, the Subcommittee for the Prevention of Torture (SPT or Subcommittee), was given the authority to visit “any place under [the state party’s] jurisdiction and control, where persons are or may be deprived of their liberty.”⁴⁷⁰ As with CAT, states were granted the power to elect the ten-member Subcommittee, who serve in their personal capacities. The Optional Protocol required the SPT to determine visits by lot and produce confidential post-visit reports that would only be made public with the consent of the Committee against Torture.⁴⁷¹ OPCAT also mandated that state parties maintain, designate or establish an independent national entity that conducts inspection visits, makes

⁴⁶⁹ For voting in the UNCHR, see UN Commission on Human Rights, *Report of the 58th Session*, Supplement No. 3, March 18-April 26, 2002, UN Doc. E/2002/23, paragraph 335. For ECOSOC voting, see UN Economic and Social Council, *Provisional Summary Record of the 38th Meeting*, November 12, 2002, E/2002/SR.38, paragraph 89. For the Third Committee voting record, see UN General Assembly, “Human rights questions: implementation of human rights instruments,” October 28, 2002, A/C.3/57/L.30. For voting in the General Assembly see, UN General Assembly, “Resolution Adopted by the General Assembly, Resolution 57/199 Optional Protocol to the Convention against Torture,” January 9, 2003, A/RES/57/199. Also, see Long and Naumovic, *Optional Protocol*.

⁴⁷⁰ Article 4.

⁴⁷¹ Evans and Haenni-Dale, “Preventing Torture?” 46. Under Article 1, if a state party refuses to cooperate with the Subcommittee or take steps to make improvements, the Subcommittee can request that the Committee against Torture make a public statement or publish the Subcommittee’s report. Under Articles 11 and 13, although the SPT may propose a follow-up visit, the state party is not obligated to accept such a visit.

recommendations and produces an annual report that states are to publish and disseminate.⁴⁷²

China and the Optional Protocol to the Convention against Torture

In contrast to its muted conduct vis à vis the Convention against Torture, China voiced firmer positions and played a more active and consequential role in the drafting and adoption of the Optional Protocol to the Convention against Torture. PRC representatives attended the annual working group sessions every year and took positions on a number of controversial issues, even proposing specific text.⁴⁷³ During the drafting sessions although the substance of its contributions sought to dilute the draft, the PRC sought to do so in ways that would generate less negative attention. These efforts paid off as other participants have come to describe China in the drafting process as not being among the more uncooperative participants and several participants characterized it as being relatively low-profile.⁴⁷⁴ For example, a Western European diplomat noted that although China was against OPCAT “they were certainly not the most active, even in the negative sense. They took the floor at times but were never in the lead against something but rather supported the ideas of other” countries that were opposed to the Optional Protocol.⁴⁷⁵ Other participants described China’s behavior as: “not being excessively vocal,” “active, yet not always taking the floor,” “active, yet very cautious,” “not a major player,” “not necessarily

⁴⁷² Article 11, 17, 19, 20 and 23. The SPT also provides assistance to state parties in establishing the national body, including training experts.

⁴⁷³ In some years, the UN records of the drafting group sessions did not identify delegations by name. However, the reports for the 4th, 5th, 6th, 7th 8th and 10th sessions make clear reference to the specific delegation.

⁴⁷⁴ Pennegard, interview; Jimenez, interview; and Judge Elizabeth Odio Benito (Chairperson of the Working Group 1992 and 2001-2002), correspondence with author, June 23, 2010.

⁴⁷⁵ Interviewee #26, Western European diplomat, June 28, 2011, New York, U.S. Rather than spearheading resistance, Beijing signed onto statements made by Cuba on behalf of an informal group of countries.

obstructive,” “very careful,” and “somewhat low-key.”⁴⁷⁶ Judge Odio Benito, the Chairperson responsible for the final draft, described China as “more passive” and “always maintain[ing] some sort of low profile.”⁴⁷⁷ The PRC employed a number of strategies to project the impression of a relatively measured participant. Rather than making lone statements, when possible it signed onto statements made by a group of like-minded countries or referenced the position of other countries when offering positions on divisive issues. Beijing also benefitted from the presence of other countries, such as Cuba and Egypt, which shared views similar to China’s and were more strident in their objections.⁴⁷⁸ In this vein, an NGO participant opined that “While China was not generally obstructive and maintained a low profile, this is relative because there were other countries that were definitely much more difficult and obstructive.”⁴⁷⁹ Beginning in 1999, rather than offering national-level statements on its own, which might bring more negative attention, China signed onto joint statements offered by an informal group of countries that included Cuba, Algeria, Egypt, Saudi Arabia, Sudan, Syria, and Sudan.⁴⁸⁰ Beijing did not appear to have

⁴⁷⁶ The description of “not being excessively vocal” and “somewhat low-key” comes from Pennegard, interview. The “active, yet not always taking the floor” quote can be attributed to Haenni-Dale, interview. Haenni-Dale noted that China did not try to derail the discussions. She saw this cautious approach as being in keeping with China’s general foreign policy behavior. The quotes “active, yet very cautious” and “not a major player” comes from Guillermet, interview. However, according to Guillermet, during the later sessions of the working group China was more active and often expressed disagreement and urged that torture efforts focus more on CAT, such as relying on the reporting procedure. Jimenez noted that China was “not necessarily obstructive.” Jimenez, interview.

⁴⁷⁷ Odio Benito, correspondence with author. On a similar note, Debra Long, who served as the APT representative to the OPCAT negotiations, described China as “not that engaged in the negotiations.” Debra Long, (APT representative and participant from 2000-2002), e-mail correspondence with author, May 11, 2011.

⁴⁷⁸ Pennegard noted that Mexico, Cuba, Nigeria, and Egypt were obstructionist. Pennegard, interview. Jimenez cited Algeria, Cuba and Egypt and Saudi Arabia as uncooperative. Jimenez, interview. Similarly, Long noted that “other states were more vocal in expressing their disapproval.” Long, correspondence. None of these interview subjects mentioned China as being among the most difficult delegations.

⁴⁷⁹ Jimenez, interview.

⁴⁸⁰ According to Haenni-Dale, although China “may have been in on some of the blocking efforts,” she did “not see them as spearheading the whole group,” or “the sense that there is a whole nefarious coalition with China leading the strategy around it.” Haenni-Dale, interview. According to Pennegard, it is hard to know

to work to persuade these countries to adopt these positions. Rather there appears to have been a meeting of the minds as these countries entered the negotiations with views that privileged state control and state sovereignty. During the adoption process, although the PRC spoke out against OPCAT and offered acerbic statements in the UNCHR, it did not sponsor formal action, such as no-action motions or amendments, to derail the Optional Protocol. Once action moved to larger UN bodies it adopted a lower profile and no longer voiced its opposition. Thus, the picture of China that emerges is that of a maker acting with restraint.

As will be detailed below, despite Beijing's measured disposition, the substance of its contributions was more pointed, and generally aimed at weakening OPCAT. Throughout the drafting sessions, PRC representatives expressed views on some of the most divisive elements of the draft and advocated for limits on the authority and independence of the proposed Subcommittee. These positions often were at odds with human rights advocates and usually paralleled the substance of the contributions from overtly obstructive countries.⁴⁸¹ The essence of its statements caused a member of the UN Committee against Torture who attended some of the working group sessions to describe China as "negatively active" and note that it often sought to weaken provisions of the original draft.⁴⁸² Likewise, one of the working group Chairpersons observed that, "China

"if China met with the countries opposing the Optional Protocol to encourage them to be obstructionist, or even if China consulted with these countries." Pennegard, interview.

⁴⁸¹ Haenni-Dale, interview and Jimenez, interview.

⁴⁸² Bent Sorensen (former member of the Committee against Torture) interview by author, July 26, 2010, Copenhagen, Denmark. Kent argued that China "worked hard to water down the draft Optional Protocol." Kent, *Beyond Compliance*, 213.

did not play, at any moment, a positive role during the whole process” and further that China was generally “not very cooperative.”⁴⁸³

As a result of the strong preferences of China and other countries, the degree of access to be granted to the Subcommittee became a divisive issue. Proponents of OPCAT argued that in order to be effective, the SPT needed far-reaching access with little leeway for states to refuse access. Beijing was among a group of countries that argued for more restrictive language, preferring to constrain the SPT’s visiting authority while giving states greater control.⁴⁸⁴ Closely related to this issue were the questions of whether prior consent by the state was required, the kinds of places to be visited, and reasons that a state could use to delay or refuse a visit.⁴⁸⁵ China and other countries argued that ratification did not equal a standing invitation, and urged that explicit state consent be required prior to a visit.⁴⁸⁶ At the fifth session, the PRC representative along with Mexico and Cuba argued that explicit state consent should be required before a visit.⁴⁸⁷ Beijing stressed that “the principles of non-intervention and prior consent were... important and must have their place in the text.”⁴⁸⁸ Several years later, Beijing reiterated this point insisting that “all missions or visits should be conducted only with the prior consent of the State

⁴⁸³ Judge Elizabeth Odio Benito (Chairperson of the Working Group 1992 and 2002-2002), correspondence with author, June 23, 2010.

⁴⁸⁴ Pennegard described this as China’s main concern and that it took the position that the state should have more control over the degree of access and other aspects related to the Subcommittee’s visits.

⁴⁸⁵ Some participants were concerned that too much prior notification would diminish the preventive nature of the visits while others argued that states needed time to make preparations in order to provide the Subcommittee the requisite information, resources and access. At the fourth session, China offered a formulation that would distinguish between missions and visits. Under this proposal, the Subcommittee would conduct *missions* to countries and during a mission the SPT would make *visits* to specific places of detention.

⁴⁸⁶ According to Costa Rican diplomat Christian Guillermet, China argued that prior consent by the country in question was required and that visits should be voluntary. Guillermet, interview.

⁴⁸⁷ UN Economic and Social Council, *Report of the Working Group on a Draft an Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 23, 1996, E/CN.4/1997/33, paragraph 31-32.

⁴⁸⁸ *Ibid.*, paragraph 34.

concerned.”⁴⁸⁹ In similar vein, in 1999 Chinese representatives sought to give the government in question greater leeway by suggesting a broad range of loosely defined acceptable reasons to postpone a visit, arguing that “the list of exceptional circumstances [in which a visit might be delayed] should be comprehensive and even exhaustive” and proposed adding considerations such as the “health status of the person to be visited, urgent interrogation for a serious crime, and serious natural disaster.”⁴⁹⁰ On the related issue of the places the SPT would be allowed to visit, China sought to limit the Subcommittee’s authority and worked with other countries to advance this position. During the eighth session, China signed on to a statement made by Cuba on behalf of Algeria, Egypt, Saudi Arabia, Sudan, and Syria that argued for greater limits on the kinds of places the Subcommittee could visit and proposed restrictive language.⁴⁹¹ This informal group, which coalesced around shared views, insisted that the scope of places included in the draft was “too wide, controversial and undefined, and raised many problems relating to national security and domestic affairs.”⁴⁹² These countries reiterated this position in a written submission asserting also that states should be allowed to reject or postpone a visit under certain circumstances.⁴⁹³

The final version of the Optional Protocol reflected an attempt at compromise. States were not specifically allowed to reject or postpone a visit to a country, but were

⁴⁸⁹UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 2, 1999, E/CN.4/2000/58, paragraph 65.

⁴⁹⁰ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture*, March 26, 1999, E/CN.4/1999/59, paragraph 60.

⁴⁹¹ UN Economic and Social Council, *Report of the Working Group on a Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 2, 1999, E/CN.4/2000/58, paragraph 63.

⁴⁹² Ibid., paragraph 63.

⁴⁹³ Ibid., paragraph 52. The position paper is not part of the official UN record. However, the working group report describes it and the specific positions contained in it.

permitted to object to a visit to a particular place of detention “on urgent and compelling grounds of national defense, public safety, natural disaster, or serious disorder.”⁴⁹⁴ At the same time, accession to OPCAT functioned as prior consent and the SPT was allowed to visit “any place under [the state’s] jurisdiction and control where persons are or may be deprived of liberty.” Further, “deprived of liberty” was defined broadly as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other authority.”⁴⁹⁵

Beijing also resisted aspects of the original draft that diminished state influence over the composition of the Subcommittee.⁴⁹⁶ Specifically, the PRC objected to allowing the Committee against Torture to select the Subcommittee members, arguing instead that states should have the authority to determine the composition of the SPT. For example, in 1997, the Chinese representative asserted that “it was not appropriate for the Committee against Torture to be involved in the composition of the Subcommittee” and that states should elect the Subcommittee.⁴⁹⁷ This position was incorporated into the final document, which allowed states to nominate and elect SPT members.⁴⁹⁸

The PRC also opposed the use of experts to assist Subcommittee members on visits, in particular challenging the necessity of experts, the selection process and the

⁴⁹⁴ Article 14. In order to prevent misuse of this clause, it was noted that, a state of emergency “shall not be invoked... as a reason to object to a visit.”

⁴⁹⁵ Article 4.

⁴⁹⁶ Pennegard, interview.

⁴⁹⁷ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 23, 1996, E/CN.4/1997/33, paragraph 57.

⁴⁹⁸ Article 6 and 7.

immunities and privileges to be granted to experts.⁴⁹⁹ Supporters of the original draft maintained that non-SPT experts were needed because their specialized knowledge was useful and would augment the SPT's capabilities.⁵⁰⁰ In reaction to the original draft, which allowed the Subcommittee to select experts to serve on missions without state involvement, the PRC pressed for greater state control. During the 1994 discussions, Beijing proposed text for Articles 10 and 11 that gave state parties greater say over the use and selection of experts. The proposed text read, "In exceptional cases, the Subcommittee may, after full consultations with, and having obtained permission of the State Party concerned, invite advisers in the personal name of members of the Subcommittee who will carry out the missions/visits to assist them in the missions/visits."⁵⁰¹ In 1997 the PRC continued to press this position, arguing that "it was important for the State Party concerned to be able not only to oppose the inclusion of a specific expert in a mission, but

⁴⁹⁹ Pennegard noted that the use of experts "was a very big problem for China." Pennegard, interview. The inclusion of immunities, which is similar to the immunities extended to diplomats, was intended to protect the Subcommittee. Privileges were meant to give the Subcommittee the kind of access and treatment that would facilitate a visit. For the PRC's efforts to restrict the immunities and privileges extended to experts, see UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, January 25, 1996, E/CN.4/1996/28, paragraph 132.

⁵⁰⁰ For the views of Amnesty International, which supported the use of experts, see UN Economic and Social Council, *Report of the Working Group drafting an Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 12, 1994, E/CN.4/1995/38, paragraphs 39-44. The Committee against Torture stressed the importance of including experts on a visit. See UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, January 25, 1996, E/CN.4/1996/28, paragraph 23.

⁵⁰¹ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 12, 1994, E/CN.4/1995/38, page 19. Although UN Doc. E/CN.4/1995/38 does not identify delegations by name, during drafting group discussions the following year, the Chinese representative drew the group's attention to the previous report and noted that this text was China's contribution. See UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, January 25, 1996, E/CN.4/1996/28, paragraph 26.

also to express its objection to the number of experts.”⁵⁰² The PRC reiterated that experts “should be used only in exceptional cases after permission had been obtained from the State concerned” and that priority should be given to experts proposed by states and that such experts should not undertake visits without SPT members.⁵⁰³ China was not alone and Mexico and Cuba offered similar comments at the same session suggesting that states should be able to unconditionally reject an expert.⁵⁰⁴ Beijing also argued more generally against the use of any experts at all. For example, in 1995, the Chinese representative argued that “the need for experts to assist a mission was dubious.”⁵⁰⁵ Beijing’s efforts to influence the final draft met with some success and OPCAT “leans toward the sensibilities of states since experts can be excluded [by states] without any particular justification being given.”⁵⁰⁶ This compromise and the limiting of immunities and privileges to members of the Subcommittee reflected PRC preferences.

China also opposed selective attention and insisted on universal, non-selective human rights monitoring, which translated into opposition to allowing the SPT to focus on particular states through ad hoc visits.⁵⁰⁷ OPCAT advocates hoped that the SPT might be given the authority to conduct follow-up, ad-hoc visits in cases where a routine visit revealed concerns. However, China strongly preferred routine visits determined on a rotational basis rather than allowing the Subcommittee to identify particular countries to

⁵⁰² UN Economic and Social Council, *Report of the Working Group on a Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 2, 1997, UN Doc. E/CN.4/1998/42, paragraph 48.

⁵⁰³ *Ibid.*, paragraph 52.

⁵⁰⁴ *Ibid.*, paragraph 49.

⁵⁰⁵ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, January 25, 1996, E/CN.4/1996/28, paragraph 26.

⁵⁰⁶ Evans and Haenni-Dale, “Preventing Torture?” 30.

⁵⁰⁷ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 2, 1999, E/CN.4/2000/58, paragraph 64.

visit. In 1999, China signed on to a statement made by Cuba on behalf of Algeria, Egypt, Saudi Arabia, Syria, and Sudan, which insisted that “the protocol should be based on non-discriminatory regular visits to all State Parties, avoiding any possibility of selectivity.”⁵⁰⁸ These views shaped the final text, which precluded selective attention by requiring that regular visits be established by lot. Further, while the SPT can propose a follow-up visit subsequent to a regular visit, the state in question is not required to accept such a visit.⁵⁰⁹

Throughout the drafting group negotiations, the PRC pushed for language referencing respect for domestic laws.⁵¹⁰ Human rights advocates were concerned that inclusion of this language might be used to interfere with the SPT’s work. In 1997, following an Egyptian proposal, China “expressed full support for the proposal [made by Egypt], stating that nothing should interfere with State sovereignty.”⁵¹¹ During the same session, the PRC, along with Cuba and Egypt, “expressed the opinion that national laws must be respected.”⁵¹² China was not alone on this and the representatives of Cuba, Egypt, Mexico and Syria put forth similar statements in the context of the importance of state sovereignty.⁵¹³ In 1999, China joined Algeria, Cuba, Egypt, Saudi Arabia, Sudan, and Syria in submitting a shared position statement that read:

The importance of referring to national legislation has to be clearly and positively reflected in the following legal context: national legislation is absolutely necessary to complement and implement the provisions of the protocol...in the absence of a clear reference to national legislation... [the] SubCommittee may be seen as a

⁵⁰⁸ Ibid., paragraph 63-67.

⁵⁰⁹ Article 13.

⁵¹⁰ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture*, March 26, 1999, E/CN.4/1999/59, paragraphs 35-49 and UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture*, December 2, 1999, E/CN.4/2000/58, paragraph 58.

⁵¹¹ UN Economic and Social Council, *Report of the Working Group on a draft Optional Protocol to the Convention against Torture*, December 2, 1997, E/CN.4/1998/42, paragraph 69.

⁵¹² Ibid., paragraph 75.

⁵¹³ Ibid., paragraphs 150-152.

‘supranational’ body... so that it could enjoy a situation of party and judge at the same time, or at least, exercise a unilateral faculty of interpretation of the State’s national legislation.⁵¹⁴

During this same session, the Chinese representative proposed language for Article 12 that read, “The provisions of this Protocol shall be applied in accordance with domestic law consistent with international obligations of states.”⁵¹⁵ The following year, the same informal group of countries that China was a part of offered a joint position paper that again pressed for inclusion of a reference to respect for national legislation.⁵¹⁶ Despite these efforts, OPCAT does not include such a reference.

China also sought to strengthen state influence in the preparation of the Subcommittee’s post-visit report and limit the kinds of recommendations or comments the Subcommittee could include in its report.⁵¹⁷ Those arguing for a robust instrument contested that this might open the door to state interference with the SPT’s independence and authority. In 1996, the PRC proposed specific text for Article 14 that would allow states to “make comments and modifications” to the SPT report and asserted that in “its preparation of its report, the Subcommittee shall give fair and equitable consideration to the comments and modifications offered by the State Party concerned.”⁵¹⁸ Beijing

⁵¹⁴ See UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture*, March 26, 1999, E/CN.4/1999/59, paragraph 49.

⁵¹⁵ Ibid., paragraph 36 and 43. During the same session, Egypt proposed language similar to China’s. Ibid., paragraph 38.

⁵¹⁶ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture*, December 2, 1999, E/CN.4/2000/58, paragraph 64.

⁵¹⁷ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture*, March 26, 1999, E/CN.4/1999/59, paragraph 71-79 and UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture*, February 20, 2002, E/CN.4/2000/58, paragraph 46-50.

⁵¹⁸ UN Economic and Social Council, *Report of the Working Group on a draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, January 25,

persisted with this issue and several years later supported language that the Subcommittee's recommendations should be "feasible."⁵¹⁹ These views were not incorporated into OPCAT, which does not require the SPT to consult with the state over the report and does not restrict the kinds of recommendations the SPT can offer.⁵²⁰ Under Article 1, if a state party refuses to cooperate with the Subcommittee or take steps to make improvements, the Subcommittee can request that the Committee against Torture make a public statement or publish the Subcommittee's report.

When Mexico presented its draft in 2001, China and a number of other countries voiced support for it, particularly the strong role accorded national bodies and the much diminished mandate for the international body.⁵²¹ For example, China, the U.S. and Egypt argued that "national and regional mechanisms should take the leading role in visiting places of detention."⁵²² The PRC, along with Cuba, Egypt, and Syria, voiced support for the approach embodied in the Mexican draft and used this opportunity to try to relegate the role of the international body to providing only technical assistance.⁵²³

1996, E/CN.4/1996/28, paragraph 39. Switzerland commented that the Chinese proposal went too far toward protecting the right of state parties, see also paragraph 49.

⁵¹⁹ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, March 26, 1999, E/CN.4/1999/59, paragraph 78.

⁵²⁰ Evans and Haenni-Dale, "Preventing Torture?," 49. As outlined in Articles 17-23, the national body's report is intended to be a public document.

⁵²¹ Both the UN documentary record and an interview subject indicated that China supported the Mexican draft. Haenni-Dale, interview and UN Economic and Social Council, *Report of the Working Group on a draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, March 13, 2001, E/CN.4/2001/67.

⁵²² UN Economic and Social Council, *Report of the Working Group on a draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, February 20, 2002, E/CN.4/2002/78, paragraph 39.

⁵²³ UN Economic and Social Council, *Report of the Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 2, 1999, E/CN.4/2002/78, paragraph 16.

In response to the chairperson's compromise draft, which retained a robust role for the international Subcommittee as well as the establishment of national-level bodies that would undertake complementary activities, China expressed opposition and called for continued discussions.⁵²⁴ The PRC representative offered a platitudinous statement, noting the Chairperson's hard work and the progress made thus far. However, the PRC also questioned the necessity of OPCAT by emphasizing that it duplicated the European Convention on the Prevention of Torture (ECPT) and pointed out that the ECPT was open to non-European states. According to the official UN reporting, the Chinese representative stated that:

States still held differing views, such as on the mandate of the subcommittee... the differences [on inclusion of reference to domestic legislation] had not been reconciled. The delegation suggested that the Chairperson should seek compromises on the issues with which some States still had difficulties... The delegation reiterated its support for an effective mechanism to prevent torture... Noting its willingness to cooperate with the Chairperson and other delegations, the delegate of China called for further consultations.⁵²⁵

The PRC closed its statement by noting that the positions of Egypt, Russia, Saudi Arabia and the U.S. to some extent also reflected China's views.⁵²⁶ Despite these misgivings, the Chairperson proceeded to move the draft to the UN Commission on Human Rights.

During the adoption process the PRC became slightly more visible, especially in smaller UN bodies, where it aired strong reservations about the Optional Protocol, yet it also tempered its opposition in front of larger audiences. Therefore, as the draft was taken up by increasingly large UN bodies, particularly the UN Third Committee and the General Assembly, China adjusted its strategy and played a less visible role and no longer spoke in

⁵²⁴ Ibid., paragraph 76.

⁵²⁵ Ibid., paragraph 74-76.

⁵²⁶ Ibid., paragraph 74-76.

opposition to OPCAT. As a Western European diplomat noted, “China was one of the countries that was opposed” to the Optional Protocol and it belonged to the “difficult camp along with Cuba, the U.S. and Japan” but once the resolution reached the larger New York-based UN bodies “China was no longer out in front” and was “not particularly difficult.”⁵²⁷ Throughout the adoption process, China also refrained from initiating action, such as no-action motions or amendments, to prevent passage of OPCAT, yet it voted in favor of blocking efforts sponsored by other countries.

Table 3: PRC and Other State Voting on the Optional Protocol to Convention against Torture⁵²⁸

UN Body	Number of country participants	For	Against	Abstain
Commission on Human Rights	53	29	10 (China)	14
Economic and Social Council	54	35	8 (China)	10
Third Committee	All UN members	104	8 (China)	37
General Assembly	All UN members	127	4	42 (China)

In smaller UN bodies, such as the Commission on Human Rights and the Economic and Social Council, China firmly opposed the draft and spoke out against it. When Cuba introduced a no-action motion in an attempt to delay action, PRC Ambassador Sha Zukang joined Saudi Arabia in endorsing Cuba’s proposition and disparaged the Chairperson’s

⁵²⁷ Interviewee #6 Western European diplomat, May 26, 2011, Geneva, Switzerland.

⁵²⁸ For voting in the UNCHR, see UN Commission on Human Rights, *Report of the 58th session*, Supplement No. 3, March 18-April 26, 2002, UN Doc. E/2002/23, paragraph 335. For ECOSOC voting, see UN Economic and Social Council, “Provisional summary record of the 38th Meeting,” November 12, 2002, E/2002/SR.38, paragraph 89. For the Third Committee voting record, see UN General Assembly, “Human rights questions: implementation of human rights instruments,” October 28, 2002, A/C.3/57/L.30. For voting in the General Assembly see, UN General Assembly “Resolution Adopted by the General Assembly, Resolution 57/199 Optional Protocol to the Convention against Torture,” January 9, 2003, A/RES/57/199. Also, see Long and Naumovic, *Optional Protocol*.

decision to move the draft forward as “arbitrary” and the text as “unbalanced.” He claimed that the PRC was not opposed to the Optional Protocol in principle, yet he warned that there would be “negative consequences” if the proposed draft were pushed through.⁵²⁹ China matched its acerbic words by joining twenty other countries voting in favor of Cuba’s unsuccessful no-action motion.⁵³⁰ When OPCAT came up for a vote, the PRC, along with ten other countries, voted against it, while 29 states voted to adopt and 14 abstained.⁵³¹ In the Economic and Social Council, China backed a U.S. amendment aimed at blocking adoption by reopening discussion on the proposed text.⁵³² Speaking in agreement with the United States, PRC representative Zhang Yishan declared that the Optional Protocol should be “the product of consensus” and that “the concerns of some [States] had been ignored and a controversial vote on the Optional Protocol had been forced through.”⁵³³ Zhang called for continuing negotiations to reach a version “that would be acceptable to all.”⁵³⁴ Consequently, Beijing voted in favor of the unsuccessful

⁵²⁹ UN Commission on Human Rights, “Report of 50th meeting of the 58th Session,” July 30, 2002, E/CN.4/2002/SR.50, paragraph 18 (translated from French). The Cuban delegation proposed both an amendment seeking to extend the mandate of the working group and a no-action motion.

⁵³⁰ Other countries that voted in favor of Cuba’s motion include Bahrain, Cuba, India, Indonesia, Japan, Libya, Malaysia, Nigeria, Pakistan, South Korea, Russia, Saudi Arabia, Sudan, Swaziland, Syria, Thailand, Togo, Uganda, Vietnam, and Zambia. Cuba’s motion was rejected by 28 votes against and 21 for, with 4 abstentions. UN Commission on Human Rights, “Report of the 58th Session,” March 18-April 26, 2002, Supplement No. 3, E/2002/23, paragraph 337.

⁵³¹ Other countries voting against the resolution include Cuba, Japan, Libya, Malaysia, Nigeria, South Korea, Saudi Arabia, Sudan and Syria. Ibid., paragraph 339.

⁵³² UN Economic and Social Council, “Provisional Summary Record of the 38th Meeting,” November 12, 2002, UN Doc. E/2002/SR.38, paragraph 68-70 and 85. China was among the 15 countries voting in favor of the U.S. amendment, which failed with 29 countries voting against and 8 abstaining.

⁵³³ Ibid., paragraph 78.

⁵³⁴ Ibid., paragraph 78.

U.S. amendment.⁵³⁵ When the Chairperson's draft came up for a vote, China voted against what turned out to be a successful resolution.⁵³⁶

Once action shifted to larger UN bodies, particularly the Third Committee and the UN General Assembly, Chinese representatives shifted tactics and refrained from making statements in opposition. As a Western European diplomat noted, "Apart from its voting positions, China did not go out and lobby against it."⁵³⁷ In the Third Committee, the PRC continued the pattern of supporting action spearheaded by other countries to thwart adoption. China voted in favor of Japan's unsuccessful motion to defer action on the resolution for 24 hours and joined Cuba, Israel, Japan, Nigeria, Syria, the United States, and Vietnam in voting against OPCAT.⁵³⁸ Once the Optional Protocol reached the larger General Assembly and the draft gained backers, China abandoned overt opposition efforts. The PRC did not speak in opposition and no longer voted in support of efforts to delay or block OPCAT. Rather than voting against as it did earlier, Beijing abstained while the Marshall Islands, Nigeria, Palau, and the United States voted against the resolution.⁵³⁹

⁵³⁵ Ibid., paragraphs 68-70 and 85. China was among the 15 countries voting in favor of the U.S. amendment to extend the mandate of the working group, which failed with 29 countries voting against and 8 abstaining.

⁵³⁶ Ibid., paragraph 89. Australia, Cuba, Egypt, Japan, Libya, Nigeria and Sudan also voted against the resolution, which was adopted by 35 votes with 10 abstentions.

⁵³⁷ Interviewee #6 Western European diplomat, May 26, 2011, Geneva, Switzerland.

⁵³⁸ CAT was introduced as draft resolution A/C.3/57/L.30 by Costa Rica along with 80 other countries as co-sponsors. United Nations, "General Assembly to be asked to Adopt Protocol on Torture Convention, Setting Up Inspection Regime for Implementation of its terms," press release, November 7, 2005. For a summary of the meeting see UN General Assembly, "Human Rights Questions: Implementation of Human Rights Instruments," December 3, 2002, A/57/566/Add. 1, paragraphs 7-9. Japan's motion to defer action was rejected by a vote of 85 to 12, with 43 abstentions. The Third Committee adopted OPCAT by a vote of 104 in favor, 8 against, and 37 abstentions.

⁵³⁹ UN General Assembly, Resolution 57/199, *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 18, 2002, A/RES/57/199. For voting in the General Assembly see, UN General Assembly, "Resolution Adopted by the General Assembly, Resolution 57/199, Optional Protocol to the Convention against Torture," January 9, 2003, A/RES/57/199. Also, see Long and Naumovic, *Optional Protocol*.

The description of PRC behavior during the negotiations and adoption of OPCAT outlined above suggest that the PRC acted as a restrained maker of the regime. The Chinese delegation took firm positions on a range of issues and argued for its views to be incorporated; yet it acted with restraint and was careful to avoid the appearance of being uncooperative especially once more expansive UN bodies began to consider the draft. Despite the PRC's objections, several participants described it as not being among the most obstructive countries. For example, Judge Odio Benito, described the Chinese delegation as "more passive as they always maintained some sort of low profile."⁵⁴⁰ As noted previously, the PRC's opposition may have been partially obscured by more visibly obstructionist countries.

In the final denouement, Beijing's effort to act as a maker of the regime and influence OPCAT was only partially successful. Despite the combined efforts of China and like-minded countries to dilute the draft or derail adoption, these states had only modest success and the final version of OPCAT provided for a more robust visiting mechanism than they preferred. For example, states cannot reject a Subcommittee visit but can deny access to a particular facility on "urgent and compelling grounds of national defense, public safety natural disaster or serious disorder."⁵⁴¹ The main intent of OPCAT—to establish an international monitoring body to undertake preventive visits—was preserved to the chagrin of the PRC and other like-minded states. Further, despite the high priority the PRC and other countries placed on sovereignty, they failed to secure reference to respect for national legislation or strengthen state influence over the content of the post-visit report. Beijing's resistance to the use of experts was only partially reflected

⁵⁴⁰ Odio Benito, correspondence.

⁵⁴¹ Article 14.

in the Optional Protocol. While experts can be included in missions, they were not granted the immunities and privileges enjoyed by the SPT and states are allowed to reject an expert without providing justification. Of the issues raised by the Chinese delegation, only their preference on giving states the authority to elect the Subcommittee and monitoring based on universality, specifically non-selective visits, were accepted without modification.

Because of the divergence between the PRC's preferences and OPCAT, China has not become a signatory. China is in good company as the Optional Protocol has been ratified or acceded to by only 67 countries and, of the other P5 members, neither the United States nor Russia has signed it either. This accession rate of 37 percent is much lower than the rate for the Convention against Torture, which has 150 state parties and a 77 percent accession rate among UN members.⁵⁴² In the context of OPCAT's relatively low accession rate, Beijing's has not been a significant outlier and has not faced strong pressure to sign this treaty. Further, China's absence has not detracted from the work of the Subcommittee.

Explaining China's Behavior

As with the Convention against Torture, the PRC government's degree of familiarity with the regime; its human rights preferences and beliefs, particularly its adherence to a Westphalian view of sovereignty; and Chinese officials' concern with international image influenced its posture. Together these variables account for the PRC's behavior, particularly its decision to join the working group and the nature of its

⁵⁴² OPCAT came into force in June 2006. United Nations Treaty Collection, "Chapter IV Human Right: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en. At the time there were 72 signatories.

participation. Between the drafting of CAT, which was adopted in 1984, and OPCAT, which was drafted during a ten year period that spanned 1992-2002, there were changes among these variables, which accounts for the shift in Beijing's posture from that of a taker to a maker. Further, the existence of a group of like-minded countries partially influenced Beijing and acted as a scope condition that enabled the PRC to act with restraint. Of these factors, China's human rights preferences and beliefs and its increased familiarity with the regime had a particularly strong influence on its behavior.

In comparison with the Convention against Torture, during the creation of OPCAT, China had greater familiarity with the regime. Unlike its novice status in the early 1980s, by the time drafting of OPCAT began the PRC was a more seasoned and confident regime participant with diplomatic skills. Throughout the process of establishing OPCAT, Chinese diplomats asserted China's positions even on contentious issues, and did not shy away from taking adversarial stances. For example, in the UNCHR Ambassador Sha threatened "negative consequences" if the supporters of OPCAT proceeded with the proposed draft.⁵⁴³ It also had greater substantive understanding of the regime, including expertise on international human rights mechanisms that enabled it to discuss specific issues, such as the visiting authority of the SPT, enabling it to act as a maker. It also gained first-hand experience with human rights monitoring mechanisms, specifically visits by the UN Special Rapporteur on Torture and the Working Group on Arbitrary Detention.⁵⁴⁴

⁵⁴³ UN Commission on Human Rights, "Report of 50th meeting of the 58th session," July 30, 2002, E/CN.4/2002/SR.50, paragraph 18 (translated from French).

⁵⁴⁴ The UN Special Rapporteur for Torture visited in 1994. The Working Group on Arbitrary Detention made a visit in 1997. The UN High Commissioner for Human Rights visited in 1998, and the Commissioner has occasionally urged China to abide by international human rights standards.

China's existing human rights ideas played a strong role, and during the decade-long negotiations there was minimal evolution in PRC positions as it did not diverge from its state-centric approach and consistently sought to circumscribe the proposed international Subcommittee's authority.⁵⁴⁵ Beijing asserted that international human rights mechanisms should not contravene state sovereignty and it contested the establishment of an international Subcommittee with a mandate that gave it "unrestricted access to all places of detention, their installations and facilities and to all relevant information."⁵⁴⁶ As demonstrated in Chapter 2, even as the PRC increased its involvement with international regimes, it articulated reservations about ceding too much authority to international regimes and favored less intrusive forms of monitoring and international regimes that enable states to retain a greater degree of control. As a result, Chinese representatives sought to roll back the SPT's authority, such as requiring state consent prior to an inspection visit and arguing for the inclusion of a reference on the need to respect domestic laws. Thus, Beijing endorsed Mexico's draft because the draft favored a domestic body and a diminished role for the international Subcommittee. As a PRC Ministry of Foreign Affairs official asserted, "Our approach is that countries should solve these problems

⁵⁴⁵ A Costa Rican diplomat recalled that the PRC often expressed the view that human rights is a national issue. Guillermet, interview.

⁵⁴⁶ United Nations Office of the High Commissioner for Human Rights, "Optional Protocol to the Convention against Torture (OPCAT) Subcommittee on Prevention of Torture," <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx>, accessed February 8, 2014. A Western European diplomat recounted that during a drafting session he pointed out to the Chinese delegation that the model being proposed was similar to disarmament monitoring, which China had come to accept. Thus, he suggested that if the PRC could accept this form of monitoring in arms control, it should be open to OPCAT. In response, the PRC representative responded very negatively. Interviewee #26 Western European diplomat, June 28, 2011, New York, U.S.

internally...”⁵⁴⁷ The discord between China’s human rights ideas and the substance of OPCAT resulted in PRC efforts to shape the regime.

Although image concerns played a less decisive role than other variables, the effect of image was still discernable. International image concerns operated in several distinct ways. First, the PRC’s first-hand experience with other parts of the regime, including experiencing human rights scrutiny and the consequences of a damaged image as a result of Tiananmen, made the PRC averse to certain kinds of human rights monitoring. For example, visits by the UN Special Rapporteur on Torture and the Working Group on Arbitrary Detention resulted in reports pointing to a number of rights violations in China. Thus, Chinese officials were wary of the inspection visits and reporting proposed under the Optional Protocol. Likewise, its battle to counter UNCHR resolutions that were critical of its human rights record likely inclined PRC representatives to resist any measures that would have allowed the Subcommittee to apply selective attention. Thus, they argued for universal monitoring with visits being determined by rotation. Second, because the PRC sought to project an image of itself as an involved and supportive member of the international community, it sought to highlight the number of treaties it had signed and other evidence of greater engagement with the regime. Therefore, it worked towards the establishment of a version of OPCAT that was compatible with its preferences and which would enable it to accede to an additional human rights treaty.⁵⁴⁸ Along these lines, a PRC Ministry of Foreign Affairs official noted that in general China participates in the drafting

⁵⁴⁷ Interviewee #56 PRC Ministry of Foreign Affairs official, June 6, 2012, Beijing, China. These remarks were given in the context of torture, and it was noted the PRC would use implementation of CAT to solve domestic problems.

⁵⁴⁸ According to Foot, a number of Chinese statements drew attention to its active role in the international human rights arena and that it had signed more international conventions than the U.S. Foot, *Rights Beyond Borders*, 107.

of international human rights instruments because even if they do not join right away, they may want to consider joining in the future so they have to shape these instruments.⁵⁴⁹ A new addition to the human rights regime that Beijing was not comfortable signing would put it at risk of appearing unsupportive and set a precedent for the direction of the regime. China was inclined to act as a maker in order to strip away the elements that chafed against its human rights conceptions.

A third way image influenced Beijing's posture was more subtle and restrained Beijing during drafting sessions and voting in UN bodies, explaining its aversion to being outspoken or isolated on an issue. Thus, even as Beijing sought to make the regime and resist some aspects of the proposed Optional Protocol, Chinese officials endeavored to avoid being seen as obstructionist or uncooperative, and avoided a prominent role.⁵⁵⁰ As an NGO participant in the drafting group emphasized, Chinese diplomats avoided "going out on a limb unless they felt they did not have a choice."⁵⁵¹ As noted previously, during the drafting process, the PRC employed several tactics to accomplish this, including joining group statements, referencing the positions of other similar-minded countries, and allowing other states to take more prominent roles in challenging the draft.

⁵⁴⁹ Interviewee #56 PRC Ministry of Foreign Affairs official, June 6, 2012, Beijing, China. Interviewee #56 elaborated that participating gives them more institutional power, enabling them to ensure their interests are protected and their views represented.

⁵⁵⁰ The PRC's increasing restraint as OPCAT was taken up by larger multilateral bodies tracks with Johnston's findings. Alastair Ian Johnston, "Learning Versus Adaptation: Explaining Change in Chinese Arms Control Policy in the 1980s and 1990s," *The China Journal* 35 (January 1996): 59. Similarly, Jianwei Wang finds that Beijing's fear of appearing obstructionist prevents it from actively opposing resolutions which it disagrees with in principle. Jianwei Wang, "Managing Conflict: Chinese Perspectives on Multilateral Diplomacy and Security," in *In the Eyes of the Dragon: China Views the World*, eds. Yong Deng and Fei-ling Wang (New York: Rowman and Littlefield Publishers, Inc., 1999).

⁵⁵¹ Haenni-Dale, interview. Interviewee #30 human rights expert and former member of the UN Committee against Torture, New York, June 30, 2011 also noted that "China's way of exercising influence is through private channels."

The constraining effect of image was also evident during the adoption process. First, while it voiced opposition to OPCAT, China did not initiate formal action but rather voted in support of efforts by other countries. Second, the PRC was careful in larger UN bodies, where it stood to incur greater damage to its image if it were seen to be uncooperative. For example, in the Third Committee and the UN General Assembly, the PRC did not make the kinds of strong statements offered by Ambassador Sha in the UNCHR. Moreover, in the UN General Assembly with the audience now comprising all member states, the PRC remained silent and abstained in the vote rather than being among the four countries that voted in opposition. Emphasizing the moderating influence of image, an NGO participant noted that as the “margins got larger and larger, and the group of countries in opposition smaller and smaller... China didn’t want to be in a minority.”⁵⁵² Cumulatively, these tactics succeeded in obscuring the PRC’s uncooperative efforts as other participants not only did not identify the PRC as a difficult or obstructive participant, but also pointed out that the Chinese delegation adopted a modest profile.⁵⁵³ At the same time, as shown by Ambassador Sha’s acerbic statements in the UNCHR during the adoption of OPCAT, image would occasionally give way to other explanatory factors.

China’s cooperation with a group of like-minded countries acted as a scope condition that in this case tempered the PRC’s behavior. The existence of this grouping, which was comprised of Saudi Arabia, Egypt, Sudan, Syria, Cuba, and Algeria, enabled

⁵⁵² Haenni-Dale, interview. This supports Alastair Iain Johnston’s finding that “the backpatting and opprobrium costs for China therefore ought to vary with the size and legitimacy of its international audience.” Alastair Iain Johnston, “International Structures and Chinese Foreign Policy,” in *China and the World*, 4th edition, ed. Samuel S. Kim (Boulder: Westview Press, 1998), 77.

⁵⁵³ Haenni-Dale, interview; Jimenez, interview; and Pennegard, interview.

the PRC to act with restraint.⁵⁵⁴ Because some of these other countries vocally espoused positions similar to China's, PRC diplomats could afford to be less strident. An NGO participant conjectured that the existence of this group benefitted China by leaving it "in a position that it did not have to block [OPCAT] because others were doing it for them."⁵⁵⁵ When, in the seventh session, these countries began cooperating explicitly by offering joint statements and written submissions as a group, Beijing signed onto these statements. Being part of a group enabled the PRC to play a less visible role and to lessen the impression that it was acting as a prominent force obstructing progress. As the Chairperson of the informal OPCAT working group observed: "Because a number of other countries were more vocal on issues of importance to China, this made it possible for the PRC to hide behind these other countries and not stick out too much."⁵⁵⁶

Conclusion

This chapter traces the evolution of the PRC's role in the international human rights regime from 1982-2002, and shows a shift as China went from a taker to a maker. As demonstrated in this chapter, Beijing's changed posture toward the regime reflected developments among key explanatory variables and changes in their relative weight. By

⁵⁵⁴ To a certain degree, the actions of this group, including China, were consistent with Long and Naumovic's description that "Prolonging the process and thereby exhausting the Working Group was precisely the preferred strategy of those States most opposed to the Protocol. Their tactics involved submitting new proposals on issues that had already been resolved and presenting objections to matters discussed years earlier." Long and Naumovic, *Optional Protocol*, 44.

⁵⁵⁵ Haenni-Dale, interview. Haenni-Dale further suggested that Beijing may have been "playing through other players." Similar views offered by Jimenez, interview; and Guillermet, interview.

⁵⁵⁶ Pennegard, interview.

focusing on two distinct approaches to combatting torture, this chapter further enables us to assess Beijing's posture toward different components of the human rights regime.

As outlined in this chapter, the effect of familiarity was more prominent during the early stages, which inclined it to act as a taker. With increased familiarity, China's potential roles were more expansive since it had the skills, confidence and understanding needed to play other roles.

Turning to beliefs, surprisingly, rather than internalizing international human rights norms, China appeared to have become more insistent in its convictions on human rights, particularly in defending state sovereignty. Thus, in contrast to CAT, when the PRC quickly acquiesced on universal jurisdiction, the PRC's positions toward OPCAT were firmer. The lack of evolution in PRC human rights views despite more than two decades in the regime and ten years of exposure to the OPCAT drafting discussions calls into question the power of the regime to transmit norms. The tenacity of PRC human rights ideas indicates the limits of some constructivist approaches that focus on the power of international norms, yet it aligns with another constructivist argument, particularly Acharya's finding regarding the importance of local norms.

In both cases studies, image was a consistent and important Chinese concern. In the early years of its participation, Beijing's was concerned with proving itself as an engaged and supportive new regime member that would not be a disruptive presence.⁵⁵⁷ Consequently, even as the PRC acted as a maker during OPCAT, it employed a number of tactics to make its efforts less obvious, including occasionally taking a less insistent position, to preserve a cooperative global image. Yet, this factor interacted with other

⁵⁵⁷ For similar point, see Economy and Oksenberg, eds. *China Joins the World: Progress and Prospect*, 21.

variables, and over time the PRC occasionally took firmer and more insistent positions. For example, during the OPCAT adoption process, the PRC's occasionally strong statements showed that image sometimes competed and conflicted with the PRC's human rights ideas. As noted in the introductory chapter, aside from the customary association of image with constructivist arguments, I argue that the PRC's concern with global image might also reflect the strength of an instrumental worldview in accounting for its behavior. As a result of the material losses it suffered following Tiananmen, PRC leaders appear to have come to believe that a positive global image was critical to its security and economic interests.

This chapter also uncovers an additional defining development: it is in this period that we witness the PRC's ability and willingness to work with other countries, which in the case of OPCAT functioned as a scope condition that had two contradictory effects. It both bolstered PRC human rights views by providing it with a like-minded community of states and also tempered the PRC's conduct as it took less insistent positions while relying on other states to take more vocal and prominent positions. The existence of this group of like-minded countries that the PRC worked with counters constructivist approaches that downplay resistance to the spread of international norms, and reveals that countries might cooperate more explicitly to combat pressure. The next chapter will explore these ideas in the context of PRC behavior toward the UN's political human rights bodies, particularly focusing on reform of the UN Commission on Human Rights.

Chapter 4

From the UN Commission on Human Rights to the Human Rights Council: China and the Establishment of the Human Rights Council, 2004-2007

China acted as a constrainer during the 2004-2007 negotiations to replace the UN Commission on Human Rights (UNCHR or Commission) with a new body. This chapter parses China's posture toward the UN's "political" human rights bodies, including mechanisms that enabled these institutions to spotlight countries for human rights abuses.⁵⁵⁸ Although the PRC did not actively seek the dissolution of the UNCHR and was, in fact, initially unexcited about replacing it, the proposed institutional reform provided it with an opportunity to shape this vital part of the regime. The adoption of a more assertive and consequential constrainer role, as will be argued in what follows, reflects changes in the relative weight of the dominant variables that have been identified in this thesis as important to explaining Chinese behavior. Image, particularly after Beijing was castigated following the 1989 Tiananmen Square crackdown, was a decisive factor that caused the PRC to strenuously oppose approaches that singled out specific countries for condemnation. The PRC's conception of human rights, particularly its view that international human rights monitoring should not infringe on state sovereignty, also strongly inclined Beijing to act as a constrainer. By 2004, when these discussions began, the PRC's greater familiarity with the regime provided it with the interest and ability to act as a constrainer state. The overall influence of these variables meant that the PRC tried

⁵⁵⁸ The UNCHR and UN Human Rights Council are political in the sense that they are comprised of officials representing their governments. Kent suggested that China's "negative influence has been most conspicuous" in these bodies. Kent, "The Universal Declaration of Human Rights and China: Breaker or Shaper of Norms," 5-6.

(not always successfully) to tip reforms away from more solidarist directions favored primarily by human rights organizations and a number of western governments toward a more state-centric approach. As will be discussed in the conclusion of this chapter, two dimensions of China's behavior—its ongoing concern with presenting itself in a positive global light and the importance of image in guiding a number of PRC positions—are of consequence in weighing the relevance of international relations theories.

Although disillusionment with the Commission had been growing for years, a threshold of support for reform was reached after the UN High Level Panel Report on *Threats, Challenges and Change* and the Secretary-General's *In Larger Freedom* report endorsed the creation of a new UN human rights entity.⁵⁵⁹ From 2005 to 2007, member states engaged in multi-stage negotiations that included the September 2005 World Summit Outcome Document, a March 2006 General Assembly (GA) resolution and a June 2007 institution-building (IB) package to create the UN Human Rights Council. Throughout the negotiations, member states espoused conflicting visions for the new body, resulting in divergence on key issues and protracted deliberations. Because the opportunity for institutional UN reform occurs infrequently, states had a particularly strong incentive in seeking to get their views incorporated into this new institution.

This chapter investigates Beijing's behavior during the negotiations to create the Human Rights Council and argues that China acted as a constrainer. It begins with a description of the growing international disillusionment with the Commission and then

⁵⁵⁹ For examples of criticism, see Human Rights Watch, "U.N. Rights Body in Serious Decline," news release, April 25, 2003, <http://www.hrw.org/news/2003/04/25/un-rights-body-serious-decline>. Freedom House offered similar concerns, noting that "six of the eighteen most repressive governments, those of China, Cuba, Eritrea, Saudi Arabia, Sudan and Zimbabwe, are members of the Commission on Human Rights (CHR)." Freedom House, "World's Worst Regimes Revealed," press release, March 31, 2005, <http://www.freedomhouse.org/template.cfm?page=70&release=255>.

outlines the process of UN human rights institutional reform. The next section considers Beijing's experiences in the Commission, the predecessor to the UN Human Rights Council. Finally, it details the PRC's behavior and strategy during each stage of the reform process before offering plausible explanations for its conduct.

The PRC acted as a constrainer in the sense that it sought to limit or hold back the strengthening of the regime. Other observers have put this in somewhat stronger terms, arguing that China was among the states with a “negative reform agenda.”⁵⁶⁰ However, my preference for the term constrainer as opposed to “breaker”—a term that is closer to the idea of negative reform—emphasizes that the PRC sought to weaken but not necessarily hollow-out the regime.⁵⁶¹ The PRC's proposed alterations were confined to the kind of modifications a constrainer would pursue. Beijing also acted defensively in the sense that it sought to constrain the regime primarily to shield itself from what it perceived as harmful international human rights criticism.⁵⁶² However, even as it assumed a mainly defensive posture, at times the PRC employed offensive techniques.⁵⁶³

⁵⁶⁰ Meghna Abraham, “Building the New Human Rights Council: Outcome and Analysis of the Institution-Building Year,” in *Occasional Papers Geneva* (Geneva: Friedrich Ebert Stiftung, 2008), <http://library.fes.de/pdf-files/bueros/genf/04769.pdf>. Abraham used the phrase “negative reform agenda.”

⁵⁶¹ Interviewee #42 commented on the PRC being “more interested in playing defense” in the UN human rights bodies. Interviewee #42 North American diplomat, July 30, 2012, Washington DC, United States.

⁵⁶² Interviewee #2, North American diplomat, May 24, 2011, Geneva, Switzerland; Interviewee #11, human rights NGO representative, May 31, 2011, Geneva, Switzerland; Interviewee #14, Latin American diplomat, June 1, 2011, Geneva, Switzerland; Interviewee #6 Western European diplomat, May 26, 2011, Geneva, Switzerland; and Interviewee #42, North American diplomat, July 30, 2012, Washington, DC, United States. See also, Sceats and Breslin, *China and the International Human Rights System*, 15.

⁵⁶³ Interviewee #24 noted that Chinese diplomats reacted strongly when its human rights record was mentioned in public UN venues. For example, China tried to prevent the European Union from completing its 2010 General Assembly statement, which mentioned China's human rights record. Interviewee #24, Western European diplomat, June 29, 2011, New York, United States.

Replacing the UN Commission on Human Rights

During its 60-year existence, the Commission made a number of positive contributions, such as giving international human rights greater precision and substance and serving as the UN's primary body to address human rights. Nevertheless, the Commission's failings led to criticism and growing calls for reform. For example, Human Rights Watch labeled the UNCHR a "rogues' gallery of human rights abusers."⁵⁶⁴ In 2004, U.S. Ambassador Richard Williamson argued for reforming the Commission, particularly introducing membership criteria, so that the Commission would "not be allowed to become a protected sanctuary for human rights violators who aim to pervert and distort its work."⁵⁶⁵ Likewise, Amnesty International lamented that "membership is too often used to shield the Commission members from human rights scrutiny instead of to protect and promote human rights."⁵⁶⁶ For many, the final straws came with the election of Libya as UNCHR chair in 2003 and Sudan's membership in 2005, which coincided with ongoing atrocities in Darfur.

During UN Secretary-General Kofi Annan's tenure, ideas for reforming the discredited Commission received critical support when two separate UN reports

⁵⁶⁴ For background on the UNCHR's achievements and failings, see Kevin Boyle, "The United Nations Human Rights Council: Origins, Antecedents, and Prospects," in *New Institutions for Human Rights Protection*, ed. Kevin Boyle (New York: Oxford University Press, 2009); Howard Tolley Jr., *The U.N. Commission on Human Rights* (Boulder, Colorado: Westview Press, 1987), 98-100 and 187-189 and Philip Alston, "The Commission on Human Rights," in *The United Nations and Human Rights: A Critical Appraisal*, 1st edition, ed. Philip Alston (Oxford: Oxford University Press, 1992).

⁵⁶⁴ Robin Wright, "U.S. Shocked by Loss of Seat on U.N. Rights Panel but Vows to Stay Active," *Los Angeles Times*, May 5, 2001.

⁵⁶⁵ U.S. Department of State, "U.S. Proposes Reforms at U.N. Commission on Human Rights," news release, Washington File, March 19, 2004, <http://usinfo.org/wf-archive/2004/040319/epf512/htm>.

⁵⁶⁶ Amnesty International, *2005 Commission on Human Rights: The UN's Chief Guardian of Human Rights?* (New York: Amnesty International, January 1, 2005), <http://www.amnesty.org/en/library/info/IO41/001/2005/en>.

highlighted the need for change. The first report, the 2004 UN High Level Panel on Threats, Challenges and Change, added to the chorus of criticism by noting that

States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.⁵⁶⁷

The Panel recommended that the UN dissolve the Commission and create a Human Rights Council, which would have universal membership and be a Charter body, rather than a subsidiary of the Economic and Social Council (ECOSOC).⁵⁶⁸ Annan offered further support for reinvigorating the system in his March 2005 *In Larger Freedom* report and noted that “the Commission’s capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism... As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.”⁵⁶⁹ In contrast to the universal body put forward by the High Level Panel, Annan recommended that the Commission be replaced “with a smaller standing Human Rights Council,” which would either be a principal UN organ or a subsidiary of the GA and comprised of members elected by two-thirds of the General Assembly, who “undertake to abide by the highest human rights standards.”⁵⁷⁰

In response, UN member states began negotiations with the intention of announcing agreement on the proposed Council at the upcoming September 2005 World Summit, the largest ever gathering of world leaders at that time. However, intractable

⁵⁶⁷ UN General Assembly, *Report of the High-Level Panel on Threats, Challenges, and Change*, December 2, 2004, U.N. Doc. A/59/565, paragraphs 282-283.

⁵⁶⁸ *Ibid.*, paragraphs 285-291.

⁵⁶⁹ UN General Assembly, Report of the Secretary-General, *In Larger Freedom: Toward Development, Security and Human Rights for all*, March 21, 2005, UN Doc. A/59/2005, paragraph 182.

⁵⁷⁰ *Ibid.*, paragraph 183.

differences over a number of issues including membership criteria, size, composition, election processes, organizational status, and functions prevented states from reaching substantive agreement. Rather, by the time the World Summit was convened they could only agree to call on the President of the UN General Assembly “to conduct open, transparent and inclusive negotiations, to be completed as soon as possible during the sixtieth session, with the aim of establishing the mandate, modalities, functions, size, composition, membership, working methods and procedures for the Council.”⁵⁷¹

Heeding this request, GA President Jan Eliasson presided over negotiations that involved “months of intense and difficult labor in the face of bitter criticism, delaying tactics and efforts at sabotage” and “significantly different visions of what the new Human Rights Council should be.”⁵⁷² President Eliasson referred to the negotiations as “a long and arduous road.”⁵⁷³ As a result of disagreement on key issues, such as the frequency and duration of Council meetings, the convening of special sessions, the details of the peer review process, and NGO involvement, the March 2006 GA Resolution left a number of specific features of the Council unresolved.⁵⁷⁴ However, countries that were opposed to a high standard for membership through specific criteria, such as agreeing to certain human rights commitments and upholding specified human rights standards, and election by a two-thirds vote succeeded in eliminating any strict membership requirements and securing election by a majority vote of the General Assembly. The UN Secretary-General, the U.S.

⁵⁷¹ UN General Assembly, Resolution 60/1, “2005 World Summit Outcome Document,” October 24, 2005, UN Doc. A/RES/60/1, paragraph 160.

⁵⁷² Paul Gordon Lauren, “To Preserve and Build on its Achievements and to Redress its Shortcomings: the Journey from the Commission on Human Rights to the Human Rights Council,” *Human Rights Quarterly* 29, no. 2 (2007): 333. Only the U.S., Israel and the Marshal Islands voted against the resolution.

⁵⁷³ Jan Eliasson, “Statement by the President of the United Nations General Assembly, H.E. Mr. Jan Eliasson at the Informal Consultations of the Plenary on the Human Rights Council,” United Nations Headquarters, New York, February 23, 2006, <http://www.un.org/ga/president/60/speeches/060223b.pdf>.

⁵⁷⁴ Lauren, “To Preserve and Build on its Achievements and to Redress its Shortcomings,” 332-335.

government, and human rights groups lamented that the most promising proposed features, particularly higher membership standards, had been stripped away.⁵⁷⁵ A New York Times editorial bemoaned that a “once-promising reform proposal has been so watered down that it has become an ugly sham, offering cover to an unacceptable status quo. It should be renegotiated or rejected.”⁵⁷⁶

Mexican Ambassador Luis Alfonso de Alba, the first president of the newly established Human Rights Council, led Council members in year-long institution-building (IB) negotiations that spanned June 2006-June 2007. Under de Alba’s leadership, eventually many of the outstanding issues were resolved, including reviewing the special procedures, revamping the body of expert advisors and the complaint procedure, setting up the new Universal Periodic Review (UPR) process, and developing the Council’s agenda, program of work, and rules of procedure.⁵⁷⁷ The debates reflected long-standing divisions over appropriate forms of human rights monitoring, and participants described the discussions as being marked by “complete mistrust” and a “clash of ideas,” particularly over the peer review process, the mandates of the special rapporteurs and working groups, and country-specific mechanisms.⁵⁷⁸ In the end, a number of compromises emerged, such

⁵⁷⁵ See Maggie Farley, “New U.N. Rights Panel is Proposed,” *Los Angeles Times*, February 24, 2006.

⁵⁷⁶ Editorial, “The Shame of the United Nations,” *New York Times*, February 26, 2006.

⁵⁷⁷ The institution-building negotiations were primarily undertaken through working groups handling specific issues, such as developing the modalities of the Universal Periodic Review Process and reviewing the special procedures.

⁵⁷⁸ Husak noted the “complete mistrust” that impeded progress in the Working Group that he facilitated. Tomas Husak (Czech Ambassador to the UN in Geneva and special procedures Working Group Facilitator), interview by author, May 25, 2011, Geneva, Switzerland. Loulichki described the discussions as involving a “clash of ideas” and that his goal was to “dissatisfy the least number of people.” Mohammed Loulichiki (former Moroccan Ambassador to the UN in Geneva and UPR Working Group Facilitator), interview by author, June 29, 2011, New York. The special procedures refers to various human rights mandates for either individuals, who serve as Rapporteurs, or working groups, such as the Working Group on Arbitrary Detention. Special procedures can be focused on either a theme, such as torture, or a specific country.

as eliminating the mandates for the rapporteurs specifically assigned to Cuba and Belarus and limiting NGO involvement in the UPR proceedings.⁵⁷⁹

Scholars and policy-makers have debated whether the Council is an improvement over the Commission. Ladan Rahmani-Ocora offered a somber assessment, noting that “with the same players in entrenched positions, the old political game is likely to be repeated.”⁵⁸⁰ More critically, Meghna Abraham recalled that during the IB negotiations, “States with a negative agenda have been very successful... in articulating their vision for the Council,” especially in stressing cooperation and dialogue as opposed to drawing attention to country-specific abuses.⁵⁸¹ A Western European diplomat based in Geneva described some observers as so disappointed that they “were ready to write off the Council.”⁵⁸² These views stemmed from the fact that while there were some positive changes, such as increased meeting time, a number of other revisions appeared to be merely cosmetic, and the Council fell short of the vision laid out in Annan’s *In Larger Freedom* report. The table below captures the organizational differences between the Commission and the Council.

⁵⁷⁹ Abraham, *Building the New Human Rights Council*, 4-5. According to Interviewee #6 Western European diplomat early on in the process it was clear that there would be no consensus if the Cuba and Belarus special rapporteur mandates were continued. Interviewee #6, Western European diplomat, May 26 2011, Geneva, Switzerland.

⁵⁸⁰ Ladan Rahmani-Ocora, “Giving the Emperor Real Clothes: The UN Human Rights Council,” *Global Governance* 12, no. 1 (2006): 16.

⁵⁸¹ Abraham, *Building the New Human Rights Council*, 45.

⁵⁸² Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland.

Table 4: Key Differences Between the UN Commission on Human Rights and the UN Human Rights Council

	The Commission on Human Rights	The Human Rights Council
Size	53 member states	47 member states
Organizational Standing	Subsidiary body of the Economic and Social Council	Subsidiary body of the General Assembly
Sessions	An annual six week session. Special sessions could be held but were never scheduled	Minimum three sessions per year with total duration of at least 10 weeks, Special sessions can be called by a vote of one-third of the members
Membership criteria	None	No hard criteria, however, states are encouraged to “take into account” the candidate country’s contribution to the promotion and protection of human rights and their voluntary human rights pledges and commitments
Election Process	States are nominated by regional blocs and voted on to the Commission by ECOSOC, requiring 28 votes or a majority of members present and voting (54 members). However, this was generally by ‘clean slates’ in which there are generally not more candidates than seats	States are elected by secret ballot based on regional allocation by a simple majority of the General Assembly, requiring 97 votes out of 192
Term Limits	None	Two consecutive terms
Suspension of Membership	None	A two-thirds majority needed to suspend a member for gross human rights violations
Geographical Composition	African states 15, Asian states 12, Eastern European states 5, Latin America and Caribbean states 11, Western Europe and others 10	African states 13, Asian states 13, Eastern European states 6, Latin America and Caribbean states 8, Western Europe and others 7

Review of member states' human rights records	Member states often blocked attempts to review their own human rights records	All UN member states reviewed through the universal periodic review process
Country-specific mechanism for Urgent Human Rights Crises	Country-specific resolutions and special procedures available	Country-specific resolutions and special procedures available; Able to call a special session with support of one-third of the members
Special procedures	Existing system of country specific and thematic special procedures	Continues the system of special procedures for both country and thematic special rapporteurs but during the institution-building process the mandates for Cuba and Belarus were terminated

By most accounts, the Council's record over its first five years has been mixed. Katherine Short noted "the Council is broadly seen as suffering from political selectivity, exemplified by a perceived obsession with the human rights violations in the Occupied Palestinian Territories."⁵⁸³ Likewise, in 2009 Freedom House lamented that "a small but active group of countries with very poor human rights records have so far succeeded in limiting the ability of the Council to protect human rights, despite their minority status on that body."⁵⁸⁴ Others, however, have described the Council as becoming more effective, particularly since the 15th session in 2010. They point to developments such as the suspension of Libya's membership; special sessions on the Ivory Coast, Libya, and Syria;

⁵⁸³ Katherine Short, "From Commission to Council: Has the United Nations Succeeded in Creating a Credible Human Rights Body?" *Sur: International Journal on Human Rights* 5, no. 9 (December 2008): 148.

⁵⁸⁴ Freedom House noted that "Member states that Freedom House designates as Not Free make up less than one-fifth of the Council, but devote considerable resources to their work in Geneva." They gave the Council a failing grade based on its ability to "take timely action on some of the most egregious human rights abuses occurring in specific countries or regions of the world, and its ability to address emerging global threats to fundamental human rights such as freedom of expression and freedom of association." Freedom House, *Special Report The UN Human Rights Council Report Card: 2007-2009*, (Washington, DC: Freedom House, September 10, 2009), <http://www.freedomhouse.org/report/special-reports/un-human-rights-council-report-card-2009-2010>.

and the reinstatement of the mandate for the Rapporteur on Iran.⁵⁸⁵ Yet, others, especially those that oppose focusing on specific countries, point to these same developments to question this optimism. A South Asian diplomat noted that “Unfortunately, over the last nine-ten months the Council is moving toward the way of the Commission. There is a general atmosphere of pointing fingers... or you hold a special session in which you condemn. We believe the best way is to engage and work cooperatively...”⁵⁸⁶ This view is shared by a number of countries, including many members of the Non-Aligned Movement (NAM) and the Organization of the Islamic Conference (OIC).⁵⁸⁷ Given the geographic distribution of seats, these countries are often able to control voting outcomes in the Council, a point that is particularly relevant to the discussion of Chinese behavior undertaken below.⁵⁸⁸

During the five-year review of the Council, conducted in 2011, these different visions regarding membership criteria, election processes, functions and country-specific approaches emerged again.⁵⁸⁹ The review, conducted by both the HRC and the General Assembly, reportedly involved a fair amount of “drama,” with primarily western countries

⁵⁸⁵ Interviewee # 8, South Asian diplomat, May 27, 2011, Geneva, Switzerland; Interviewee #11, human rights NGO representative, May 31, 2011, Geneva, Switzerland; and Interviewee #7, human rights NGO representative/human rights scholar, May 26, 2011, Geneva, Switzerland.

⁵⁸⁶ Interviewee #10, South Asian diplomat, May 31, 2011, Geneva, Switzerland. Interviewee #10 expanded on this and noted that after “you condemn something it is over and there is nothing more you can do about it after that.” This interview subject suggested that cooperation or capacity-building efforts were preferable.

⁵⁸⁷ Interviewee #10 South Asian diplomat, May 31, 2011, Geneva, Switzerland; Interviewee #4, Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland; and Interviewee #8 South Asian diplomat, May 27, 2011, Geneva, Switzerland.

⁵⁸⁸ Point also made by Juan Antonio Fernandez Palacios, “The Non-Aligned Movement’s Role in the Institution-Building Process of the Human Rights Council: An Approach from the Cuban Chairmanship,” in *The First 365 Days of the United Nations Human Rights Council*, ed. Lars Muller (Bern: Swiss Department of Foreign Affairs, 2007), 163.

⁵⁸⁹ Interviewee #8, South Asian diplomat, May 27, 2011, Geneva, Switzerland; Interviewee #25, Western European diplomat, June 28, 2011, New York, United States; Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland; and Interviewee #7, human rights NGO representative/human rights scholar, May 26, 2011, Geneva, Switzerland. The five-year review was mandated by the GA resolution establishing the Council.

proposing changes, such as membership criteria, a review of the human rights pledges of candidate countries, and new mechanisms to address country-specific situations.⁵⁹⁰

However, a large number of NAM countries, whose views China shared, preferred the status quo and successfully countered efforts to introduce reforms.⁵⁹¹

The divisive nature of the debates over the establishment of the Council, the differing views on the Council's record thus far, and the disagreements during the five-year review demonstrated the degree to which human rights remain contested and international consensus remains elusive. Throughout the negotiations, a number of countries that shared China's views on human rights worked together to challenge efforts by (primarily) western nations to spotlight specific countries with poor records, to set a high bar for membership, and to strengthen international human rights monitoring. Despite, or perhaps because of, the disputed nature of international human rights, as will be shown below, China has become an increasingly active participant and shown a high degree of willingness to be involved in the regime.

China and the UN Commission on Human Rights

China joined the HRC negotiations with an attitude that was prefigured by its experiences in the UN Commission on Human Rights and its Sub-Commission. The threat of critical resolutions following the 1989 Tiananmen Square crackdown had a particularly

⁵⁹⁰ Interviewee #25, Western European diplomat, June 28, 2011, New York, United States and Interviewee #8, South Asian diplomat, May 27, 2011, Geneva, Switzerland.

⁵⁹¹ Interviewee # 4, Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland; Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland; Interviewee #27, UN OHCHR official, June 29, 2011, New York, United States; and Interviewee #31, Eastern European diplomat, June 30, 2011, New York, United States.

strong influence on PRC views toward the regime and shaped its approach to the discussions.

As noted previously China became an observer in the UNCHR in 1979, before becoming a full member in 1982, which was followed by the placement of a Chinese member on the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission).⁵⁹² During the 1980s, China began to “participate cautiously” in the UNCHR, and primarily acted as a taker.⁵⁹³ PRC diplomats adopted a “passive role with respect to the regime,” meaning that they generally refrained from taking assertive stances on a number of issues and focused on learning in order to become more familiar with the procedures of the Commission.⁵⁹⁴ The Chinese government also expanded its involvement in the regime by signing a number of human rights instruments, such as the Convention against Torture in 1986. Yet, Beijing also offered resistance to universal rights and intrusive human rights monitoring using cultural relativism and state sovereignty arguments; asserted that more attention should be given to economic, social and cultural rights; and made a case for the right to development.⁵⁹⁵

Importantly, until 1989, the PRC was “only subject to the weak influence of the international human rights regime,” meaning that international actors did not give Chinese

⁵⁹² Ann Kent, “China and the International Human Rights Regime: A Case Study of Multilateral Monitoring, 1989-1994,” *Human Rights Quarterly* 17, no. 1 (February 1995): 7.

⁵⁹³ Kent, *China, the United Nations and Human Rights*, 43. Kent does not specifically describe the PRC as a “taker.” This description of China as a taker is based on my assessment of its posture at the time.

⁵⁹⁴ *Ibid.*, 43.

⁵⁹⁵ Samuel Kim, “Human Rights in China’s International Relations,” in *What If China Doesn’t Democratize?: Implications for War and Peace*, ed. Edward Friedman, and Barrett L. McCormick (New York: M.E. Sharpe, 2000), 132-134.

human rights abuses significant and sustained attention.⁵⁹⁶ For example, prior to 1989, just a few states and certain human rights NGOs raised human rights violations in Tibet and only in limited instances.⁵⁹⁷ In response to the use of force by Chinese authorities to quell unrest in Tibet in the late 1980s and a declaration of Martial Law in March 1989, some actors, particularly the U.S. Congress and some NGOs, began giving some attention to Beijing's treatment of Tibetans.⁵⁹⁸ However, the level of scrutiny China received remained mild. According to Rosemary Foot, during this period China was accorded "sympathetic treatment... based on the scale of the economic reforms taking place and the problems it faced."⁵⁹⁹

The 1989 Tiananmen Square protests and the international condemnation that followed altered Beijing's relationship with the human rights regime. China found itself facing UN censure, sanctions from western governments, suspension of high-level bilateral meetings, a freeze on World Bank and Asian Development Bank loans, and the cancellation of bilateral cooperation in a number of areas.⁶⁰⁰ Scholar Thomas W. Robinson described the post-Tiananmen situation for China thus: "Internationally, Tiananmen vitally affected China's relations with many other states, all of whom reacted with revulsion and disgust at the wanton and immoral slaughter of so many ordinary and innocent Chinese citizens and the unnecessary incarceration of so many others in Beijing

⁵⁹⁶ Kent, *China, the United Nations and Human Rights*, 45-46. In the mid to late 1980s China occasionally faced criticism for racial discrimination and human rights violations in Tibet. However, as Kent notes, "in none of these cases was international attention focused on China in any thorough-going, systematic way."

⁵⁹⁷ The unrest in Tibet occurred from September 1987 through March 1989. The UN General Assembly had debated and passed resolutions on Chinese violations in Tibet in 1959, 1961, and 1965. General Assembly Resolutions 1353 (XIV), 1723 (XVI) and 2079 (XX). However, between 1971 when China joined the UN and 1989, it did not receive much human rights scrutiny.

⁵⁹⁸ Foot, *Rights Beyond Borders*, 98.

⁵⁹⁹ *Ibid.*, 98. Kent made a somewhat similar observation, noting that "At the time of China's entry, however, a preparedness to exempt China from its human rights responsibilities was apparent in the world at large, which concentrated first on "bringing China in." Kent, *China, the United Nations and Human Rights*, 28.

⁶⁰⁰ *Ibid.*, 114-118.

and other Chinese cities.”⁶⁰¹ In August 1989, two months after the June 4 crackdown, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities’ passed a resolution on China, which was the first time a permanent member of the Security Council had been censured for human rights abuses.⁶⁰² This also marked the beginning of greater scrutiny of China, including the passage of another resolution in the Sub-Commission in 1991 and attempts to pass resolutions in the Commission.⁶⁰³ Although it defeated UNCHR resolutions through the use of “no-action” motions, the mere threat of censure in the Commission and the annual fight over the resolution were embarrassing to Beijing.

Therefore, in the post-Tiananmen period, the PRC’s focus shifted from cautious participation to vigorously defending and protecting itself from human rights scrutiny, and Chinese diplomats began a “human rights offensive.”⁶⁰⁴ The Chinese government responded to the 1991 Sub-Commission resolution by working with other like-minded countries to diminish the power of the Sub-Commission.⁶⁰⁵ During the 1990s, the PRC also aggressively lobbied against UNCHR resolutions on its human rights record, even using foreign aid to secure votes.⁶⁰⁶ The support of developing world countries was

⁶⁰¹ Robinson, “Chinese Foreign Policy 1940-1990,” 588-589.

⁶⁰² Kent, *China, the United Nations and Human Rights*, 119.

⁶⁰³ The Dui Hua Foundation, “The Commission on Human Rights: Another Round in 2006?” *Dialogue* 21 (Fall 2005): 1-3. Resolutions on China were not offered in 1991, 1998, 2003 and 2005. China successfully used a no-action motion to prevent discussion of resolutions in 1990, 1992, 1993, 1994, 1996, 1997, 1999, 2000, 2001, 2002, and 2004. China’s no-action motion was not successful in 1995, but the actual condemnatory resolution failed to pass when brought to the floor for a vote.

⁶⁰⁴ James D. Seymour, “Human Rights in Chinese Foreign Relations,” in *China and the World: Chinese Foreign Policy Faces the New Millennium*, ed. Samuel S. Kim (New York: Westview Press, 1998), 222.

⁶⁰⁵ Kent, *China, the United Nations, and Human Rights*, 64 and 74-75. These changes included preventing the Sub-Commission from discussing a country already being considered by the UNCHR and limiting it to an advisory role. The PRC persisted in attacking the Sub-Commission. See UN Commission on Human Rights, *Summary Record of the Fiftieth Meeting*, December 11, 2000, UN Doc. E/CN.4/2000/SR.50/, paragraph 74.

⁶⁰⁶ For tactics to combat resolutions, see Human Rights Watch, “Chinese Diplomacy Western Hypocrisy and the U.N. Human Rights Commission,” *Human Rights Watch/Asia* 9, no. 3 (March 1997): 1-14, <http://www.hrw.org/reports/pdfs/c/china/china973.pdf>. In 1997, when Denmark and the Netherlands agreed

crucial to the PRC's success in defeating passage of a UNCHR resolution. More significantly, Beijing along with some other developing countries, initiated a "concerted push... to eliminate all country-specific resolutions."⁶⁰⁷ Ann Kent linked China's behavior with the Commission's eroding credibility, asserting that "the means by which success was obtained [by China in defeating the resolution], the openly threatening nature of China's response to those sponsoring and cosponsoring the resolution... reflected a qualitative change from the past that had disturbing implications for the continued credibility of Commission resolutions."⁶⁰⁸ Making a similar point, scholar Dominguez-Redondo pointed out that until 2002 only the PRC had used the no-action motion to circumvent discussion of its human rights situation, but after that point Zimbabwe, Cuba, and Belarus also began using this political maneuver to prevent consideration of resolutions on their human rights record.⁶⁰⁹

In the mid-1990s, Beijing introduced a new tactic by urging the UN to reform the Commission.⁶¹⁰ In 1995, when China lost the no-action motion for the first time and barely defeated a UNCHR resolution, the Chinese government reacted by calling for "comprehensive reform," including "standardizing the participation of non-governmental

to sponsor the resolution on China, PRC authorities suggested that this would harm Denmark's bilateral relationship with China, particularly its economic interests, and noted that "it would be for Denmark like holding a stone over its head and letting go." Quoted in Foot, *Rights Beyond Borders*, 205. Kent noted that the PRC published a list of Danish corporations to exclude from future contracts. Kent, *China, the UN and Human Rights*, 77.

⁶⁰⁷ Phillip Alston, "Reconceiving the UN Human Rights Regime; Challenges Confronting the New UN Human Rights Council," *Melbourne Journal of International Law* 7, no. 1 (2006): 196. In explaining its support of the resolutions on Israel and The Occupied Territories that raised concerns about Israeli human rights abuses in the West Bank and Gaza Strip, China has justified this as a situation of unlawful occupation in which condemnation is legitimate. Sceats and Breslin, *China and the International Human Rights System*, 20.

⁶⁰⁸ Kent, *China, the United Nations, and Human Rights*, 77.

⁶⁰⁹ Elvira Dominguez Redondo, "The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session," *Chinese Journal of International Law* 7, no. 3 (2008): 723.

⁶¹⁰ Kim, "China and the United Nations," 70. In 1996, China also called for geographic redistribution of seats. See, for example, UN Commission on Human Rights, *Summary Record of the 33rd Meeting*, April 16, 1996, UN Doc. E/CN.4/1996/SR.33, paragraphs 1-6.

organizations and eliminating selectivity.” This latter phase meant abandoning country-specific resolutions.⁶¹¹ Chinese reactions may also have been triggered by the scrutiny China received from various parts of the human rights regime. Specifically, in 1995, all of the UN Special Procedures included critical mention of China in their reports.⁶¹² Beijing reacted by attempting to give country-specific resolutions a negative gloss, referring to them as “confrontation” and “naming and shaming.”⁶¹³ Two years later, at the Economic and Social Council, the PRC reiterated its reform proposals, stressing the importance of mutual equality and respect, protection of the interests of developing countries, and ending confrontation.⁶¹⁴ In 2002, it further argued that “the practice of using Commission resolutions to exert pressure on States was harmful.”⁶¹⁵

China also began working with other countries, particularly among the developing world, to promote reform and advance shared views on human rights. Beijing’s 1996 statement in response to an EU resolution raising concern about China’s human rights record—in which it claimed that the resolution was targeted not merely at China but the whole of the developing world—was an attempt to promote common cause with

⁶¹¹ Beijing sustained its challenge of country-specific resolutions for a number of years. See UN Commission on Human Rights, *Sixty-first Session, Summary Record of the 20th Meeting*, April 8, 2005, UN Doc. E/CN.4/2005/SR.20, paragraph 18.

⁶¹² See Foot, *Rights Beyond Borders*, 179 and 182.

⁶¹³ UN Commission on Human Rights, *Summary of Record of the 44th Meeting*, March 3, 1995, UN Doc. E/CN.4/1995/SR.44, paragraph 63-70. 1995 was the only year that the no-action motion failed. However, the resolution was defeated by one vote, when Russia, which had voted against the no-action motion, failed to support the resolution. The no-action motion is a political maneuver that prevents the Commission from considering the resolution.

⁶¹⁴ “China Proposes Reforms in the UN Human Rights Body,” *Xinhua*, July 22, 1997, and Kent, *China, the United Nations and Human Rights*, 75.

⁶¹⁵ See UN Commission on Human Rights, *Summary Record of the 56th Meeting*, December 13, 2000, UN Doc. E/CN.4/2000/SR.56, paragraph 74; UN Commission on Human Rights, *Summary Record of the 50th Meeting*, December 9, 2005, UN Doc. E/CN.4/2004/SR.50, paragraph 35; UN Commission on Human Rights, *Summary Record of the 20th Meeting*, April 8, 2005, UN Doc. E/CN.4/2005/SR. 20, paragraph 17; and UN Commission on Human Rights, *Summary Record of the 21st Meeting*, April 1, 2004, UN Doc. E/CN.4/2004/SR.21, paragraph 56.

developing countries.⁶¹⁶ In 1997, a group of 19 countries that eventually came together as the “Like-Minded Group” (LMG) presented reforms to give states greater control over the independent experts serving within the UN human rights system as part of the special procedures and privileging dialogue and cooperation over confrontation.⁶¹⁷ The group, which included Algeria, Bangladesh, Belarus, Bhutan, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, Vietnam, and Zimbabwe, coalesced around opposing country-specific human rights approaches, challenging the universality of human rights, emphasizing a right to development and stressing state sovereignty.⁶¹⁸ Although the PRC was not the principal or permanent leader of the group, LMG participants and observers described China as one of the core countries while also noting that this group emerged in part because these human rights views were widely shared among developing countries.⁶¹⁹ A participant described the group as “NAM countries active on human rights”⁶²⁰ while another participant described the LMG as

⁶¹⁶ Chinese delegate Wu Jianmin at the UN Human Rights Commission in April 1996, quoted in *The New York Times*, April 24, 1996, p. A12. Kent also noted that the PRC rallied the developing world with the refrain that “You could be next.” Kent, *China, the United Nations and Human Rights*, 71.

⁶¹⁷ Alston, “Reconceiving the UN Human Rights Regime,” 204-205. For examples of the group’s proposals, see UN Commission on Human Rights, “Rationalization of the Work of the Special Procedures System,” April 10, 1997, UN Doc. E/CN.4/1997/L.86, and UN Commission on Human Rights, “Rationalization of the Work of the Commission,” March 9, 1999, UN Doc. E/CN.4/1999/120. LMG views also detailed by Interviewee #14 Latin American diplomat, June 1, 2011, Geneva, Switzerland; Interviewee #6 Western European diplomat, May 26, 2011, Geneva, Switzerland; Interviewee #7 human rights NGO representative/human rights scholar, May 26, 2011, Geneva, Switzerland; and Interviewee #4 Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland.

⁶¹⁸ Alston, “Reconceiving the UN Human Rights Regime,” 204.

⁶¹⁹ Comments on the PRC role based on statements from Interviewee # 3, former Middle Eastern diplomat, May 25, 2011, Geneva, Switzerland and Interviewee #4, Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland. Interviewee #3 noted that Egypt was initiated the group and played a strong leadership role, even describing Egyptian diplomats as the “chief” of the LMG. Over time, other countries also helped lead, and the leadership, and even the membership of the LMG, was not fixed. However, Interviewee #3 also noted that the key countries playing a leadership role included Egypt, Pakistan, China and Malaysia.

⁶²⁰ Interviewee # 4 Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland.

representing the views of developing countries.⁶²¹ Similar positions were put forward by the Asia group, whose membership partially overlapped with the Like-Minded Group.⁶²²

Beyond coalescing NAM support, Beijing successfully used other tactics to fend off scrutiny. Chinese diplomats' arguments for "dialogue and cooperation" over "confrontation" divided the primarily Western governments that had previously supported resolutions. China also used counter-attacks and counter-arguments and the use of economic incentives and leverage, such as market access, investment opportunities and major purchases, to ward off human rights condemnation.⁶²³ As China's economy continued to experience exponential growth, this leverage increased. Human rights pressure, particularly from Western European countries, also began to recede as China showed an apparent willingness to make commitments, such as signing the International Covenant on Civil and Political Rights in 1998 and ratifying the International Covenant on Economic, Social and Cultural Rights in 2001.⁶²⁴ Such steps and other selective concessions seemed to convince some of these countries of the merits of 'quiet diplomacy.' Beijing further weakened western resolve when it offered to engage in bilateral human rights dialogues in exchange for agreement to abandon UNCHR resolutions.⁶²⁵

Due in part to the success of Beijing's strategies there was a distinct easing of human rights attention on China. France's refusal to co-sponsor a resolution in 1996

⁶²¹ Interviewee #3 former Middle Eastern diplomat, May 25, 2011, Geneva, Switzerland.

⁶²² Alston, "Reconceiving the UN Human Rights Regime," 216.

⁶²³ See Foot, *Rights Beyond Borders*, 204-205.

⁶²⁴ China signed the International Covenant on Civil and Political Rights on October 5, 1998, but still has not ratified it.

⁶²⁵ Philip Baker, "Human Rights, Europe and the People's Republic of China," *The China Quarterly* 169 (March 2002): 57-59.

marked the end of a unified European position on UNCHR resolutions on China.⁶²⁶ Further, after the September 11, 2001 terrorist attack, the U.S., consumed with new strategic priorities, failed to consistently sponsor resolutions on China. When it did, few other countries joined in support. Beijing perceived its efforts as successful to the extent that it was comfortable with the status quo and less interested in reform when discussions began in 2004 to replace the Commission. Although China continued to complain about the use of country-specific resolutions, PRC diplomats had “mastered the art of human rights diplomacy within the existing UN structure” and they “had little difficulty in mustering the votes to pass no-action motions to thwart resolutions on its human rights record.”⁶²⁷

By the time UN member states began to consider the creation of the Human Rights Council, China had largely succeeded in deflecting criticism of its record in the UNCHR. As a UN official put it, China was “satisfied with the status quo” because the Commission was no longer doing it damage.⁶²⁸ Despite its lukewarm attitude toward reform, when the HRC reform process began Beijing had at its disposal a number of strategies that it had developed and used successfully in the Commission. Further, its experiences in the Commission shaped its posture and positions over the proposed Council.

⁶²⁶ Ibid., 55-56.

⁶²⁷ The Dui Hua Foundation, “The Commission on Human Rights: Another Round in 2006?” *Dialogue* 21 (Fall 2005): 1-3. For PRC positions, see for example, United Nations, “Commission on Human Rights Opens Sixty-First Session,” press release, March 14, 2005, UN Doc. HR/CN/1107, www.un.org/News/Press/docs/2005/hrcn1107.doc.htm.

⁶²⁸ Interviewee #29 UN official, June 29, 2011, New York, United States.

China and the creation of the UN Human Rights Council

Beijing's conduct throughout the HRC negotiations illustrates the extent to which it had become a participatory and skilled actor in the regime. Unlike its behavior in the early 1980s during the CAT negotiations, the PRC participated in the HRC negotiations in a more consequential manner and had clearly defined positions on the proposed Council. The PRC also showed that it was willing to accept some aspects of the regime, while resisting others. In this sense, it acted as a constrainer of the regime. Substantively, Beijing's positions during the early phase of the negotiations, prior to the passage of the GA resolution that created the Council, included:

- opposing membership criteria and election by two-thirds majority;⁶²⁹
- resisting upgrading the organizational status of the Council;⁶³⁰
- calling for a larger Council and altering the geographic distribution of seats to give African and Asian states greater representation;⁶³¹ and
- eliminating country-specific resolutions.⁶³²

⁶²⁹ Interviewee #29, UN official, June 29, 2011, New York, United States. Interviewee # 41 noted that "China was in favor of near universal membership" and didn't want a high bar for membership. On membership criteria, Interviewee #41, Western European diplomat noted that China "had very strong" views against human rights criteria for membership and election by a two-thirds majority.

Interviewee #41, Western European diplomat, July 23, 2012.

⁶³⁰ Interviewee #1, former North American official, October 27, 2010, Washington DC, United States. Among the proposed changes that were discussed was upgrading the Human Rights Council to a principal UN body on par with the UN Security Council.

⁶³¹ Interviewee #16, Western European diplomat, June 13, 2011, Oslo, Norway. Point on PRC preference for larger body also noted by Interviewee #1, former North American official, October 27, 2010, Washington DC, United States. Beijing had long complained of the need for redistribution of seats along geographic lines. See UN Commission on Human Rights, 55th Session, *Summary Record of the 33rd Meeting*, April 16, 1996, UN Doc. E/CN.4/1996/SR.33, paragraph 4. Despite the PRC's preference for more expansive human rights bodies, the PRC did not influence the High Level Panel's decision to include the recommendation for a universal human rights body. Lord David Hannay (member of the UN *High Level Panel on Threats, Challenges and Change*) interview by author, November 8, 2011, London, United Kingdom; Sebastian von Einsiedel (staff member UN High Level Panel on Threats, Challenges and Change), e-mail correspondence with author, September 19, 2011; and Tarun Chabra (staff member UN *High Level Panel on Threats, Challenges and Change*), interview by telephone, September 10, 2011. Einsiedel identified Robert Badinter, one of the members of the High Level Panel, as offering the idea for a universal human rights body.

As the process continued and the Council became a reality through a GA resolution, the discussions involved more specific issues on the Council's institutional characteristics.

China's positions during this period included:

- challenging the system of special procedures, especially questioning country-specific mandates;
- supporting a code of conduct for the special procedures that would curtail the independence of these experts and seeking greater state control over the mandate holders serving within the special procedures system;⁶³²
- restricting the responsibilities of the Sub-Commission to serving only as an advisory body;⁶³⁴

⁶³² The above Chinese position taken from Interviewee #41, Western European diplomat, July 23, 2012, New York, United States; Interviewee #29, UN official, June 29, 2011, New York, United States; Interviewee #13 Western European diplomat, May 31, 2011, Geneva, Switzerland; and Interviewee #25, Western European diplomat, June 28, 2011, New York, United States. PRC positions during this time also from Sha Zukang, "Statement by H.E. Ambassador Sha Zukang, on behalf of the Like Minded Group, at the Meeting Between the President of the General Assembly and the Commission on Human Rights," Permanent Mission of the PRC to the UN in Geneva, November 25, 2005, www.china-un.ch/eng/rqrd/thsm/t223170.htm; Amnesty International New York Office files, Notes on "HRC Negotiations: Morning Session," February 6, 2006, in author's possession; Amnesty International New York Office files, "Positions Taken by Countries Speaking in General Assembly Debates Since 11 October 2005 on the Creation of the Human Rights Council After Adoption of the September Outcome Document by the 2005 World Summit," updated November 15, 2005, in author's possession; and Amnesty International New York Office files, Notes on "HRC Negotiations: Morning Session," January 11, 2006, in author's possession.

⁶³³ The PRC's above positions on the special procedures taken from Council Monitor, International Service for Human Rights, "Human Rights Council Working Group on Review of Mechanisms and Mandates, 13-24 November 2006, Report on the Review of Special Procedures," *Human Rights Monitor Series*, November 13-24, 2006, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/wg_review_sps.pdf, and "PRC statement 5 December 2006," UN Human Rights Council Extranet,

<http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/3rdSession/OralStatements/051206/Tab15/Tab2/3.China.pdf>. China and other countries argued that member states should elect special procedures mandate holders, that the terms of reference for visits should be elaborated by states, and mandate holders should be reviewed by HRC member states. The HRC extranet can be accessed via:

<http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCRegistration.aspx>. Some UN reporting on the reform process does not identify member states specifically but only reports on general positions. Thus, the International Service for Human Rights (ISHR) reports on the institution-building negotiations complement the official UN documents because it clearly identifies state positions. ISHR representatives attended the working group meetings and published regular updates on the negotiations and the various state positions.

⁶³⁴ "Non-Paper on Review of All Human Rights Machineries, submitted by China on behalf of the Like-Minded Group, September 15, 2006," UN Human Rights Council Extranet, September 15, 2006, <http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/WG->

- limiting the complaint procedure to cases of “consistent pattern[s] of gross and reliably attested violations of human rights and fundamental freedoms;”⁶³⁵
- asserting that the UPR process should not result in binding follow-up action and that NGO participation should be limited;⁶³⁶
- opposing country-specific approaches, including resolutions, special procedures, and special sessions;⁶³⁷ and

[ReviewMechanisms/OralStatements/150906/China\(LMG\).pdf](http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/WG-ReviewMechanisms/OralStatements/150906/China(LMG).pdf). Beijing may have been particularly concerned about the expert body, which replaced the Sub-Commission, because the Sub-Commission passed resolutions on China in 1989 and 1991. A Non-Paper is a negotiating text circulated informally among delegations for discussion without committing the originating delegation's country to the contents. PRC position also from “Chinese Government Statement, September 7-8, 2006,” UN Human Rights Council, <http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/WG-ReviewMechanisms/OralStatements/07-080906/China.pdf>; “Speech by Chinese Delegation on the Preliminary Conclusion of the new Expert Advisory Body Discussion,” UN Human Rights Council Extranet, December 7, 2006,

<http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/3rdSession/OralStatement/s/071206/Tab15/Tab2/15.China.pdf>; and Council Monitor, International Service for Human Rights, “Human Rights Council 3rd Session Daily Update,” *Human Rights Monitor Series*, December 1, 2006, http://www.ishr.ch/hrm/council/dailyupdates/session_003/1_December_06.pdf.

⁶³⁵ “Non-Paper on Review of All Human Rights Machinerys, China submitted on behalf of the Like-Minded Group,” UN Human Rights Council Extranet, September 15, 2006, [http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/WG-ReviewMechanisms/OralStatements/150906/China\(LMG\).pdf](http://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/WG-ReviewMechanisms/OralStatements/150906/China(LMG).pdf).

⁶³⁶ PRC efforts to limit NGO participation were noted by Interviewee #34 Asia Pacific, September 28, 2011, Canberra, Australia. Council Monitor, International Service for Human Rights, “Human Rights Council Working Group to Develop the Modalities of the Universal Periodic Review 3rd Session, 11-24 April 2007,” *Human Rights Monitor Series*, April 11 and 24, 2007, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/wg_upr_03.pdf. Adoption of any UPR follow-up outcomes was made contingent on the agreement of the state in question and NGOs were barred from participating in the interactive dialogue that is part of the UPR discussions and examination, although information from NGOs is used as part of the review. However, NGOs are to participate in other aspects of the Council’s work. See Abram, *Building the New Human Rights Council*, 14.

⁶³⁷ China used the opportunity to raise its grievances against “politicization, double standards, and selectivity” and asserted that country-specific resolutions should either be abolished or limited only to “gross and systemic violations.” Sha Zukang, “Statement by H.E. Ambassador Sha Zukang, on behalf of the Like Minded Group, at the Meeting Between the President of the General Assembly and the Commission on Human Rights,” Permanent Mission of the PRC to the UN in Geneva, November 25, 2005, www.china-un.ch/eng/rqrd/thsm/t223170.htm. China was also intent on eliminating country-specific mandates and limiting their use, calling for specific criteria before a mandate could be established and insisted on state consent. See Council Monitor, International Service for Human Rights, “Working Group on Review of Mechanisms and Mandates, 13-24 November 2006,” *Human Rights Monitor Series*, November 13-24, 2006, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/wg_review_sps.pdf; Council Monitor, International Service for Human Rights, “Working Group on Review of Mechanisms and Mandates, 5-16 February 2007,” *Human Rights Monitor Series*, February 5-16, 2007, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/wg_review_sps_february_2007.pdf; and Council Monitor, International Service for Human Rights, “Working Group on Review of Mechanisms 10-27 April 2007,”

- reiterating that the Council should be guided by “dialogue and cooperation.”⁶³⁸

The thrust of Beijing’s positions sought to prevent the Council from emerging as a more robust entity than its predecessor. As a former U.S. government official remarked, China may have “recognized that there was a substantial opportunity to de-fang the Commission, making the Council a less intrusive entity.”⁶³⁹ Overall, Beijing appeared to view the negotiations as an opportunity to introduce changes to limit the Council’s ability to focus on its record. It also seemed to regard it as a potential setback were the Council to emerge as a stronger, more effective entity than the Commission.

While the PRC’s positions remained generally consistent throughout the reform process, among the most noticeable patterns in PRC behavior was its tailored strategy during each phase of the negotiations and a clear evolution in its tactics and posture as the discussions continued. Because UNCHR human rights attention on China had receded, when proposals to replace the Commission with a Human Rights Council emerged in late 2004 the PRC was initially wary and ambivalent, even expressing a degree of reluctance and subtle resistance.⁶⁴⁰ As a UN official observed, Beijing’s initial response to the idea of

Human Rights Monitor Series, April 10-27, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/wg_sps_03_advance_copy.pdf. Beijing’s position on special sessions also based on Amnesty International New York Office files, Notes on “HRC Negotiations: Morning Session, February 6, 2006,” in author’s possession. Other positions that reflected a desire to avoid criticism or drawing attention to its human rights record included its support for a more structured and less flexible agenda for the Council, which many participants suspected was intended to limit opportunities to raise country-specific issues. Council Monitor, International Service for Human Rights, “Human Rights Council Working Group on Agenda, Programme of Work, Working Methods and Rules of Procedure, Highlights Monday 23 April 2007,” *Human Rights Monitor Series*, April 23, 2007, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/highlights/wgagenda_highlights_23_april_07.pdf.

⁶³⁸ Interviewee #16, Western European diplomat noted that “dialogue and cooperation” were important to China and other non-western developing countries. Interviewee #16, Western European diplomat, June 13, 2011, Oslo, Norway. For PRC positions, see also Abraham, *Building the New Human Rights Council*.

⁶³⁹ Interviewee #1, former U.S. government official, October 27, 2010, Washington DC, United States; Interviewee #41, July 23 2012, New York, United States; and Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia.

⁶⁴⁰ According to UN officials, by June 2005, four months before the World Summit where it was expected that the vision for the Council would be unveiled, China was the only major nation that had not yet given its

a new human rights body was “not positive.”⁶⁴¹ Reflecting this tepid attitude, in Geneva in April 2005, Ambassador Sha asserted on behalf of the Like-Minded Group that the proposed Council did not stem from “consultations among member states at the Commission on Human Rights, the ECOSOC and the General Assembly. Such a proposal requires thorough understanding before it can be considered seriously.”⁶⁴² In June 2005, when UNCHR members met informally to discuss the *In Larger Freedom* report, China again stated that “it was not yet convinced of the need to replace the Commission.”⁶⁴³ The PRC asserted that the Commission should “not be dismissed lightly” and called for further “earnest discussions” before proceeding with wholesale reform.⁶⁴⁴ A former U.S. government official suggested that Beijing’s lukewarm response stemmed from a concern that the Council “might become something more intrusive than the Commission,” as well as its opposition to certain proposals under discussion, such as membership criteria, competitive elections, and upgrading the Council to a principal UN organ.⁶⁴⁵ Yet, as China saw support for the Council growing, it moved from a wary attitude to a more engaged posture, and it became willing to discuss specific issues. According to a UN

support for human rights reform. See Tom Wright, “Swiss take lead role in seeking UN rights reform,” *The New York Times*, June 30, 2005. Amnesty International’s assessment also suggests that at this point Beijing was not supportive of the Council. A June 2005 Amnesty International document described China as being “on the fence” on human rights reform. Amnesty International New York Office files, Memo on “Group Specific Views,” June 10, 2005, in author’s possession.

⁶⁴¹ Interviewee #29, UN official, June 29, 2011, New York, United States.

⁶⁴² Sha Zukang, “Statement by H.E. Ambassador Sha Zukang, on behalf of the LMG, at the Informal Meeting on Reform of the UN Human Rights Machinery,” Permanent Mission of the PRC to the UN in Geneva, April 12, 2005, www.china-un.ch/eng/rqrd/thsm/t191364.htm.

⁶⁴³ UN Commission on Human Rights, “Commission on Human Rights Holds Informal Meeting on Secretary-General’s Reform Proposals,” news release, June 20, 2005, [http://www.unog.ch/unog/website/news_media_archive.nsf/\(httpNewsByYear_en\)/80257631003154D9C12570F1004B621A?OpenDocument](http://www.unog.ch/unog/website/news_media_archive.nsf/(httpNewsByYear_en)/80257631003154D9C12570F1004B621A?OpenDocument).

⁶⁴⁴ Amnesty International New York Office files, “Cluster III and IV: Discussion of SG’s report by member states: Relevant Issues Summary,” April 2005, in author’s possession and Amnesty International New York Office, “Human Rights Council Matrix and Amnesty International New York Office files, Memo on “Group Specific Views,” June 10, 2005, in author’s possession. This document suggests that early in the process, during the deliberations over the World Summit Outcome Document, China along with Russia opposed forcing a decision on the Human Rights Council at the September 2005 World Summit.

⁶⁴⁵ Interviewee #1, former U.S. government official, October 28, 2011, Washington DC, United States.

official, “once China understood that the Commission was undermined and needed to be reformed, they were not going to stand in the way... and began discussing specifics.”⁶⁴⁶

The PRC’s receptivity to the Council grew as broader support for reform grew and some of its views were accepted, particularly those positions that already enjoyed broader support from developing countries, such as opposing membership criteria. Once the Council became a reality and member states engaged in IB negotiations to determine remaining issues, China endorsed the idea of the Council and became still more engaged, participating actively and offering specific positions.⁶⁴⁷

Yet, Beijing endeavored to maintain a modest, almost inconspicuous profile. A number of diplomats and human rights NGO representatives concurred that Beijing preferred to keep a low-profile.⁶⁴⁸ Participants described China as rarely taking the lead on issues,⁶⁴⁹ as “not difficult,”⁶⁵⁰ “not the most vocal,”⁶⁵¹ “not a ringleader,”⁶⁵² and “usually

⁶⁴⁶ Interviewee #29, UN official, June 29, 2011, New York, United States. Interviewee #12, Western European diplomat noted that as support grew, China “got on board.” Interviewee #12, Western European diplomat, May 31, 2011, Bern, Switzerland.

⁶⁴⁷ Interviewee #25, Western European diplomat, June 28, 2011, New York, United States; Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland; and Interviewee #22, North American diplomat, June 27, 2011, Washington DC, United States described China as active and engaged.

⁶⁴⁸ Interviewee # 2 North American diplomat, May 24, 2011, Geneva, Switzerland; Interviewee #15, South Asian diplomat, June 3, 2011, Geneva, Switzerland; Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland; Interviewee #11, human rights NGO representative, May 31, 2011, Geneva, Switzerland; and Interviewee #19, North American diplomat, June 17, 2011, Washington DC, United States. Interviewee #19 described the Chinese delegation as “rarely putting their heads above the parapet to announce a strong position on human rights.”

⁶⁴⁹ Interviewee #29, UN official, June 29, 2011, New York, United States and Interviewee #1, former U.S. government official, October 27, 2011, Washington DC, United States. Both interview subjects characterized the PRC during the deliberations prior to the GA Resolution as not shaping the terms of the debate and keeping a low-profile. Interviewee #13, Western diplomat noted that China was “not out in front” during early informal workshops to discuss the proposed Council. Interviewee #13, Western European diplomat, May 31, 2011, Bern, Switzerland.

⁶⁵⁰ Interviewee #5, Western European diplomat, October 2, 2010, Stockholm, Sweden.

⁶⁵¹ Interviewee #16, Western European diplomat, June 13, 2011, Oslo, Norway.

⁶⁵² Interviewee #19, North American diplomat, June 17, 2011, Washington DC, United States. Interviewee #29 UN official noted that throughout the process the PRC “did not lead the charge.” Interviewee #29, UN official, June 29, 2011, New York, United States.

holding its fire.”⁶⁵³ Former Pakistani Ambassador to the UN, Munir Akram, described China as playing “a kind of clever game” of not “put[ting] their chin out” except on key issues.⁶⁵⁴ Thus, despite its early ambivalence, the PRC was generally described as playing a modest role and refraining from strongly asserting its views.⁶⁵⁵ A Western European diplomat noted that “even when China is trying to kill something, they try to do so in a smooth and diplomatic way.”⁶⁵⁶ Even after the Council’s establishment, China appeared to continue this modest role.⁶⁵⁷ For example, during the Geneva portion of the five-year review of the Council, China was described as having “kept quiet,” as having held “its cards to its chest”⁶⁵⁸ and as having avoided “a front and center role.”⁶⁵⁹

It achieved this in part by consistently employing a rather predictable strategy of conserving its energies by focusing on issues that were either of high importance to it or where its intervention would likely be consequential. As a UN official noted, China will not speak up “unless they really dislike something.”⁶⁶⁰ Another UN official noted that during the World Summit Outcome document negotiations, the PRC limited its opposition

⁶⁵³ Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia.

⁶⁵⁴ Munir Akram, (former Pakistani Ambassador to the UN) telephone interview material in private possession of author, January 16, 2012, Oxford to Geneva.

⁶⁵⁵ Interviewee # 16, Western European diplomat, June 13, 2011, Oslo, Norway and Interviewee #19, North American diplomat, June 17, 2011, Washington DC, United States. As discussed below, this perception was partly due to Beijing’s behavior of asserting its positions in smaller, more private meetings.

⁶⁵⁶ Interviewee #26, Western European diplomat, June 28, 2011, New York, United States.

⁶⁵⁷ There are indications that China may be emerging as a more prominent voice in the Human Rights Council. During the 18th regular session of the HRC, held in September 2011, China delivered a high-profile statement on behalf of 32 states. This statement emphasized the duties of governments to maintain public security, public order, and social stability and affirmed sovereignty and non-interference. “Joint Statement at the Panel on the Promotion and Protection of Human Rights in the Context of Peaceful Protests,” UN Human Rights Council Extranet, September 13, 2011, <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/18thSession/OralStatements/3.China-5.pdf>. The statement was signed onto by Algeria, Bangladesh, Bahrain, Belarus, Bolivia, Congo, Cuba, North Korea, Djibouti, Ecuador, Iran, Kuwait, Laos, Malaysia, Mauritania, Myanmar, Namibia, Nicaragua, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Tajikistan, Uganda, Venezuela, Vietnam, Yemen, and Zimbabwe. Similar point made by Sceats and Breslin, *China and the International Human Rights System*, 29-31.

⁶⁵⁸ Interviewee #4, Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland.

⁶⁵⁹ Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland.

⁶⁶⁰ Einsiedel, e-mail correspondence.

to aspects of the proposal that it considered most unacceptable, which included membership criteria, election by a two-thirds majority, and upgrading the Council's organizational status.⁶⁶¹ Similarly, in the IB working groups, convened from June 2006-June 2007, Chinese diplomats intervened selectively on key issues, such as questioning the special procedures and seeking to place restrictions on these experts; seeking greater state influence over the Universal Periodic Review by focusing the mechanism on state provided reporting, eliminating binding follow-up action and restricting NGO participation; and challenging country-specific approaches, including resolutions, special procedures, and special sessions.⁶⁶² Although China was supportive of eliminating the rapporteurs for Belarus and Cuba, it did not weigh in heavily on this issue because other countries had taken the lead on this and appeared to have already secured this outcome.⁶⁶³ However, it backed positions to give states greater control over the special procedures, including that states should elect mandate holders, that the terms of reference for visits should be elaborated by states, and that mandate holders should be reviewed by HRC member states. Yet, a western European diplomat suggested that Chinese delegates had refrained from taking a more outspoken position on the expert advice mechanism because this issue was "going their way."⁶⁶⁴ Another Western European diplomat concluded that "China was willing to be vocal on issues that were redlines, but on everything else it

⁶⁶¹ Interviewee #29, UN official, June 29, 2011, New York, United States. Similar comments from Interviewee #1 former U.S. government official, October 28, 2010, Washington, DC, United States and Interviewee #41, Western European diplomat, July 23, 2012, New York, United States.

⁶⁶² Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland, and Interviewee #27, OHCHR official, June 29, 2011, New York, United States.

⁶⁶³ A couple of interview subjects noted that other countries had secured this early victory and that the PRC did not play a key role. Luis Alfonso de Alba, (former Mexican Ambassador to the UN and first President of the Human Rights Council), interview by author by skype, August 9, 2012, and Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland.

⁶⁶⁴ Interviewee #6, Western European diplomat, May 26, 2011 Geneva, Switzerland.

preferred to sit back and support other countries taking more prominent positions.”⁶⁶⁵

Beijing could afford to do this because often its involvement was not pivotal. The PRC appeared to intervene when it calculated that the potential benefits of influencing the outcome outweighed the potential costs of damaging its image by taking a provocative stance.

In addition, China varied the tone and substance of its statements based on venue, audience, and public visibility.⁶⁶⁶ Beijing confined its stronger, more direct positions to smaller, private inter-state negotiations while offering softer, cautiously worded, anodyne statements in larger, public venues with a broader audience, particularly when non-state actors, such as NGOs, were included.⁶⁶⁷ As John Bolton, former U.S. Ambassador to the UN, noted, the PRC did not “like to take a controversial public position,” and preferred to express more insistent positions privately.⁶⁶⁸ When the World Summit Outcome Document and the UN General Assembly Resolution were under consideration, Beijing seemed particularly intent on not opposing reform publicly and only expressed its skepticism about replacing the Commission in meetings confined to a restricted audience, especially discussions that did not include a record of the proceedings.⁶⁶⁹ A former U.S.

⁶⁶⁵ Interviewee #41, Western European diplomat, July 23, 2012, New York, United States. For similar point, see Kim, “China and the United Nations,” 63-64.

⁶⁶⁶ Other scholars noted China’s more cooperative behavior in larger bodies. See Johnston and Evans, “China’s Engagement with Multilateral Security Institutions,” 252-253, and Kim, “China and the United Nations,” 81.

⁶⁶⁷ As Interviewee #28, former human rights NGO representative noted, it is typical of China to offer resistance privately while releasing public statements that offer general support. Interviewee #28, August 23, 2011, by e-mail correspondence with author.

⁶⁶⁸ John Bolton, (former U.S. Ambassador to the UN), interview by author, October 14, 2011, Washington, DC, United States. Ambassador Bolton noted Beijing’s varied behavior during the GA resolution negotiations and suggested that the PRC preferred to “water down the resolution in private” and that the most promising elements of the Council were “stripped away behind the scenes.” China was joined by Russia and Pakistan at this phase.

⁶⁶⁹ Interviewee #12, Western European Diplomat, observed that China is “careful to have less documentation” of its positions to avoid being on record as opposing the Council. Interviewee #12, Western

government official recalled China's "vociferous" arguments against upgrading the status of the Council in smaller, private meetings, while Chinese public statements were bland, even offering general support for human rights reform.⁶⁷⁰ As the High Level Panel and the Secretary-General's ideas for a new human rights institution were being considered, in consultations involving only a limited number of participants and the UN Secretariat, Beijing expressed misgivings about replacing the Commission. Yet, its comments in larger bodies, such as the General Assembly were general and platitudinous.⁶⁷¹

Working with other-like minded countries and relying on them to take a more controversial position enabled Beijing to maintain a low-profile and foster a more benign image. As a Western European diplomat put it, China let others "carry the water."⁶⁷² An Asia Pacific diplomat pointed out that instead of "fighting on the front line," China's delegates preferred to be seen as "part of the pack" and "were supportive of others leading the charge."⁶⁷³ The PRC was successful in using this tactic because a number of these countries were willing to assume more prominent roles by offering more vociferous statements.⁶⁷⁴ A Western European diplomat noted that China was able to utilize this tactic because it often did not "have to be against something" as a number of other

European diplomat, May 31, 2011, Bern, Switzerland. Bolton similarly noted that "evidence of the PRC's role in the public record is hard to come by." Bolton, interview.

⁶⁷⁰ Interviewee #1, former U.S. government official, October 28, 2010, Washington DC, United States.

⁶⁷¹ PRC behavior in smaller venues taken from Interviewee #29 UN official, June 29, 2011, New York, United States. For the PRC's General Assembly statement, see Wang Guangya, "Statement by Ambassador Wang Guangya on the Report of the High-Level Panel," Permanent Mission of the PRC to the UN in New York, January 27, 2005, www.china-un.org/eng/xw/t181639.htm.

⁶⁷² Interviewee #41, Western European diplomat, July 23, 2012, New York, United States. Sceats and Breslin noted that this can be a source of frustration for its allies. Sceats and Breslin, *China and the International Human Rights System*, 16.

⁶⁷³ Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia.

⁶⁷⁴ Interviewee #41, Western European diplomat, noted Cuba was particularly vocal and strident. Interviewee #41, Western European diplomat, July 23, 2012, New York, United States. Interviewee #34 noted that often more prominent countries came from the Organization of the Islamic Conference. Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia. India, Egypt and Pakistan were identified by Ambassador Akram as more vocal states. Akram, interview.

countries were already taking similar positions.⁶⁷⁵ Similarly, as a South Asian diplomat put it, “China easily finds other countries with similar views.”⁶⁷⁶ Supporting this assertion, Sceats and Breslin analyzed PRC voting in the HRC and concluded that China’s voting coincidence with the majority of African and Asian states is more than 80%.⁶⁷⁷ Thus, in some cases despite the intensity of PRC concern, it was often unnecessary for it to play a direct or energetic role because its backing was not pivotal.

In keeping with its tendency to align with other countries holding similar positions, China particularly made common cause with non-western, developing countries, such as Cuba and Pakistan.⁶⁷⁸ According to a Southeast Asian diplomat, even prior to the HRC negotiations China “consistently supported developing countries, especially on human

⁶⁷⁵ Interviewee #13, Western European diplomat, May 31, 2011, Bern, Switzerland. Similar comment from Interviewee #34, Asia Pacific diplomat, that China does not have to influence other countries as there is already a “meeting of the minds.” Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia.

⁶⁷⁶ Interviewee #8, South Asian diplomat, May 27, 2011, Geneva, Switzerland. Interviewee #10, South Asian diplomat and Interviewee #4, Southeast Asian diplomat offered similar comments, noting that their countries have similar positions. Interviewee #10, South Asian diplomat, May 31, 2011, Geneva, Switzerland and Interviewee #4 Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland. Former Pakistani Ambassador to the UN in New York outlined Pakistan’s positions during the early HRC discussions, which were very similar to PRC’s. Akram, interview. Also Pakistani statement during the negotiations contains positions very similar to China’s. Munir Akram, “Statement by Ambassador Munir Akram, Permanent Representative of Pakistan to the United Nations at the Human Rights negotiations on the Establishment of Human Rights Council, New York—18 October 2005,” Human Rights Council, October 18, 2005, http://www.pakun.org/statements/Plenary_of_General_Assembly/2005/10182005-01.pdf.

⁶⁷⁷ Sceats and Breslin, *China and the International Human Rights System*, 21. Sceats and Breslin further find that China’s voting coincidence is over 90% with Cuba, Egypt, Russia, Sri Lanka, Mali, South Africa, Azerbaijan, Pakistan, Nicaragua, Algeria, Morocco, Tunisia, Indonesia, and Bolivia. China continued to benefit from cooperation with countries holding similar human rights views even after the Council was established. Prior to its February 2008 Universal Periodic Review examination, Beijing solicited positive comments and recommendations and stacked the speaker list with delegations and NGOs from friendly countries. Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland, and Interviewee #7, human rights NGO representative/human rights scholar, May 26, 2011, Geneva, Switzerland. In this spirit, Cuba offered a recommendation that amounted to praise by urging the PRC “...in strict compliance of law...avoid the impunity for people who are qualifying themselves as human rights defenders with the objective of attacking the interests of the state and the people of China.” UN General Assembly, *Human Rights Council, Universal Periodic Review: Report of the Working Group on the Universal Periodic Review, China*, March 3, 2009, A/HRC/11/25, paragraph 34.

⁶⁷⁸ Interviewee #41, Western European diplomat particularly noted that China often aligned with Cuba, Pakistan and Russia. Interviewee #41 Western European diplomat, July 23, 2012, New York, United States.

rights issues.”⁶⁷⁹ Adopting positions sympathetic to the developing world also enabled the PRC to frame its arguments in terms of representing the views of non-western countries, rather than purely self-interest. For example, in March 2005, the PRC in its capacity as spokesperson for the Like-Minded Group complained that the High-Level Panel Report failed to address developing countries’ views, especially a greater focus on economic, social and cultural rights, a preference for dialogue rather than confrontation, and the misuse and “proliferation of country-specific resolutions.”⁶⁸⁰

The PRC’s criticism of country-specific special rapporteurs also seemed to be designed to appeal to the developing world countries. Beijing’s efforts did not go unnoticed. Once the IB package was adopted, Malaysia and Pakistan “expressed their thanks to China for its work on country mandates.”⁶⁸¹ Later, when China made a controversial proposal on country-specific resolutions, it framed this position as being “supported by the vast majority of developing countries and many members of the Council.”⁶⁸² The PRC has continued this behavior, and as Sceats and Breslin noted, “The Human Rights Council has been a key venue within which China seeks to demonstrate its membership of and solidarity with the developing world.”⁶⁸³ For example, in 2009, the

⁶⁷⁹ Interviewee #36, Southeast Asian diplomat, November 9, 2011, London, United Kingdom.

⁶⁸⁰ Sha Zukang, “Statement by H.E. Ambassador Sha Zukang, on behalf of the Like-Minded Group, at the 61st session of the Commission on Human Rights,” Permanent Mission of the PRC to the UN in Geneva, March 14, 2005, www.china-un.ch/eng/rqrd/thsm/t187353.htm. For similar sentiment see, Zhang Yishan, “Statement by Ambassador Zhang Yishan, Permanent Representative of China to the UN, after the adoption of the draft resolution on Human Rights Council,” Permanent Mission of the PRC to the UN in New York, March 15, 2006, www.china-un.org/eng/xw/t240623.htm.

⁶⁸¹ Council Monitor, International Service for Human Rights, “Report of the Conclusion of the 5th Session and the Organization Meeting of the Council,” *Human Rights Monitor Series*, June 12, 2007, http://olddoc.ishr.ch/hrm/council/dailyupdates/session_005/12_june_2007.pdf.

⁶⁸² Qin Gang, “Foreign Ministry Spokesman Qin Gang’s Regular Press Conference on 19 June 2007,” PRC Ministry of Foreign Affairs, June 19, 2007, www.fmprc.gov.cn/eng/xwjw/s2510/2511/t331911.htm, and Council Monitor, International Service for Human Rights, “Report of the Conclusion of the 5th Session and the Organization Meeting of the Council,” *Human Rights Monitor Series*, June 12, 2007.

⁶⁸³ Sceats and Breslin, *China and the International Human Rights System*, 21. Kinzelbach made a similar point. Kinzelbach, “Will China’s Rise Lead to a New Normative Order?” 312.

PRC explained its vote against a resolution on the human rights situation in North Korea by stating that “We are against using country specific human rights resolutions as a way to exert political pressure on developing countries.”⁶⁸⁴ This strategy may have been intended to help the PRC “shore up a reserve power base should [China] need to mobilize support again from these quarters to defeat censure by the West.”⁶⁸⁵

The PRC’s turn serving as spokesperson for the Like-Minded Group forced Beijing to take a slightly more visible role, while at the same time possibly giving it greater influence over the group’s statements. As mentioned previously, the PRC joined the Like-Minded Group, a coalition in the UNCHR that was active from the late 1990s until the establishment of the Council in 2006.⁶⁸⁶ PRC Ambassador Sha Zukang served as spokesperson for the 19-member LMG from 2004-2007, which coincided with the period of transition from the Commission to the Council.⁶⁸⁷ In this capacity, in October 2006, the PRC advocated for a number of issues important to developing countries, including offering a strongly-worded statement that opposed all country-mandates except for the rapporteur on Palestinian Territories.⁶⁸⁸ The PRC also supported other countries calling for a review of all mandates and Algeria’s proposal for a code of conduct for special

⁶⁸⁴ Zhang Dan, “Statement by Ms. Zhang Dan, Counselor of the Chinese Delegation, at the 3rd Committee of the 64th Session of the General Assembly on Explanation of Vote before the Vote on Draft Resolution,” Permanent Mission of the PRC to the UN, November 19, 2009, www.china-un.org/eng/chinaandun/socialhr/rqwt/t628146.htm.

⁶⁸⁵ Sceats and Breslin, *China and the International Human Rights System*, 22.

⁶⁸⁶ For background on the Like-Minded Group, see Alston, “Reconceiving the Human Rights Regime.”

⁶⁸⁷ Ambassador Sha Zukang’s biography specifically noted his role as “coordinator” of the LMG from 2004-2007, when he served as PRC Ambassador to the UN in Geneva. “The Biography of Sha Zukang Under-Secretary General for Economic and Social Affairs,” United Nations, www.un.org/News/dh/infocus/SMG.asp?smgID=121. As an example of PRC statements as LMG spokesperson, see United Nations, “Commission on Human Rights Opens Sixty-First Session,” press release, March 14, 2005, UN Doc. HR/CN/1107, www.un.org/News/Press/docs/2005/hrcn1107.doc.htm.

⁶⁸⁸ Council Monitor, International Service for Human Rights, “Human Rights Council Daily Update, 3 October 2006,” International Service for Human Rights, October 3, 2006, www.ishr.ch/council-monitor/daily-updates.

procedures, which human rights groups noted could be used to threaten the independence of these experts.⁶⁸⁹ The LMG's dissolution during the first year of the Council deprived China of the opportunity to ally with a group of similar-minded countries specifically focused on human rights issues.⁶⁹⁰ Despite having to take its turn as spokesperson from 2004-2007 and play a more prominent role, the PRC was still able to present itself as part of a group and also to use this role to further build goodwill with LMG countries.

China also often affiliated with groups such as the Non-Aligned Movement as well as with other sympathetic coalitions, which helped it divert attention. According to then-Egyptian Ambassador Maged Abdelaziz, China emphasized cooperation with developing countries and signed onto G-77 positions.⁶⁹¹ Likewise, in 2011, during the HRC's five-year review, when the action shifted to the GA, China joined the Cross Regional Group (CRG). This was comprised mainly of a subset of NAM countries, which succeeded in arguing that the review should be limited in scope and in opposing significant changes to the Council, such as any improvements in the Council's ability to address country-specific situations or the introduction of membership criteria.⁶⁹² Aside from China, this group

⁶⁸⁹ Ibid.

⁶⁹⁰ Interviewee #3 former Middle Eastern diplomat, May 25, 2011, Geneva, Switzerland noted that the dissolution of the LMG stemmed from their success in geographic redistribution. With the composition of the HRC including more developing countries, there was less of a need to organize since these countries were often able to control voting outcomes. At the time of the LMG's dissolution, China was taking its turn serving as spokesperson for the group. The PRC may have preferred that the group continue. A November 13, 2006 statement that the PRC initially drafted in the name of the LMG shows handwriting changing this to a PRC only statement. Thus, the PRC may have drafted the statement with the expectation that it would be delivered on behalf of the LMG, but found that LMG countries were less committed to continuing to make joint statements. Further, after this statement there were no further LMG statements during the remainder of the IB process or in the HRC's other dealings, and the LMG appears to have dissolved. Sha Zukang, "Draft Statement on Country Mandates by H.E. Ambassador Sha Zukang on behalf of the Like Minded Group," UN Human Rights Council Extranet, <http://www2.ohchr.org/english/bodies/hrcouncil/form.htm>.

⁶⁹¹ Maged Abdelaziz (former Egyptian Ambassador to the UN), interview by author by phone, August 9, 2012. Ambassador Abdelaziz noted that China generally held positions closer to those of developing countries as opposed to western countries.

⁶⁹² Interviewee #14, Latin American diplomat, June 1, 2011, Geneva, Switzerland; Interviewee #4, Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland; Interviewee #15, South Asian diplomat, June 3, 2011,

included Pakistan, Cuba, Venezuela, Bolivia, Nicaragua, Belarus, Syria, Iran, Vietnam, Algeria, Yemen, and Russia as the spokesperson.⁶⁹³ During the five-year review after joining this coalition, China adopted a lower national profile and simply signed onto the group's statements rather than offering its own contributions.⁶⁹⁴

Despite its preference to either adopt a low-profile role or join other countries, when it judged important interests to be at stake, the PRC was willing to take a controversial stance or threaten to withhold support in an effort to see its views incorporated, especially in private discussions restricted to select UN staff and other states. According to then-U.S. Ambassador John Bolton, China along with Russia and Pakistan objected to some components of the draft World Summit Outcome document “at the last minute, days before the September 14 deadline.”⁶⁹⁵ Among their complaints was the inclusion of the Human Rights Council in the document because the proposal included specifics with which they were uncomfortable, such as standards for membership. Only after their concerns were addressed did the PRC agree to the document. Yet because PRC representatives were cautious and expressed their objections in private meetings, involving

Geneva, Switzerland; and Interviewee #25, Western European diplomat, June 28, 2011, New York, United States. Because the PRC and these other countries had been successful in shaping the Council, they were satisfied with the status quo. See, for example, Liu Zhenmin, “Statement by H.E. Ambassador Liu Zhenmin, Deputy Permanent Representative of China to the United Nations, at the Third Committee of the 64th Session of the General Assembly on Report of Human Rights Council,” Permanent Mission of the PR to the UN, October 29, 2009,” www.china-un.org/eng/chinaandun/socialhr/rqwt/t623503.htm.

⁶⁹³ Interviewee #26, further noted that Russia had a more visible position because China “almost never takes the lead on human rights.” Interviewee #26, Western European diplomat, June 28, 2011, New York, United States.

⁶⁹⁴ Interviewee #24, Western European diplomat, noted that once the CRG emerged China was “quiet,” did not offer interventions in a national capacity, and adopted a lower profile. Interviewee #24, June 29, 2011, New York, United States. Similar comments made by Interviewee #26, Western European diplomat, June 28, 2011, New York, United States. According to Interviewee #31, Eastern European diplomat, Russia served as spokesperson, but was not the initial organizer. This interviewee noted that China also did not lead or initiate the group. Interviewee #31, Eastern European diplomat, June 30, 2011, New York, United States.

⁶⁹⁵ Bolton, interview. Similarly, James Traub noted that shortly before the World Summit, China joined Russia and Egypt in resisting language allowing the Council to censure a country for criticism even in the case of “gross and continuous violations.” Traub, *The Best Intentions*, 373 and 386-387.

a small number of participants, few realized that China was one of the last governments to agree to the Outcome Document.⁶⁹⁶ A Western European diplomat asserted that “China was willing to be vocal and take a strong stand on redlines but on everything else would rather sit back and support the others.”⁶⁹⁷

However, particularly when China acted alone, this strategy of adopting an insistent position or withholding its support was less effective. During the Institution-Building discussions, the PRC took a visible stance seeking to severely restrict use of country-specific resolutions. As a participant in the IB negotiations observed while the PRC in general tended not to “fight on the front lines,” at the last minute when it saw that its views had not been accepted through low-profile measures, it “suddenly became very active” in challenging country-specific resolutions.⁶⁹⁸ With the one-year deadline for passage of the IB package looming, China held up agreement by introducing and insisting on a controversial proposal requiring country-specific resolutions to be sponsored by one-third

⁶⁹⁶ Interviewee #29, UN official, noted that not all participants were aware that China was one of the last governments to agree to the Outcome Document. Interviewee #29, UN official, June 29, 2011, New York, United States. Interviewee #13, Western European diplomat, May 31, 2011, Bern, Switzerland noted that China was not out in front.

⁶⁹⁷ Interviewee #41, Western European diplomat, July 23, 2012, New York, United States.

⁶⁹⁸ Quote from Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia. Others described China’s behavior similarly. Interviewee #36, Southeast Asian diplomat, November 9, 2011, London, United Kingdom; Interviewee #27, UN OHCHR official, June 29, 2011, New York, United States; Interviewee #15, South Asian diplomat, June 3, 2011, Geneva, Switzerland; and Interviewee #10, South Asian diplomat, May 31, 2011, Geneva, Switzerland. Others noted that the PRC consistently called for an end to country-specific resolutions during the IB process but it was never clear how much of a redline this issue was. As the IB negotiations were drawing to a close and it saw that its views had not been accepted, it pressed its position. Interviewee #4, Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland. NGO documents show that the PRC raised this issue early in the IB process. See Amnesty International New York Office files, “Positions Taken by Countries Speaking in General Assembly Debates Since 11 October 2005 on the Creation of the Human Rights Council After Adoption of the September Outcome Document by the 2005 World Summit,” updated November 15, 2005, in author’s possession; and International Service for Human Rights, “The Institution-Building Process,” November 21, 2007, <http://www.ishr.ch/news/institution-building-process>.

of the Council and passed by a two-thirds vote.⁶⁹⁹ As an Asia Pacific diplomat noted the PRC attached great importance to “preventing scrutiny of its record” and that it “realized [the elimination of country-specific resolutions] was not going to happen without them.”⁷⁰⁰ China’s insistence resulted in the “final 30 minutes [of the final working group meeting] descending into division amid thinly disguised threats.”⁷⁰¹ Signifying the importance of this issue, China approached other delegations, especially developing countries, urging them to support this proposal.⁷⁰² While Iran, South Africa, Bangladesh, Russia, Algeria (on behalf of the Africa Group) and Cuba, initially made sympathetic comments, they refused to support China’s position.⁷⁰³ Yet, the PRC persisted even as the IB agreement moved from the smaller working group to consideration by the entire Council, where HRC President de Alba negotiated with Chinese diplomats until nearly midnight.⁷⁰⁴ Some sympathetic countries pointed out that the composition of the Council was such that if

⁶⁹⁹ After one year, the membership of the Council would change and the negotiations would have had to be restarted with new members.

⁷⁰⁰ Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia. According to a Western European diplomat, Beijing saw this as an opportunity to “do away with country resolutions once and for all.” Interviewee #41, Western European diplomat, July 23, 2012, New York, United States.

⁷⁰¹ Council Monitor, International Service for Human Rights, “Human Rights Council Working Group on Agenda, Programme of Work, Working Methods and Rules of Procedure Highlights Monday 23 April 2007,” *Human Rights Monitor Series*, April 23, 2007, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/highlights/wgagenda_highlights_23_april_07.pdf. The report specifically noted that “At 5:30, a half hour before the discussion was to end, China proposed a new initiative to require that resolutions relating to a specific country must be co-sponsored by a third of the members of the Council and supported by a special majority of two-thirds of the members of the Council present and voting.”

⁷⁰² Interviewee #36, Southeast Asian diplomat. China also raised this with a visiting Foreign Minister in Beijing. Yet, there is no evidence that China offered incentives or disincentives. Interviewee #36, Southeast Asian diplomat, November 9, 2011, London, United Kingdom.

⁷⁰³ Council Monitor, International Service for Human Rights, “Human Rights Council Working Group on Agenda, Annual Program of Work, Working Methods and Rules of Procedure 13-27 April 2007,” *Human Rights Monitor Series*, April 13-27, 2007, http://olddoc.ishr.ch/hrm/council/wg/rules/wg_agenda_02.pdf. There has been some speculation that the PRC pushed for the removal of the mandates of Cuba and Belarus at this point. However, these two mandates had already been removed from de Alba’s text. This in part reflected the earlier efforts of a number of countries. de Alba, interview; Husak, interview; and Interviewee #33, Latin American diplomat, September 5, 2011, interview by skype.

⁷⁰⁴ Interviewee #33, Latin American diplomat, confirmed that the negotiations dragged on because China resisted compromise. Interviewee #33, Latin American diplomat, September 5, 2011, interview by skype.

faced with a resolution, China could muster the votes needed to defeat it.⁷⁰⁵ According to Ambassador de Alba, China was isolated when its usual allies refused to back this proposal and even called on China to accept the IB package.⁷⁰⁶ Beijing was “increasingly isolated even among friendly countries like Cuba and Algeria,”⁷⁰⁷ and only after Ambassador de Alba turned up the pressure by showing the PRC delegation news dispatches portraying China as “destroying the Council” did it relent.⁷⁰⁸ Although a number of countries were sympathetic to Beijing’s argument and agreed that country-specific resolutions had been misused, they felt the Chinese position was too extreme and divisive, particularly because it was so unpopular with western countries.⁷⁰⁹ Reportedly, certain European countries were so strongly opposed that there was suggestion they might withdraw from the Council if the PRC proposal was accepted.⁷¹⁰ Beijing’s insistence also risked reopening the entire IB package, thereby threatening the interests of Cuba and Belarus, which had secured the elimination of the special rapporteurs assigned to their countries and were eager to cement this agreement. Ultimately, Chinese diplomats accepted face-saving, non-binding

⁷⁰⁵ Akram, interview, and Interviewee #36, Southeast Asian diplomat, interview material in private possession of author, January 25, 2013. Akram noted that developing country numbers outweighed the western group, and therefore, country resolutions were no longer a major threat. The reallocation of seats gave 26 out of 47 Human Rights Council seats to Asian and African countries, the very countries that China finds critical support from.

⁷⁰⁶ de Alba, interview. He noted that as he was negotiating with China, the PRC representative was on the phone with the Ministry of Foreign Affairs in Beijing getting instructions on whether to drop their proposal.

⁷⁰⁷ Interviewee #36, Southeast Asian diplomat, November 9, 2011, London, United Kingdom.

⁷⁰⁸ Stephane Bussard, “A Night of Madness for Human Rights,” in *The First 365 Days of the Council*, ed. Lars Muller (Bern: Swiss Department of Foreign Affairs, 2007), 70 and “China Deals Setback to the UN human rights watchdog” *New York Times*, June 18, 2007, www.nytimes.com/2007/06/18/world/asia/18iht-rights.5.6198244.html.

⁷⁰⁹ Interviewee #36, Southeast Asian diplomat, November 9, 2011, London, United Kingdom. Similar observations also made by former Pakistani Ambassador to the UN, Munir Akram. Akram, interview.

⁷¹⁰ Richard Gowan and Franziska Brantner, *A Global Force for Human Rights? An Audit of European Power at the UN* (London: European Council on Foreign Relations Policy Paper, September 2008), http://ecfr.3cdn.net/3a4f39da1b34463d16_tom6b928f.pdf, 5. Ambassador de Alba confirmed that there was a chance that some European countries would threaten to withdraw over China’s proposal because it would have made it nearly impossible to use country-specific resolutions. However, this was not a formal EU-member state position. de Alba, interview.

language that did not require but only suggested that states should seek to secure the broadest support possible for resolutions.⁷¹¹

The PRC does not appear to have used material incentives or other inducements.⁷¹² Further, surprisingly, China's economic clout failed to sway non-western, developing world countries. Among the 26 Asian and African HRC members, which often formed the base of the PRC's support, China was a top five export market for 10 of them.⁷¹³ China's commercial relationship with the Association of Southeast Asian Nations (ASEAN) has been particularly robust, with trade in 2009 totaling \$178 billion.⁷¹⁴ The Philippines, which was a member of the Council at this time, is illustrative of the PRC's economic importance. For example, a package of 2004-2006 bilateral agreements included pledges of \$1.6 billion in Chinese loans and investments, as well as military assistance worth more than \$1 million.⁷¹⁵ Bilateral trade totaled \$8.29 billion in 2008, and by 2006 China had become the fifth largest source of overseas development assistance to the Philippines.⁷¹⁶

⁷¹¹ de Alba interview, and Interviewee #36, Southeast Asian diplomat interview, material in private possession of author, January 25, 2013, London, United Kingdom. Sceats and Breslin noted that this language was meant to spare Beijing from embarrassment. Sceats and Breslin, *China and the International Human Rights System*, 11. The text reads, "The sponsors of a draft resolution or decision should hold open-ended consultations on the text of their draft resolution(s) or decision(s) with a view to achieving the widest participation in their consideration and, if possible, achieving consensus on them." UN Human Rights Council, Resolution 5/1, "Institution-building of the United Nations Human Rights Council," June 18, 2007, A/HRC/RES/5/1, paragraph 127.

⁷¹² Interviewee #36, Southeast Asian diplomat, telephone interview material in private possession of author, January 25, 2013, and Akram, interview. Both interview subjects noted that they were not aware of Beijing using material incentives. Sceats and Breslin offered similar findings on PRC non-use of material leverage. See Sceats and Breslin, *China and the International Human Rights System*, 16.

⁷¹³ World Trade Organization, *Trade Profiles 2006* (Geneva: WTO Publications, 2006). These figures are for 2005. For an account of China's use of its commercial relationships to achieve political goals, see Stefan Halper, *The Beijing Consensus: How China's Authoritarian Model Will Dominate the Twenty-first Century* (New York: Basic Books, 2010), 107-119.

⁷¹⁴ ASEAN Secretariat, "Asian-China Free Trade Area: Not a Zero-Sum Game," January 7, 2010, <http://www.aseansec.org/24161htm>. See also <http://www.aseansec.org/stat/Table20.pdf>.

⁷¹⁵ Luz Baguioro, "Beijing offers Manila \$2.6bn in funds," *The Straits Times*, April 28, 2005 and "Philippines warms to China with care," *The Straits Times*, June 7, 2006.

⁷¹⁶ Ian Storey, "Conflict in the South China Sea: China's Relations with Vietnam and the Philippines," *The Asia-Pacific Journal: Japan Focus* 8, no. 8-9 (April 30, 2008), <http://www.japanfocus.org/-Ian-Storey/2734>.

Further, Beijing's overseas development aid to a number of these countries was not trivial.⁷¹⁷ According to PRC government reporting Africa and Asia were the predominant recipients with Africa receiving 45.7% and Asia receiving 32.8%.⁷¹⁸ Scholar Deborah Brautigam estimated PRC foreign aid worldwide in 2005 at \$970 million.⁷¹⁹ Though there is no evidence that the PRC referred to its development assistance in seeking broader support, in the past, Beijing has used development aid to further its foreign policy goals, such as rallying diplomatic support to defeat UN resolutions, securing access to natural resources and competing with Taiwan for diplomatic recognition.⁷²⁰

To a lesser degree, China took a vocal stance during inter-state negotiations over the Council's 2011 five-year review when it countered proposals for membership criteria and candidate hearings. Although Beijing was more discreet during the Geneva phase of the review, in New York when action moved to the General Assembly, seeing that these proposals regarding membership were still being discussed, it assumed a more vocal position and spoke out against these proposals, especially during non-public discussions that were limited to interested states. According to a Western European diplomat, in New

⁷¹⁷ The PRC government does not disclose specific foreign aid statistics, including the main country recipients of Chinese largesse. See Denis M. Tull, "China's Engagement in Africa: Scope Significance and Consequences," *Journal of Modern African Studies* 44, no. 3 (2006): 459-479; Thomas Lum, Hannah Fischer, Julissa Gomez-Granger, and Anne Leland, *China's Foreign Aid Activities in Africa, Latin America and Southeast Asia*, Congressional Research Service Report R40361 (Washington DC: Library of Congress, Congressional Research Service, February 25, 2009), 1; and Deborah Brautigam, "Chinese Development Aid in Africa: What, Where, Why and How?" in *Rising China: Global Challenges and Opportunities*, ed. Jane Golley and Ligang Song (Canberra, Australia: Australia National University Press, 2011), 208.

⁷¹⁸ Information Office of the State Council of the People's Republic of China, *China's Foreign Aid*, (Information Office of the State Council: Beijing, China, April 21, 2011), Section IV Distribution of Foreign Aid, http://www.china.org.cn/government/whitepaper/2011-04/21/content_22411590.htm.

⁷¹⁹ Brautigam, "Chinese Development Aid in Africa."

⁷²⁰ See, for example, Deborah Brautigam, *The Dragon's Gift: The Real Story of China in Africa* (Oxford: Oxford University Press, 2010); Ian Taylor, "China's Foreign Policy Towards Africa in the 1990s," *Journal of Modern African Studies* 6, no. 3 (1998): 443-460;

York, the PRC was one of “the most outspoken in objecting to candidate hearings.”⁷²¹ As part of these proposed hearings, it was suggested that candidate country’s human rights records would be reviewed, which would have put the PRC in the uncomfortable position of being placed under scrutiny.

Chinese representatives also used the negotiations as an opportunity to reiterate their customary human rights grievances. For example, following the adoption of the GA Resolution, Ambassador Zhang Yishan repeated China’s human rights boilerplate, complaining about “political confrontation caused by the country specific resolution” and referred to country-specific resolutions as “a chronic disease” of the CHR.⁷²² During the IB discussions, PRC Ambassador Sha complained that “the most serious flaw, one that is based on selectivity and has led to the greatest amount of politicization, is country mandates” and called these mandates “dysfunctional, unnecessary and controversial.”⁷²³

As demonstrated above, a number of countries that largely shared PRC views were successful in getting some of their positions incorporated into the Human Rights Council. During the early phases of the talks involving the World Summit Outcome Document and General Assembly resolution, these countries successfully resisted several of the improvements recommended by the UN Secretary-General, such as election by a two-

⁷²¹ Interviewee #24, Western European diplomat, June 29, 2011, New York, United States. According to Interviewee #24, the proposals for membership criteria or holding candidate hearings before Council election “pushed all of China’s buttons.”

⁷²² Zhang Yishan, “Statement by Ambassador Zhang Yishan, Permanent Representative of China to the UN, after the adoption of the draft resolution on Human Rights Council,” Permanent Mission of the PRC to the UN in New York, March 15, 2006, www.china-un.org/eng/xw/t240623.htm. PRC Foreign Minister Yang Jiechi echoed these sentiments, stating that “Political confrontation led to the [Commission’s] credibility crisis.” “Official seeks fresh start for rights body,” *China Daily*, June 22, 2006, www.chinadaily.com.cn/china/2006-06/22/content_623010.htm. See also, UN Human Rights Council, *Summary Record of the 25th Meeting*, December 6, 2006, UN Doc. A/HRC/2/SR.25/, paragraph 44.

⁷²³ Sha Zukang, “Draft Statement on Country Mandates by H.E. Ambassador Sha Zukang on behalf of the LMG,” UN Human Rights Council Extranet, <http://www2.ohchr.org/english/bodies/hrcouncil/form.htm>.

thirds vote in the GA and the U.S. proposal for membership criteria.⁷²⁴ These victories led Amnesty International to complain that “It is totally unacceptable that a small number of countries with deeply troubling human rights records led by China and Russia are being allowed to block the creation of a new, stronger, more effective and authoritative Human Rights Council.”⁷²⁵ During the institution-building negotiations, these countries were again able to influence some outcomes, including challenging the special procedures, especially eroding the independence of these experts; preventing the advisory body from addressing country-specific issues or initiating its own studies; restricting NGO participation in the UPR process and preventing any binding action as a result of the UPR even when troubling human rights abuses were uncovered.⁷²⁶ However, without broader support China failed in restricting the use of country-specific resolutions.⁷²⁷ Taking these outcomes into account, the HRC has not been a significant improvement over the UNCHR.

The PRC has continued to take actions that have at times diluted the effectiveness of the Council. It has continued to resist country-specific scrutiny, strongly discouraging its use.⁷²⁸ Moreover, in preparation for its 2009 Universal Periodic Review, PRC diplomats entreated other delegations not to make hard-hitting remarks, especially

⁷²⁴ Interviewee #16, Western European diplomat, June 13, 2011, Oslo Norway and Interviewee #13, Western European diplomat, May 31, 2011, Bern, Switzerland. James Traub, noting the absence of the two-thirds election requirement in the GA resolution, described the Council as “an eviscerated version of the body Annan had proposed a year before.” Traub, *The Best Intentions*, 413.

⁷²⁵ “In quotes: UN World Summit,” *BBC News*, September 16, 2005, <http://news.bbc.co.uk/2/hi/americas/4247296.stm>.

⁷²⁶ Abraham, *Building the New Human Rights Council*, 5. NGOs are barred from asking questions during the interactive dialogue part of the UPR, when states are under review and allows states to reject recommendations emerging from the UPR without justification. However, in contrast to China’s wishes, the review does not rely solely on state reporting and is comprised of a national report; a compilation of information contained in the reports of treaty bodies, special procedures and other UN sources; and a summary of information received from other stakeholders, including NGOs. *Ibid.*, 5.

⁷²⁷ The PRC and like-minded countries have succeeded as the idea of cooperation and dialogue over confrontation has gained some acceptance or as Kent put it “This idea has now become common currency.” Kent, “The Universal Declaration and Human Rights and China,” 7. These themes were included in the GA Resolution establishing the HRC.

⁷²⁸ Kinzelbach, “Will China’s Rise Lead to a New Normative Order?” 315.

avoiding mention of Tibet and Xinjiang.⁷²⁹ As a result, China and other countries have offered platitudinous statements during their respective UPRs that has occasionally blunted scrutiny.⁷³⁰ Citing manipulation of the process by a number of countries, including China, a human rights scholar described the UPR as “an extremely weak process that allows a country being examined to pick and choose which recommendations to accept.”⁷³¹ A former member of the LMG criticized the excesses of these machinations, complaining that these countries were misusing their increased representation in the HRC by acting as “a club to protect friends.”⁷³² He noted that these actions, especially mobilizing friends to make soft-ball comments and even writing statements for other countries to offer on their behalf, threatened to strip human rights of any meaning, leaving it a “mere slogan.”

The PRC’s conduct, particularly its proposals regarding the HRC, were in keeping with the kinds of modifications a constrainer would seek.⁷³³ Although the PRC objected to a number of the proposed improvements, especially membership standards and election by two-thirds of the General Assembly, and challenged country-specific approaches, its behavior did not amount to that of a breaker as it left much of the regime untouched. For

⁷²⁹ Interviewee #7, human rights NGO representative/human rights scholar, May 26, 2011, Geneva, Switzerland; Interviewee #11 human rights NGO representative, May 31, 2011, Geneva, Switzerland; Interviewee #2, North American diplomat, May 24, 2011, Geneva, Switzerland; and Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland. Interviewee #2 noted that China “spent a lot of time encouraging and engaging” countries that would say positive things to sign up for the speakers list. Kinzelbach also noted the PRC’s “tactical UPR manoeuvring” and “dishonest spirit.” Kinzelbach, “Will China’s Rise Lead to a New Normative Order?” 327.

⁷³⁰ Interviewee #7, human rights NGO representative/human rights scholar, May 26, 2011, Geneva, Switzerland. UN General Assembly, *Human Rights Council, Universal Periodic Review: Report of the Working Group on the Universal Periodic Review, China*, March 3, 2009, A/HRC/11/25, paragraph 34

⁷³¹ Interviewee #43, former human rights NGO representative/human rights scholar, June 9, 2012, Hong Kong, China.

⁷³² Interviewee #3 former Middle Eastern diplomat, May 25, 2011, Geneva, Switzerland.

⁷³³ A scholar affiliated with the CCP described the establishment of the HRC as a “successful reform” because some of its proposals were accepted, and it prefers UPR over country-specific resolutions. Interviewee #45, PRC scholar, June 13, 2012, Beijing, China. Ambassador Chen Jian, noted that the PRC is more accepting of UPR because unlike UNCHR, it is universal and not targeted at a small number of states. Chen, interview.

example, Beijing did not contest the HRC's authority to monitor human rights globally nor the importance of a UN forum dedicated to human rights. Moreover, it did not seek to totally eliminate the thematic special procedures, even though some of the reports issued by these independent experts have highlighted PRC human rights abuses. Further, despite initial reservations, Beijing backed the Universal Periodic Review system, which some observers suggest is an improvement since all countries will undergo examination. As demonstrated in this chapter, China's conduct fits that of a regime constrainer as it resisted reforms that would have made the Council more powerful.⁷³⁴ The targeted and limited nature of the PRC's efforts suggests that it was seeking to constrain, rather than destroy the regime.

Yet, suggesting limits to the PRC's influence, it enjoyed success to the extent that its views overlapped with those of other countries, particularly non-western, developing countries. In the final outcome, although the informal coalition of developing countries whose views aligned with China often influenced aspects of the Council, China's role and support were not decisive.

Explaining China's behavior

Throughout the HRC negotiations, the PRC's conduct as a constrainer was guided by three main factors: PRC leaders' concerns with its international image; Chinese governmental beliefs regarding human rights; and the degree of its familiarity with the human rights regime. These diverse influences sometimes resulted in contradictory

⁷³⁴ For similar point, see Sceats and Breslin, *China and the International Human Rights System*, 2.

behavior, especially as China sought to balance its efforts to constrain the regime with its preference for keeping a low-profile. These variables are discussed below in order of relative strength. In addition, the presence of like-minded countries acted as a scope condition that influenced the PRC's conduct in more subtle ways, especially its tactics and level of activism.

PRC concerns with its international image carried particularly strong explanatory weight, and its constrainer posture was guided by image concerns of two main types: image associated with China's own human rights practices and its image as an international actor, especially as a regime participant. First, Chinese diplomats displayed extreme sensitivity to criticism of its domestic human rights record.⁷³⁵ The 1989 Tiananmen Square crackdown and the castigation Beijing faced constituted a watershed point, which caused Beijing to combat efforts to focus international attention on its domestic human rights record. Emphasizing this point, a North American diplomat noted that the PRC perceived any mention of its internal human rights violations as harmful to its image.⁷³⁶ Consequently, Chinese diplomats have expended energy in attempting to prevent scrutiny and censure, particularly as the subject of resolutions in the UN human rights bodies. In this vein, as noted earlier, in an effort to shield itself from criticism, prior to its 2009 Universal Periodic Review, Chinese officials approached other countries requesting that they refrain from making critical comments. Image concerns also led Chinese officials to attempt to thwart the use of country-specific resolutions, even though doing so jeopardized the secondary image concern noted above—that of being seen as a

⁷³⁵ Interviewee #42, North American diplomat, July 30, 2012, Washington, DC, United States, and Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia.

⁷³⁶ Interviewee #19, North American diplomat, June 17, 2011, Washington D.C., United States.

cooperative and supportive contributor to the regime.⁷³⁷ As demonstrated previously, China sought to cultivate a positive image of itself as a cooperative regime participant and to avoid being seen as obstructing progress. As an Asia Pacific diplomat noted Beijing wants “to be seen as a good international citizen.”⁷³⁸ Beijing admitted as much when Foreign Ministry Spokesperson Qin Gang stressed that China participated in the HRC discussions “in a constructive and cooperative manner.”⁷³⁹ Ambassador Li Baodong’s 2009 statement in the HRC also revealed a desire to portray China in a positive light. He noted that “The Chinese delegation is ready to engage in open and sincere dialogue with [the Council] in a responsible manner.”⁷⁴⁰

When faced with a tension between these two image concerns, PRC diplomats appear to have surmised that it was more critical to avoid censure of its domestic human rights record than to portray itself as a constructive and unassuming regime participant. Beijing’s willingness to obstruct adoption of the IB package and suffer the potential image-damaging consequences shows the high priority it placed on curbing the use of country-specific resolutions. Its frenetic lobbying and willingness to jeopardize an agreement that already secured the elimination of the special rapporteurs assigned to Cuba and Belarus

⁷³⁷ Interviewee #26, Western European diplomat, noted that the PRC does not want to be seen as being negative or difficult on human rights issues, and tries to be low-key. Interviewee #26, June 28, 2011, New York, United States. Similar point made by Sceats and Breslin, *China and the International Human Rights System*, 16.

⁷³⁸ Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia.

⁷³⁹ Qin Gang, “Foreign Ministry Spokesman Qin Gang’s Regular Press Conference on 19 June 2007,” PRC Ministry of Foreign Affairs, June 19, 2007, www.fmprc.gov.cn/eng/xwjjw/s2510/2511/t331911.htm.

⁷⁴⁰ Li Baodong, “Opening Statement by Ambassador Li Baodong, Head of the Chinese Delegation at the Fourth Session of the HRC Working Group on UPR,” Permanent Mission of the People’s Republic of China to the United Nations at Geneva, February 9, 2009, <http://www.china-un.ch/eng/hom/t536333.htm>. In 2009, PRC Ambassador Liu Zhenmin reiterated that “China has always fulfilled in good faith its responsibilities as a member of the HRC by actively participating in the consideration of all the agenda items... contributing to the work of the Human Rights Council...” Liu Zhenmin, “Statement by H.E. Ambassador Liu Zhenmin, Deputy Permanent Representative of China to the United Nations, at the Third Committee of the 64th Session of the General Assembly on Report of the Human Rights Council,” Permanent Mission of the PRC to the UN, October 29, 2009, www.china-un.org/eng/chinaandun/socialhr/rqwt/t623503.htm.

demonstrated the importance it attached to this issue. Obviously, this aspect of reform mattered greatly to Beijing, and it may have calculated that the benefit of ridding the Council of country-specific resolutions surpassed the risk of damaging its image as a constructive regime member. Beijing again showed that its preference for a low-key role would give way to a more visible posture when during the New York phase of the five-year review, it took an assertive position in inter-state discussions as it objected to the introduction of a high bar for membership. It likely surmised that being examined in membership hearings or being held to specific human rights criteria would draw unwanted attention to its domestic human rights record.

The two image concerns outlined above influenced the PRC's posture toward the HRC negotiations in two distinct ways. First, as explained previously, the PRC was inclined to constrain the regime by pursuing changes that would make it harder for it to receive condemnation or scrutiny.⁷⁴¹ Beijing's effort to restrict country-specific resolutions was clearly intended to prevent resolutions on China.⁷⁴² Likewise, a UN official noted that China was initially concerned that the Universal Periodic Review could be used to highlight PRC's human rights violations, but once it understood that all countries would receive equal treatment it dropped resistance.⁷⁴³

Second, even as Beijing took positions on the future Council that were intended to constrain the regime, it attempted to limit image costs by doing so in a low-key,

⁷⁴¹ Similar point made by Jeremy Paltiel, *The Empire's New Clothes: Cultural Particularism and Universal Value in China's Quest for Global Status* (New York: Palgrave Macmillan, 2007), 149.

⁷⁴² Council Monitor, International Service for Human Rights "Human Rights Council Working Group on Agenda, Programme of Work, Working Methods and Rules of Procedure Highlights Monday 23 April 2007," *Human Rights Monitor Series*, April 23, 2007, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/highlights/wgagenda_highlights_23_april_07.pdf.

⁷⁴³ Interviewee #29, UN official, June 29, 2011, New York, United States.

unobtrusive manner. A Western European diplomat closely involved in the negotiations observed that PRC representatives tried to avoid being seen as a “prominently negative voice.”⁷⁴⁴ Further, according to a journalistic account, the PRC withdrew its controversial proposal on country-specific resolutions when it saw news articles portraying China as obstructionist and as “destroying the Council.”⁷⁴⁵

In order to constrain the regime without incurring image costs, Chinese diplomats employed a number of strategies. First, as described in the previous section, China was more circumspect in larger, public venues, while in more private venues it often took a stronger stand.⁷⁴⁶ Second, China often allowed other countries with similar views to take a more vocal stance. A number of diplomats and human rights NGO representatives observed that China preferred not to take the lead on human rights issues, and was more likely to play a “discreet role.”⁷⁴⁷ As a Western European diplomat put it, China “shelters behind” countries such as Russia, Egypt, Pakistan, and Cuba, which frequently took more strident positions.⁷⁴⁸ Expanding on this point, an Asia Pacific diplomat noted that “it suits Beijing for others to be the spoilers” and that often Algeria, Cuba and Pakistan do the

⁷⁴⁴ Interviewee #41, Western European diplomat, July 23, 2012, New York, United States.

⁷⁴⁵ Bussard, “A Night of Madness for Human Rights,” 70.

⁷⁴⁶ For similar findings, see Sceats and Breslin, *China and the International Human Rights System*, 16.

⁷⁴⁷ Interviewee #21, human rights NGO representative, June 23, 2011, by phone with author. Sutter made a similar finding, noting that “...Chinese diplomats usually positioned themselves behind other powers and rarely took the lead...” Robert Sutter, *Chinese Foreign Relations: Power and Policy Since the Cold War* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2009), 119.

⁷⁴⁸ Quote from Interviewee #5, Western European diplomat, October 2, 2010, Stockholm, Sweden. This point was also echoed by Interviewee #11, human rights NGO representative, May 31, 2011, Geneva, Switzerland; Interviewee #19, North American diplomat, June 17, 2011, Washington DC, United States; and Interviewee #21 human rights NGO representative, June 23, 2011, by phone with author. Interviewee #1 former U.S. government official noted that China’s strategy appears to be to quietly push other countries with similar positions, such as African and Asian states, to take a more public position. Interviewee #1, former U.S. government official, October 27, 2010, Washington DC, United States. According to Interviewee #6, Western European diplomat, during the IB negotiations, the PRC “didn’t really have to get too heavily involved” on the expert advice mechanism because Cuba and Egypt were successfully asserting the same points. Interviewee #6, Western European diplomat, May 26, 2011, Geneva, Switzerland.

“dirty work.”⁷⁴⁹ According to a South Asian diplomat, this strategy was not difficult to implement because China “easily finds other countries with similar views.”⁷⁵⁰ Third, as noted earlier, China at times joined more formal groupings, such as the Like-Minded Group, and often adopted a lower national profile while allowing the group to represent its views. Finally, although direct evidence is lacking, numerous UN officials, diplomats, and non-governmental human rights representatives have speculated that the PRC used its influence in less visible ways by working “behind the scenes.”⁷⁵¹ Specifically, observers suggested that China might use its influence to urge other countries to adopt or support a particular position⁷⁵² or that Chinese officials coordinated its position with other countries, and once Beijing was assured these other countries would champion certain issues, it adopted a lower profile and avoided speaking out.⁷⁵³ As a human rights NGO

⁷⁴⁹ Interviewee #34, Asia Pacific diplomat, September 28, 2011, Canberra, Australia. According to Akram, the most vocal NAM states on the Human Rights Council were India, Pakistan and Egypt. Akram, interview.
⁷⁵⁰ Quote from Interviewee #15, South Asian diplomat, June 3, 2011, Geneva, Switzerland. Similar points offered by Interviewee #22, North American diplomat, June 27, 2011, Washington DC, United States; Interviewee #13, Western European diplomat, May 31, 2011, Bern, Switzerland; and Interviewee #4, Southeast Asian diplomat, May 25, 2011, Geneva, Switzerland. Ann Kent noted that “The NAM states have also been useful to China in advocating positions with which it agrees but which it does not wish to espouse openly.” Ann Kent, “China’s Participation in International Organisations,” in *Power and Responsibility in Chinese Foreign Policy*, eds. Yongjin Zhang and Greg Austin (Canberra, Australia: Asia Pacific Press, 2001), 151.

⁷⁵¹ Interviewee #19, North American diplomat, June 17, 2011, Washington DC, United States. According to Interviewee #30, human rights scholar, China prefers to exercise its influence in private, non-public channels. Interviewee #30, human rights scholar, June 30, 2011, New York, United States. Interviewee #1, former U.S. government official, made a similar observation, referring to China’s “invisible role.” Interviewee #1, former U.S. government official, October 28, 2010, Washington DC, United States. As former Pakistani Ambassador to the UN Munir Akram put it “Chinese exercise influence behind the scenes.” Akram, interview.

⁷⁵² Interviewee #8, South Asian diplomat, May 27, 2011, Geneva, Switzerland, and Interviewee #26, Western European diplomat, June 28, 2011, New York, United States. For example, Interviewee #19, described China’s role as a “quiet power” behind the scenes and hypothesized that China could be “quietly having conversations,” especially with swing vote African countries to gain more support for the public position taken by Russia or Pakistan, including using a variety of “incentives,” which could involve aid or investment. Interviewee #19, North American diplomat, June 17, 2011, Washington DC.

⁷⁵³ Interviewee #18, North America diplomat, June 17, 2011, Washington DC, United States; Interviewee #14, Latin American diplomat, June 1, 2011, Geneva, Switzerland; and Interviewee #23, human rights NGO representative, June 28, 2011, New York, United States. Along similar lines, Interviewee #28, former human rights NGO representative, noted that China “lets other countries oppose positive initiatives for them, so little

representative put it, “We suspect that China may have used other states to push their agenda” during the HRC negotiations.⁷⁵⁴ Assuming these suppositions are correct (and certainly China has used such tactics in other instances),⁷⁵⁵ these strategies allowed China to preserve its image while presenting itself as a status quo power, whose views were in conformity with others.

The PRC’s ideas about human rights were another strong explanatory factor that also inclined China to act as a constrainer. Because some aspects of the UNCHR and the proposed Council were in conflict with Beijing’s ideas, especially its discomfort with robust international regimes with extensive authority, it was inclined to act as a constrainer. For example, it sought to restrict the mandate of the expert body affiliated with the Council and diminish the independence of the experts serving through the special procedures. These positions were also influenced by the PRC’s view of the relationship between state sovereignty and international human rights monitoring, specifically its unease with ceding what it perceived as excessive authority to the regime in ways that could infringe on its definition of state sovereignty. For example, the Chinese government stressed state control over human rights mechanisms,⁷⁵⁶ such as limiting the independence of the special procedures and restricting NGO participation, especially in the Universal Periodic Review process.⁷⁵⁷ More specifically, Chinese questioning of whether “NGO and other information from stakeholders” met the criteria for “objective and reliable

becomes visible.” Interviewee #28, former human rights NGO representative, August 23, 2011, e-mail correspondence with author.

⁷⁵⁴ Interviewee #11, human rights NGO representative, May 31, 2011, Geneva, Switzerland.

⁷⁵⁵ Similar point made in Sceats and Breslin, *China and the International Human Rights System*, 15-16.

⁷⁵⁶ Interviewee #6, Western European Diplomat, May 26, 2011, Geneva, Switzerland. Beijing sought to increase state control over the complaint procedure, the expert advice body (the successor to the Sub-Commission), the special procedures, and the OHCHR, including reviewing the budget and the work plan.

⁷⁵⁷ Interviewee #22, North American diplomat, June 27, 2011, Washington DC, United States, and Interviewee #27, UN OHCHR official, June 29, 2011, New York, United States.

information...” in part reflected its belief in the primacy of the state, particularly a belief that state representatives comprising the UN should have the greatest control over human rights monitoring.⁷⁵⁸ Likewise, during discussions about the Universal Periodic Review, China sought to shift influence in the direction of states as it argued that any UPR follow-up measures, such as technical assistance, should be voluntary and only at the request of the state involved.⁷⁵⁹

China’s familiarity with the human rights regime acted as a slightly weaker explanatory variable. It provided the PRC with the ability, especially the knowledge and skills needed to act as a constrainer of the regime. After joining the Commission in 1984, Chinese diplomats studied the regime to the point that they had come to “know how to play the system.”⁷⁶⁰ In contrast to the Convention against Torture negotiations in the early 1980s, when PRC officials were uncertain, rarely asserted themselves, and made minimal contributions, China had gained diplomatic skills and relevant substantive and procedural knowledge. Consequently, the PRC was conversant with the regime and its rules and able to offer specific, detailed and substantive positions, which is required in order to seek to effect change within the regime.

The PRC government’s willingness and ability to cooperate with countries that shared its views acted as a scope condition. Although this did not determine the PRC’s posture, it still influenced its conduct and led to two contradictory tendencies. First, this

⁷⁵⁸ UN Human Rights Council, “Chinese February 14, 2007 Statement,” UN Human Rights Council, February 14, 2007, <http://www2.ohchr.org/english/bodies/hrcouncil/form.htm>. Similar position confirmed by Council Monitor, International Service for Human Rights, “Human Rights Council Working Group to Develop the Modalities of the Universal Periodic Review 3rd Session, 11-24 April 2007,” *Human Rights Monitor Series*, April 11-24, 2007, http://olddoc.ishr.ch/hrm/council/wg/wg_reports/wg_upr_03.pdf.

⁷⁵⁹ Interviewee #22, North American diplomat, June 27, 2011, Washington DC, United States, and Interviewee #27, UN OHCHR official, June 29, 2011, New York, United States.

⁷⁶⁰ Interviewee #7, human rights NGO representative/human rights scholar, May 26, 2011, Geneva, Switzerland.

scope condition mitigated more strident behavior. As noted above, China often assumed a more modest stance as it let other countries take a more visible and active role. In this way, the presence of like-minded countries has potentially moderated Beijing's behavior. Paradoxically, the presence of other countries sharing its positions may also have hardened and reinforced its views on human rights. As demonstrated in this chapter, other countries echoed the PRC's human rights views on a number of issues, including the PRC's distaste for country-specific resolutions and preference for cooperation and dialogue over censure. This reservoir of support may have formed a sufficiently strong community that it may have weakened the impact of certain normative human rights pressures.

Conclusion

This chapter sheds additional light on the PRC's posture toward another part of the human rights regime and the explanatory variables accounting for PRC behavior. By focusing on the UN's political human rights bodies, which are comprised of other member states, this chapter allows us to parse PRC behavior toward a highly visible UN body, one that is intended to serve as the primary venue for discussions about human rights. Given the institutional importance of the Council and Beijing's increased sensitivity to its international image following the 1989 Tiananmen Square crackdown, image played a particularly strong role in shaping its behavior.

Aside from image, Beijing's human rights ideas also carried significant explanatory weight as it continued to favor state sovereignty over international human rights monitoring, and took positions to enable states to retain greater control of the regime. As

with its behavior in OPCAT, there was little evolution in PRC human rights ideas as a number of its stances in the Commission remained unchanged in the Council.

The strong role of image and PRC human rights ideas as key explanatory factors underscores the salience of constructivism in providing insights into China's posture toward the regime and the link PRC leaders made between its image and material consequences. As argued previously, China was especially vigilant in the post-Tiananmen period in seeking to protect its international image as a means to guard its material interests. This stance likely reflects the PRC's material losses, including in the security and economic fields, following the international criticism it faced for using force against protestors in 1989. Thus, in the post-Tiananmen period, during the UNHRC negotiations, the PRC more vigorously countered country-specific mechanisms that could result in image-damaging attention. A focus on image also points to constructivist insights regarding the importance of social standing. Constructivists argue that states, like individuals, live in a world of their own making and that the social standing of states can be an important motivation for state behavior.⁷⁶¹

Although its familiarity with the regime carried slightly less explanatory weight, it also inclined the PRC toward a constrainer role and provided it with procedural and substantive knowledge that enabled it to act as a constrainer. Further, while the effect of other like-minded countries as a scope condition enabled it to act as a less conspicuous constrainer, the presence of countries with similar views may also have reinforced and strengthened the PRC's views on human rights. In the next chapter, we will consider the

⁷⁶¹ See, for example, Nicholas Onuf, *World of Our Making: Rule and Rules in Social Theory and International Relations*, Columbia, South Carolina: University of South Carolina, 1989.

influence of these explanatory variables on PRC conduct in the International Labour Organization's Conference Committee on the Application of Standards.

Chapter 5

China and the International Labour Organization's Conference Committee for the Application of Standards: 1983-2011

Unlike its more assertive behavior in other parts of the human rights regime, China's behavior toward the International Labour Organization's Conference Committee on the Application of Standards (CCAS, Conference Committee or the Committee) can best be described as that of a taker. The absence of threats to its image in the Conference Committee, the CCAS's closer conformity with PRC preferences and ideas on international human rights monitoring, and Beijing's growing understanding of and familiarity with the regime over the long period of its association with it influenced China's taker posture. As with the other case studies, the PRC's ability and willingness to cooperate with other countries acted as a scope condition, which helps account for the PRC's use of the CCAS as a venue to defend friendly states when they were being examined. In the conclusion of this chapter, I will discuss how these explanatory factors relate to international relations theories.

The International Labour Organization's premier role in securing labor rights merits this investigation. It also allows us to investigate a body focused on an area of collective rights and economic, social and cultural rights that China claims to give precedence. The ILO was established in 1919 by the Treaty of Versailles to "abolish the 'injustice, hardship and privation'" of workers and "guarantee 'fair and humane conditions

of labour.”⁷⁶² Subsequently, the ILO created the Conference Committee in 1926 with the purpose of monitoring state compliance with ratified conventions, primarily by conducting a public inquiry of countries with problematic records. Given its vital role in upholding labor rights, observers familiar with the Conference Committee have described it as the “heart and soul” of the ILO.⁷⁶³

This chapter begins by outlining the responsibility and functions of the Conference Committee on the Application of Standards. It then turns to describing and analyzing China’s participation in this Committee, covering the period 1983-2011 and focusing on the Committee’s public examination of countries. Although the ILO’s processes for monitoring labor rights are much broader than the Conference Committee, my focus in this chapter is limited to the Conference Committee. This delineation is warranted for two primary reasons. First, unlike a number of other committees that form part of the ILO’s monitoring system, this Committee is comprised of states rather than individuals acting in personal capacities.⁷⁶⁴ It, therefore, fits within my examination of China’s state behavior. Second, the Conference Committee is a central part of the ILO’s monitoring system and has earned the moniker “the conscience of the ILO.”⁷⁶⁵ Given my focus on this particular ILO Committee, my findings are not meant to capture the totality of China’s interactions

⁷⁶² Virginia Leary, “Lessons from the Experience of the International Labour Organisation,” in *The United Nations and Human Rights: A Critical Appraisal*, ed. Philip Alston (Oxford: Clarendon Press, 1992), 582. The ILO became a specialized UN agency in 1946.

⁷⁶³ Ed Potter (Employer Spokesperson in the CCAS since 2005, member of the U.S. delegation to the ILC since 1982 and participant in the CCAS 1986-1995 and 1999-2011), interview by author by telephone, May 11, 2011.

⁷⁶⁴ The ILO’s Committee of Experts and the Committee on the Freedom of Association are comprised of members who serve in their personal capacities.

⁷⁶⁵ Potter, interview.

with the International Labour Organization.⁷⁶⁶ The final section of this chapter turns to explaining the factors behind the PRC's taker posture.

The ILO's Conference Committee on the Application of Standards

The ILO created the Conference Committee on the Application of Standards and charged it with monitoring state compliance with ratified conventions by conducting a public examination of countries reported to have serious violations.⁷⁶⁷ ILO members simultaneously created a counterpart body, the Committee of Experts for the Application of Standards (Committee of Experts or COE), which as the name suggests is composed of independent experts serving in their individual capacities. The similar names of the two committees reflect their complementary roles and responsibilities in reviewing state compliance with ratified conventions.⁷⁶⁸ The COE was charged with completing an initial review of state reports and producing an annual report that highlighted serious cases of noncompliance. The COE's report has served as a guide in helping the Conference

⁷⁶⁶ Aside from the CCAS, the ILO has other mechanisms for monitoring state compliance with unratified conventions, including the Committee on the Freedom of Association. See Laurence R. Helfer, "Monitoring Compliance with Unratified Treaties: The ILO Experience," *Law and Contemporary Problems* 71, no. 1 (2008): 193-218. The International Labour Conference and the Governing Body can also take steps to highlight countries of concern. As will be discussed in a later section, some of these measures were taken in the case of Myanmar.

⁷⁶⁷ Victor-Yves Ghebali, *The International Labour Organization: A Case Study on the Evolution of U.N. Specialised Agencies* (London: Martinus Nijhoff Publishers, 1989), 224-225. These committees were established because the ILO realized that the task of monitoring state compliance with ratified treaties and reviewing the plethora of reports required dedicated resources. Article 7 of the Standing Orders of the International Labour Conference outlined the responsibilities and purpose of the Conference Committee. International Labour Organization, "Record of Proceedings: International Labour Conference, 8th Session, 1926," 1926, First Record, Appendix V, 395 and 429.

⁷⁶⁸ Dame Justice Laura Mary Cox (member of the Committee of Experts and British High Court Judge), interview by author, London, November 9, 2011. Cox noted that the creation of two bodies, one which was comprised solely of outside experts and the other comprised of ILO members, reflected the ILO's desire to use outside expertise while retaining ownership and control.

Committee determine the countries to examine.⁷⁶⁹ As a complement to the Committee of Experts, government, employer and worker representatives from member states serving in their official capacities comprise the Conference Committee.

The Conference Committee was established as a standing committee of the International Labour Conference (ILC), the annual gathering of the ILO's supreme body.⁷⁷⁰ It has been one of the largest committees of the ILC, with approximately 200-250 individual participants and 100-120 governments.⁷⁷¹ Because each of the ILO's tripartite groups make up one-third of the voting, the worker and employer representatives together comprise a two-thirds majority and have been able to influence the Conference Committee's work even without the support of government members. Thus, unlike other parts of the human rights regime, member states have less influence. Yet, this does not mean this body is immune to politics. An international labor expert and member of the ILO's Committee on Freedom of Association pointed out that the political considerations of the entities represented in the CCAS can affect the proceedings and the "Conference Committee... is sometimes a show."⁷⁷²

Aside from giving the CCAS an opportunity to question state representatives, the public examination also allows governments to present information, including progress and

⁷⁶⁹ Under Article 22, for fundamental and priority conventions states submit reports every two years and for all other reports every five years. International Labour Organization, International Standards Department, *Handbook of Procedures Relating to International Labour Conventions and Recommendations*, (Geneva: International Labour Organization, 2006), Section IV, paragraph 35 and Alfred Wisskirchen, "The Standard-Setting and Monitoring Activity of the ILO," *International Labour Review* 144, no. 3 (2005): 270-273.

⁷⁷⁰ Leary, "Lessons from the Experience of the International Labour Organisation," 599.

⁷⁷¹ Participation in the CCAS is open to member states and all participants of the ILC.

⁷⁷² Paul F. van der Heijden (Chairperson of the Committee of Freedom of Association), interview by author, May 27, 2011, Geneva, Switzerland.

steps taken.⁷⁷³ The Committee's proceedings are part of the ILO annual conference, which attracts 2000-3000 participants, and every year the entire ILC discusses and adopts the Conference Committee's report.⁷⁷⁴ Worker, employer and government representatives in the CCAS participate in country reviews by offering comments, raising issues on particular cases, asking questions and requesting additional information.⁷⁷⁵ Countries of high concern with reports of grave labor rights abuses usually generate greater attention, including a number of statements from representatives of other countries. The public nature of the Conference Committee's work is intended to mobilize attention and to exert "moral pressure on governments to comply with ratified conventions."⁷⁷⁶ As Alfred Wisskirchen, who participated in the CCAS as a German employer delegate, noted, "It is primarily the repeated, public scrutiny of a member State's observance of ILO standards which therefore exerts political and moral pressure on the government in question."⁷⁷⁷ While the proceedings are open to the public, the CCAS sessions have not generated the level of interest and publicity associated with other human rights bodies, such as the UN Human Rights Council.

As might be expected, determining the countries to be reviewed has often been a contentious process. Given their combined voting strength, the worker and employer groups play a strong role in deciding which countries to examine. The workers, represented by international labor unions, take the lead in drafting and circulating a

⁷⁷³ The ILO has described this process as a "dialogue," during which member states can discuss the difficulties encountered in applying international labor standards. The International Labour Organization, *The Committee on the Application of Standards of the International Labour Conference: A Dynamic and Impact Built on Decades of Dialogue and Persuasion* (Geneva: International Labour Organization, 2011), 12.

⁷⁷⁴ In 1974, 1977 and 1982, some countries that were unhappy with the CCAS report used lack of quorum to prevent adoption of the CCAS by the ILC.

⁷⁷⁵ Leary, "Lessons from the International Labour Organisation," 599-601.

⁷⁷⁶ Claude Akpokavie (Senior Advisor, Bureau for Workers' Activities, International Labour Organization), interview by author, May 24, 2011, Geneva, Switzerland.

⁷⁷⁷ Wisskirchen, "The Standard-Setting and Monitoring Activity of the ILO," 270.

proposed list of approximately 45 countries months before the annual ILC meeting.⁷⁷⁸

Subsequently, at the start of the International Labour Conference, the workers and the employers groups discuss and finalize the list.⁷⁷⁹ Due to time constraints, since the early 1990s the Conference Committee has restricted its review to only 25 countries per year.⁷⁸⁰

The Committee relies on a number of criteria in determining the countries to be examined. Among its chief considerations is the COE annual report. This report highlights the most worrisome cases of noncompliance and draws attention to cases that should be considered for examination by the CCAS.⁷⁸¹ The Committee of Experts has endeavored to be “even-handed” by applying objective criteria in selecting cases to highlight. Partially in response to complaints from developing countries, the COE also considers geographic balance and tries not to focus on the “same offenders” repeatedly.⁷⁸²

In turn, the Conference Committee applies similar criteria as it determines the list of countries to summon for public review. Aside from countries highlighted in the COE’s report, the Conference Committee’s selection of cases has been guided by a number of other factors, including a focus on the ILO’s fundamental conventions;⁷⁸³ equitable geographic distribution of cases;⁷⁸⁴ balance among the different categories of ILO

⁷⁷⁸ Circulating the list of potential countries to be examined by the CCAS allows countries time to prepare.

⁷⁷⁹ Wisskirchen, “The Standard Setting and Monitoring Activity of the ILO,” 253- 89.

⁷⁸⁰ Potter, interview. Potter noted that previously 40-45 countries would be reviewed.

⁷⁸¹ Cox, interview. The COE highlights the cases of greatest concern that the CCAS may wish to consider by using “double footnotes” to draw attention to the most egregious cases. This contrasts with states that either receive only a single footnote, suggesting a lesser degree of concern, or no footnote. For the COE’s description of its use of these footnotes, see ILO, “Report of the Committee of Experts on the Application of Conventions and Recommendations Committee of Experts: International Labour Committee, 97th Session, 2008,” 2008, <http://www.ilo.org/public/libdoc/ilo/P/09661/>, p. 14-15.

⁷⁸² Cox, interview. Cox noted that the COE has used fixed and objective criteria in order to minimize criticism.

⁷⁸³ Wisskirchen, “The Standard-Setting and Monitoring and Activity of the ILO,” 282.

⁷⁸⁴ Potter, interview; Jan Dereymaeker (Development Cooperation and Education Officer, International Trade Union Confederation), interview by author, March 21, 2012, Brussels, Belgium and Stephen Benedict (Director for Human and Trade Union Rights, International Trade Union Confederation), interview by author

conventions; the urgency and seriousness of the situation; and previous CCAS discussions and conclusions.⁷⁸⁵ According to Alfred Wisskirchen, the emphasis on fundamental conventions is so strong that the majority of the cases handled by the CCAS involve these eight conventions, which relate to freedom of association; right to organize and collective bargaining; forced labor; discrimination and equality; and child labor.⁷⁸⁶ Further, the Committee has in particular focused on Conventions 87 (freedom of association) and 98 (the right to organize), which are estimated to comprise half of the cases reviewed by the CCAS.⁷⁸⁷

Following the public examination, the CCAS uses a “special paragraph” to draw attention to cases in which a state has “seriously and repeatedly violated a Convention.”⁷⁸⁸ This paragraph has sometimes been referred to as a “blacklist”⁷⁸⁹ and has generally included one to five countries. As an ILO official put it, the “special paragraph is the highest level of condemnation that the CCAS can use.”⁷⁹⁰ States included in this section of

by phone, March 16, 2012. Potter noted that the CCAS gives strong consideration to equitable geographic distribution.

⁷⁸⁵ International Labour Organization, *The Committee on the Application of Standards and the International Labour Conference*, 20-21, and Wisskirchen, “The Standard-Setting and Monitoring Activity of the ILO,” 280-82.

⁷⁸⁶ Wisskirchen, “The Standard-Setting and Monitoring Activity of the ILO,” 282. The eight fundamental conventions are Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Forced Labor Convention, 1930 (No. 29), Abolition of Forced Labor Convention, 1957 (No. 105), Minimum Age Convention, 1973 (No. 138), Worst Forms of Child Labor Convention, 1999 (No. 182), Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

⁷⁸⁷ Debrulle, interview, and Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland.

⁷⁸⁸ Wisskirchen, “The Standard-Setting and Monitoring Activity of the ILO,” 275-82, and Ghebali, *The International Labour Organisation*, 225. See also Hector Bartolomei de la Cruz, Geraldo von Potobsky, and Lee Swepston, *The International Labour Organization: The International Standards System and Basic Human Rights* (Boulder, Colorado: Westview Press, 1996), 83. The CCAS Chairperson and Vice-Chairpersons take the lead in drafting the special paragraph.

⁷⁸⁹ Leary, “Lessons from the Experience of the International Labour Organisation,” 599.

⁷⁹⁰ Akpokavie, interview. Some observers see the use of the special paragraph as being based on a “mobilization of shame.” On this concept, see Alfred Zimmern, *The League of Nations and the Rule of Law* (London: MacMillan and Co., 1936.)

the CCAS report “increasingly objected to it, [and] considered it a serious form of censure.”⁷⁹¹

Although government representatives participate in the review and are able to exert a measure of influence over the general tenor of the examination, they lack the voting strength needed to influence the outcome, including protecting themselves or other countries from censure.⁷⁹² Although their positions have at times aligned with various governments, due to their two-thirds combined voting strength the worker and employer groups can determine the conclusions and the content of the special paragraph.⁷⁹³ Worker and employer representatives noted that while they take into account the comments of other participants, including foreign government representatives, and the explanation provided by the country being reviewed, they primarily rely on the salient facts of the case to determine the content of the special paragraph.⁷⁹⁴

In the past, countries have occasionally criticized the Conference Committee and proposed reforms to redress perceived failings. These complaints have often been motivated by perceptions of biased and unwarranted attention from the CCAS. During the Cold War, communist countries claimed that they were selectively and unfairly targeted

⁷⁹¹ Leary, “Lessons from the Experience of the International Labour Organisation,” 599. Initially, this was a ‘special list’ but as a result of criticism that the list was overwhelmingly focused on developing and socialist countries and did not allow for an explanation of pertinent facts, in 1980 it was replaced with a “special paragraph.” However, this is primarily a change of form rather than substance.

⁷⁹² As Leary put it, “It has been possible for the Conference Committee, because of the two-thirds non-governmental participation, to cite governments in its reports—including even major countries—for failure to implement conventions.” Leary, “Lessons from the Experience of the International Labour Organisation,” 599.

⁷⁹³ Dereymaeker, interview.

⁷⁹⁴ Potter, interview and Andree Debrulle, (Senior Advisor to the Worker Spokesperson, Confederation of Christian Trade Unions), interview by author, March 23, 2012, Brussels, Belgium.

and introduced reforms to weaken this body.⁷⁹⁵ For example, in 1984, Eastern European countries lambasted the Conference Committee, asserting that the special paragraph was of questionable legality since it gave the CCAS an almost judicial role.⁷⁹⁶ Some members of the Non-Aligned Movement have made similar complaints, and at times these countries have sought support from other states when examined by the Committee or on occasion have lobbied to be excluded from among the countries reviewed.⁷⁹⁷ Despite these occasional challenges, due in part to its tripartite structure, the Conference Committee has been resistant to change.⁷⁹⁸ As a former senior ILO official noted, the Conference Committee has been “very nearly immune to pressure” from countries that have sought to weaken it and that it works much as it did in the 1960s.⁷⁹⁹

The occasional ire of these countries is somewhat surprising given the limited attention the CCAS has received. Although countries included in the special paragraph have likely felt some degree of public censure, this body has not generated the level of publicity associated with other kinds of human rights supervision, such as resolutions in

⁷⁹⁵ Quote from Odd Bruass. Odd Bruaas (former Norwegian government official and CCAS participant), interview by author, June 13, 2011, Oslo, Norway. On efforts to alter the working methods, see Gerry Rodgers, Eddy Lee, Lee Swepston, and Jasmien Van Daele, *The ILO and the Quest for Social Justice, 1919-2009* (Cornell: Cornell University Press, 2009), 21, and Ghebali, *The International Labour Organisation*, 229-30.

⁷⁹⁶ Ghebali, *The International Labour Organization*, 230-231 and International Labour Organization, “Record of Proceedings: International Labour Conference 70th Session, 1984,” 1984, p. 800. In response to these complaints, a majority of the employer and worker representatives pushed back, arguing that “the supervisory machinery was... fair and effective and that questioning it too often could lead to self-destruction.” In 1974, 1977, and 1982, some countries that were unhappy with the CCAS report used lack of quorum to prevent adoption of the CCAS by the ILC. Socialist (during the Cold War) and non-alignment movement countries have periodically raised similar complaints, including in 1985 and 2004.

⁷⁹⁷ Comment regarding NAM from Akpokavie, interview. Akpokavie noted Cuba as a country that has been critical of this process and sought the support of other states. Comments regarding lobbying from Debrulle, interview. Interviewee #38 North American governmental representative to the CCAS, June 2, 2011, Geneva, Switzerland and Interviewee #39 ILO official for employers’ activities, May 27, 2011, Geneva, Switzerland offered similar comments on lobbying and noted that it is an infrequent occurrence.

⁷⁹⁸ Jean-Jacques Elmiger (Swiss Ambassador, State Secretariat for Economic Affairs, Federal Department of Economic Affairs), interview by author, June 1, 2011, Geneva, Switzerland and Interview #38, North American governmental representative to the CCAS, June 2, 2011, Geneva, Switzerland.

⁷⁹⁹ Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland.

the UN Commission on Human Rights and the Human Rights Council.⁸⁰⁰ For example, international media and non-governmental organizations have paid minimal attention to the CCAS report, its examination of countries or its use of special paragraphs highlighting particular countries.⁸⁰¹ Along these lines, Leary noted that “well-known human rights NGOs are conspicuously absent from participation in ILO human rights activities.”⁸⁰² However, according to an ILO official, governments might object to CCAS scrutiny because national media has in some instances reported on a country’s examination by the CCAS.⁸⁰³ As will be discussed below, this limited publicity and other institutional features, such as the Conference Committee’s responsibility for ratified conventions, have inclined the PRC toward a taker posture.

China and the ILO’s Conference Committee on the Application of Standards

The PRC’s engagement with the ILO, a United Nations specialized agency, followed Beijing’s growing engagement with other parts of UN.⁸⁰⁴ The People’s Republic of China was recognized as a member of the ILO in 1971 when it replaced the Republic of China in the United Nations. Unlike other international human rights bodies, where the Chinese Ministry of Foreign Affairs serves as lead agency, the Ministry of Human

⁸⁰⁰ Dereymaeker, interview and Wisskirchen, “The Standard-Setting and Monitoring Activity of the ILO,” 279.

⁸⁰¹ Bruaas, interview; Akpokavie, interview; and Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland. Kent also noted that the ILO is not as accessible as the UN human rights bodies to non-occupational NGOs. Kent, *China, the United Nations, and Human Rights*, 121.

⁸⁰² Leary, “Lessons from the Experience of the International Labour Organisation,” 585.

⁸⁰³ Akpokavie, interview. Akpokavie offered Indonesia under the Suharto as an example.

⁸⁰⁴ On China’s entry into the ILO, see Ghebali, *The International Labour Organization*, 122-25. The Republic of China, as a member of the League of Nations, was a founding member of the ILO. Kent, *China, the United Nations and Human Rights*, 124.

Resources and Social Security has primary responsibility for Chinese participation in the ILO.⁸⁰⁵

During its first decade as a member, the PRC did not participate in ILO activities. As noted by Victor-Yves Ghebali, in the early 1970s “China had very little practical experience of multilateral diplomacy and would have found it difficult to participate in [the ILO’s] elaborate procedures without adequate preparation” and therefore “abstain[ed] for over ten years from effective participation in the work of the organization.”⁸⁰⁶ Similarly, Ann Kent noted that the PRC indicated that it needed “time to increase its understanding of the ILO and become familiar with it.”⁸⁰⁷ Likewise, a Chinese official explaining PRC non-participation during this time suggested that China was “trying to learn and understand” the ILO.⁸⁰⁸

Beijing finally assumed fuller participation in 1983 when it sent its first delegation to the annual International Labour Conference, during which Chinese representatives also attended the sessions of the Conference Committee on the Application of Standards.⁸⁰⁹ As noted in Chapter 4, it was also in the early 1980s that China became a member of the UN Commission on Human Rights. In explaining the decision to engage, a PRC official noted that Beijing realized that there “would be issues related to China” in the ILO and therefore

⁸⁰⁵ Interviewee #40, Chinese government official, June 12, 2011, Beijing, China. According to Interviewee #40, China’s Ministry of Human Resources and Social Security, which was previously the Ministry of Labor, coordinates with the Ministry of Foreign Affairs.

⁸⁰⁶ Ghebali, *The International Labour Organization*, 124.

⁸⁰⁷ Kent, *China, the United Nations, and Human Rights*, 124.

⁸⁰⁸ Interviewee #40, Chinese government official, June 12, 2011, Beijing, China. Interviewee #40 noted that prior to reform and opening up, the Cultural Revolution had resulted in China being closed. As a result, China needed time to gain comfort and familiarity with multilateral institutions.

⁸⁰⁹ International Labour Organization, “Record of Proceedings: International Labour Conference, 69th Session, 1983,” 1983, p. 324.

it had to be prepared to play a part in the organization.⁸¹⁰ The PRC was also likely seeking to act as a full member similar to other countries.⁸¹¹ Although the PRC has become a more vocal and engaged participant, overall it has maintained a low profile. Other participants described China as “always...very low-key,”⁸¹² “a good player,” “respect[ing] the CCAS rules”⁸¹³ and “not really asserting itself.”⁸¹⁴ Ed Potter, who has served as the Employer Spokesperson to the Conference Committee and has participated in the Committee since the late 1980s, described the PRC as “not a particularly visible country... in the CCAS.”⁸¹⁵ A Western European national trade union official with over 15 years of experience in the Committee, noted that China has not been a subversive force and summed up China’s approach to the CCAS as, “We won’t bother you, don’t bother us.”⁸¹⁶ A PRC government official whose responsibility includes ILO matters described Beijing’s as “a member of the ILO, [China] should respect established procedures and rules.”⁸¹⁷ These statements paint a picture of the PRC as accepting the regime and participating in a modest and low-profile manner.

From the early 1980s through most of the 1990s, the PRC was a subdued and quiescent participant. In 1983 and 1984, which coincided with the PRC’s first two years attending the ILC, it remained silent as other communist countries called for “democratization” of the ILO’s supervisory system and protested that the system

⁸¹⁰ Interviewee #40, Chinese government official, June 12, 2011, Beijing, China.

⁸¹¹ As Interviewee #38, noted governments at the ILC generally try to participate in as many activities as they can and it would be unusual not to participate in the work of the ILC Committees, including the CCAS. Interview #38, North American government official, June 2, 2011, Geneva, Switzerland.

⁸¹² Interviewee #38, North American government official, June 2, 2011, Geneva, Switzerland. Interviewee #38 did not have strong recollections of China “saying very much.”

⁸¹³ Debrulle, interview.

⁸¹⁴ Potter, interview.

⁸¹⁵ Potter, interview.

⁸¹⁶ Dereymaeker, interview. Dereymaeker further described the Chinese position as being, “We are the master of our own internal policy so don’t mess with us and we will not interfere in other cases.”

⁸¹⁷ Interviewee #40, Chinese government official, June 12, 2011, Beijing, China.

victimized socialist and developing countries through selective and unfair attention.⁸¹⁸

There was a slight uptick in the PRC's visibility when in 1985 for the first time it offered statements during the CCAS's general discussions of the ILO supervisory process and along with India, Saudi Arabia and Syria asserted that the problems of developing countries should be considered.⁸¹⁹ This also marked the first year in which a PRC representative spoke during the Conference Committee's examination of countries. The PRC Worker representative backed the demands of the workers in Guatemala to organize and encouraged the ILO to support Guatemalan workers.⁸²⁰ Attending CCAS sessions also enabled the PRC in order to gain familiarity with the Committee's working methods. A former ILO official recalled PRC representatives observing the CCAS proceedings in the early to mid-1980s, and appearing to delight in watching the USSR's public examination and seeing their Soviet counterparts facing scrutiny.⁸²¹ (These were also the years when China regarded the Soviet Union as the major adversary, a perception that did not change until later in the 1980s.)

PRC representatives gradually become more vocal and participatory in the CCAS.⁸²² However, during the first fifteen years of Beijing's participation in the Conference Committee, from the early 1980s through to the late 1990s, it did not play an active role in the public examination of other countries and made minimal comments in the

⁸¹⁸ For an example of these discussions, see International Labour Organization, "Record of Proceedings: International Labour Conference, 70th Session, 1984," 1984, p. 460, 497, 611, 629, 719, 800. See also Ghebali, *The International Labour Organization*, 230.

⁸¹⁹ International Labour Organization, "Record of Proceedings: International Labour Conference, 71st Session, 1985," 1985, p. 836.

⁸²⁰ *Ibid.*, 867-68. Given the PRC government's influence over the All-China Federation of Trade Unions and the limited space for genuine independent civil society, the Worker statement can be considered to reflect the official PRC position and likely reflected PRC displeasure that Guatemala gave diplomatic recognition to the ROC, not the PRC.

⁸²¹ Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland. This was a first-hand observation by Interviewee #37.

⁸²² Kent, *China, the United Nations, and Human Rights*, 126.

Committee's other discussions. Aside from the previously noted 1985 PRC Worker representative statement backing the demands of Guatemalan workers, PRC representatives did not speak in the CCAS.⁸²³

There was a noticeable shift in the late 1990s when PRC representatives began expressing sympathy for certain governments being examined. This pattern began with a 1999 statement on behalf of Myanmar by the Chinese government representative who stated that China "hopes that the Committee would take note of the new progress achieved by the Government in the application of the Convention..."⁸²⁴ At this time, Myanmar was coming under the spotlight of scrutiny from the ILO in response to reports of severe restrictions on freedom of association and forced labor violations. Although the CCAS seeks to apply a "regular" and "universal" approach to human rights supervision, the severity of the abuses in Myanmar resulted in selective and sustained attention from other parts of the ILO. For example, the Governing Body deployed a 1998 Commission of Inquiry that found "widespread and systemic forced labor," and in 2000 the ILC passed a resolution on the problem of forced labor in Myanmar.⁸²⁵ Following this statement on Burma, China continued this behavior and from 1999-2011, it offered vocal support for Belarus, Bangladesh, Colombia, Egypt, Myanmar, Uzbekistan, Venezuela and Zimbabwe a total of 26 times. These PRC comments generally portrayed the governments being examined as earnestly making progress, urged the CCAS to be lenient and called on the

⁸²³ International Labour Organization, "Record of Proceedings: International Labour Conference, 71st Session, 1985," 1985, p. 867-68.

⁸²⁴ International Labour Organization, "Record of Proceedings: International Labour Conference, 87th Session, 1999," 1999, p. 839-40.

⁸²⁵ International Labour Organization, "International Labour Conference adopts Resolution targeting forced labour in Myanmar," press release, June 14, 2000, http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_007899/lang--en/index.htm. See also Wisskirchen, "The Standard-Setting and Monitoring Activities of the ILO," 269.

ILO to play a supportive role by providing assistance. The table below captures these PRC statements.⁸²⁶

Table 5: PRC Statements During CCAS Examination of Countries

Year	PRC Speaker	Country and Convention Under Examination	PRC Statement
1985	Worker Representative	Guatemala (87, Freedom of Association)	Supported the statement of the Workers' members; demands of workers of Guatemala to obtain the right to organize were legitimate; encouraged ILO to take effective measures to assist Guatemala to ensure the right to organize
1998	Worker Representative	Russia (95, Protection of Wages)	Deeply concerned about the non-payment and late payment of wages to workers in Russia; workers and families unable to survive; Russia should take decisive measures and national economy should not be promoted at the expense of workers; Russian government bore the responsibility
1999	Government Representative	Myanmar (29, Forced Labor)	Hoped that the Committee would take note of the new progress achieved by Myanmar
2003	Government Representative	Myanmar (87, Freedom of Association)	Encouraged Myanmar to cooperate with the ILO
2004	Government Representative	Colombia (87, Freedom of Association)	Noted the efforts undertaken by Colombia; hoped ILO would strengthen technical cooperation; Colombia should not appear in the special paragraph
2005	Government Representative	Belarus (87, Freedom of Association)	Belarus was taking positive steps and had made progress; encouraged ILO and international community to provide technical assistance which was needed at this stage
	Government Representative	Colombia (87, Freedom of Association)	Colombia making efforts and progress to protect trade union rights; still a long way to go; praised cooperation between ILO and Colombia

⁸²⁶ These statements reflect only PRC interventions in the Conference Committee, rather than the entire ILC, where it also occasionally spoke in defense of its allies. For example, in 2000, even though the PRC did not speak in the CCAS, it vigorously defended Myanmar in the plenary when a resolution on forced labor was considered. The Chinese government complained that some parts of the ILO “still insists on the application of article 33 of the Constitution, and has carried out extreme measures against Myanmar. This has now occurred for the first time in the ILO's history. It has created a very dangerous precedent. Therefore, the Chinese Government opposes the application of Article 33 of the Constitution.” International Labour Organization, “Record of Proceedings: International Labour Conference, 88th Session, 2000,” 2000, p. 268. When a country refuses to fulfill the recommendations of a Commission of Inquiry, the Governing Body can take action under Article 33 of the ILO Constitution.

	Government Representative	Venezuela (87, Freedom of Association)	Venezuela had made remarkable achievements in reforming its legislation and in promoting social dialogue; demonstrated Venezuela's willingness to cooperate with the social partners; should acknowledge achievements; encouraged ILO technical support
	Government Representative	Zimbabwe (98, Right to Organize)	Zimbabwe amending laws to address concerns; noted actions Zimbabwe had mentioned; Zimbabwe making progress and needed more time; encouraged ILO to provide technical cooperation
2006	Government Representative	Belarus (87 and 98, Freedom of Association and the Right to Organize)	Government of Belarus was ready to apply the recommendations of the Commission of Inquiry and to follow up on the observations of the Committee of Experts, and that it had drawn up a plan of action
	Government Representative	Bangladesh (98, Right to Organize)	Urged the Committee to appreciate the efforts made by Bangladesh; Bangladesh fully respected international labor standards; invited the Governing Body to recognize progress made; urged ILO cooperation and allowance for latitude in design and implementation of social policy
2007	Government Representative	Belarus (87, Freedom of Association)	Belarus government faithfully implementing recommendations of the Commission of Inquiry; noted meaningful measures and progress; encouraged the Committee to recognize these steps; and encouraged further cooperation
	Government Representative	Venezuela (87, Freedom of Association)	Appreciated progress achieved and efforts made by Venezuela to cooperate with the ILO; agreed with GRULAC statement ⁸²⁷
	Government Representative	Bangladesh (111, Discrimination)	The principle of equality was embodied in the Constitution and the new Labor Code; Bangladesh made genuine efforts to combat discrimination and apply the Convention; asserted that Bangladesh remained an underdeveloped country and economic development was crucial to overcoming challenges; encouraged the ILO and the international community to provide assistance
2008	Government Representative	Belarus (87, Freedom of Association)	Belarus achieved further progress through cooperation with the ILO and other steps which should be recognized by the Committee; endorsed further cooperation between ILO and Belarus
	Government Representative	Egypt (87, Freedom of Association)	Taken note of the Government's statement in particular with regard to the legislation adopted and the measures taken to promote social dialogue; ILO should continue to cooperate with Egypt

⁸²⁷ Mexico's statement on behalf of GRULAC, noted that they "recognized the attitude of responsibility and the spirit of cooperation of the Bolivarian Republic of Venezuela with all ILO supervisory and other bodies... The fact that the Bolivarian Republic of Venezuela had responded to all requests for information by the supervisory bodies should be taken into consideration in the Committee's conclusions." For full statement, see International Labour Organization, "Record of Proceedings: International Labour Conference, 96th Session, 2007," 2007 p. 911.

2009	Government Representative	Belarus (87, Freedom of Association)	Thanked Belarus for the information provided; since 2005, the Government had been taking effective measures to improve the implementation of the recommendations of the Commission of Inquiry; Committee should recognize progress; endorsed cooperation
	Worker Representative	Belarus (87, Freedom of Association)	Noted the information provided by the government representative and indicated that he had followed closely the issue of the implementation of the Convention in Belarus and the progress that was being made; hoped that the Government would strengthen its cooperation with the ILO with a view to safeguarding trade union rights and achieving decent work for the workers of the country
	Government Representative	Myanmar (87, Freedom of Association)	Challenges that Myanmar faced should be taken into consideration; progress towards democratization had been noted; steps taken by Myanmar reflect its will to promote human rights and protect workers; hoped ILO continue dialogue and technical assistance with Myanmar
	Government Representative	Venezuela (87, Freedom of Association)	Should recognize steps taken by Venezuela to implement recommendations made by the Committee of Experts; ILO should provide technical assistance to help in capacity-building in the country; ILO and Venezuela can should strengthen their mutual trust and pursue dialogue and cooperation, which will address issues and challenges
2010	Government Representative	Belarus (87, Freedom of Association)	Belarus had paid close attention to the recommendations of the Commission of Inquiry and had made significant efforts and progress to strengthen tripartism, social dialogue and freedom of association; committee should note Belarus's sincere determination to strengthen cooperation with the ILO to improve implementation of the Convention
	Government Representative	Myanmar (87, Freedom of Association)	Should be acknowledged that concrete and effective measures had been taken; encouraged Myanmar to continue its dialogue and cooperation with the ILO with a view to promoting Convention No. 87.
	Government Representative	Venezuela (87, Freedom of Association)	Venezuela taking steps; Conference Committee should recognize Venezuela's sincerity in its cooperation with the social partners and the ILO and the concrete measures it had adopted; ILO should continue its commitment and cooperation with Venezuela
2011	Worker Representative	Zimbabwe (87, Freedom of Association)	Progress being made; underlined the importance of social dialogue; disappointed about lack of tripartite meetings; urged Zimbabwe government and social partners to accept tripartism; feared that the signing and launching of the Kadoma Declaration and labor law reform was window dressing; stressed importance of social dialogue; emphasized importance of autonomous, independent and strong workers' organizations; urged Zimbabwe not to infringe on legitimate rights of workers' organizations

Government Representative	Belarus (98, Right to Organize)	Over the last year Belarus engaged with ILO and made remarkable progress; important to acknowledge the sincerity of these efforts; hoped the ILO would strengthen cooperation
Government Representative	Uzbekistan (Worst Forms of Child Labor)	Highlighted Uzbekistan's positive attitude; observed that proper measures were being taken; expressed support for these efforts to eradicate child labor

Despite the statements noted above, in the majority of examinations of countries Beijing did not intervene. Table 6 below presents a comparison of the countries that were examined and the subset of cases in which the PRC intervened. The minority of instances when the PRC spoke in favor of labor rights is listed in bold. In the non-bold cases, the PRC's comments amounted to a defense of the country being examined. The final column shows those countries that were subject to a special paragraph. Despite Beijing's rhetorical support, ultimately that country was included in the special paragraph twenty-three percent of the time.⁸²⁸ A number of participants suggested that China's interventions and those of other states did not influence the content of the special paragraph.⁸²⁹ The PRC made these statements to demonstrate solidarity with particular allies.

⁸²⁸ From 1999-2011, there were 39 countries mentioned in the special paragraph. China spoke on behalf of those countries nine times.

⁸²⁹ Dereymaker, interview; Potter, interview; Debrulle, interview; Akpokavie, interview; Tate, interview; Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland; Interviewee #38, North American governmental representative to the CCAS, June 2, 2011, Geneva, Switzerland; and Interviewee #39, ILO official for employers' activities, May 27, 2011, Geneva, Switzerland. Debrulle further noted that the worker group is independent and tries not to take politics into account, including these kinds of statements, when making decisions on the outcome of the CCAS review. Interviewee #39 noted that sympathetic comments are useful because they can be cited by the government in question in press releases and shape the tone of the public examination, even if these comments were unlikely to influence the content of the special paragraph. Tate noted that PRC comments did not add much substance but that it reflected a PRC desire to be on the record and to offer support to the government in question. Rudi Delarue (Head of the ILO office in Brussels, Belgium and former EU Commission representative to the ILO), interview by author, March 21, 2012, Brussels, Belgium. Delarue also noted that China's comments do not directly influence the outcome. However, this is not to say that state comments carry no influence because country comments can shape the thinking of different actors.

Table 6: Countries Examined, including Countries the PRC Spoke on Behalf of

Year	PRC comments	Countries Examined	Special Paragraph
1985	Guatemala (by PRC Worker Representative)	Argentina, Bahamas, Bangladesh, Belgium, Bolivia, Canada, Central African Republic, Chile, Colombia, Congo, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, Federal Republic of Germany, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Iran, Ireland, Jamaica, Japan, Jordan, Liberia, Libya, Malaysia, Malta, Mauritius, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Spain, Sri Lanka, Syria, Thailand, Tunisia, Turkey, United Kingdom, USSR, Yemen	Guatemala, Haiti, Iran, Yemen
1998	Russia (by PRC Worker Representative)	Argentina, Australia, Bangladesh, Bolivia, Brazil, Cameroon, Colombia, Cote d'Ivoire, Croatia, Ecuador, Ethiopia, India, Indonesia, Malaysia, Morocco, Myanmar, New Zealand, Pakistan, Peru, Russia, Sudan, Swaziland, Turkey, Uruguay	Myanmar, Sudan
1999	Myanmar	Afghanistan, Australia, Bangladesh, Brazil, Cameroon, Canada, Chad, Costa Rica, Djibouti, Ecuador, Ethiopia, Guatemala, Iran, Libya, Malaysia, Mexico, Myanmar, Pakistan, Peru, Sri Lanka, Russia, Swaziland, Venezuela	Cameroon, Myanmar
2000	No comments	Afghanistan, Australia, Brazil, Cameroon, Colombia, Djibouti, Ethiopia, Guatemala, Hungary, India, Iran, Kuwait, Mauritania, Mexico, Pakistan, Panama, Saint Lucia, Sudan, Swaziland, Tanzania, Ukraine, United Kingdom, Venezuela	Cameroon, Sudan, Venezuela
2001	No comments	Belarus, Chile, Colombia, Costa Rica, Djibouti, Ethiopia, Guatemala, India, Iran, Japan, Kenya, Myanmar, Pakistan, Panama, Peru, Portugal, Spain, Sudan, Swaziland, Turkey, Uganda, Ukraine, United Arab Emirates, Venezuela	Belarus, Colombia, Ethiopia, Myanmar, Sudan, Venezuela
2002	No comments	Belarus, Colombia, Costa Rica, Cote d'Ivoire, Ethiopia, Fiji, Germany, Guatemala, Japan, Mauritania, Moldova, Myanmar, Pakistan, Paraguay, Peru, Qatar, Sudan, Swaziland, Turkey, United Arab Emirates, United States, Uruguay, Venezuela, Zimbabwe	Ethiopia, Sudan, Venezuela
2003	Myanmar	Belarus, Cameroon, Colombia, Croatia, Cuba, Ecuador, Ethiopia, Guatemala, India, Iran, Kenya, Libya, Mauritania, Myanmar, Pakistan, Panama, Paraguay, Portugal, Serbia and Montenegro, Uganda, Ukraine, Uruguay, Venezuela	Belarus, Cameroon, Libya, Mauritania, Myanmar, Zimbabwe
2004	Colombia	Australia, Bangladesh, Bolivia, Canada, China, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Iceland, Indonesia, Japan, Myanmar, Netherlands, Niger, Poland, Republic of Korea, Serbia and Montenegro, Slovakia, Sudan, Ukraine, Venezuela, Zimbabwe	Myanmar

2005	Belarus, Colombia, Venezuela, Zimbabwe	Argentina, Australia, Belarus, Bosnia and Herzegovina, Colombia, Ecuador, Guatemala, Iran, Mauritania, Myanmar, Nepal, Niger, Panama, Peru, Qatar, Romania, Russia, Saudi Arabia, Sudan, Swaziland, Turkey, United States, Venezuela, Zimbabwe	Belarus, Myanmar
2006	Bangladesh, Belarus	Australia, Bangladesh, Belarus, Bosnia and Herzegovina, Central African Republic, Costa Rica, Croatia, Djibouti, Guatemala, Iran, Ireland, Kenya, Libya, Mexico, Pakistan, Paraguay, Philippines, Slovakia, Switzerland, Thailand, Uganda, United Kingdom, United States, Venezuela, Zimbabwe	Bangladesh, Belarus
2007	Bangladesh, Belarus, Venezuela	Argentina, Australia, Bangladesh, Belarus, Bosnia and Herzegovina, Cambodia, China, Congo, Djibouti, Ethiopia, Gabon, Guatemala, India, Iran, Italy, Japan, Philippines, Romania, Spain, Sri Lanka, Turkey, United Kingdom, United States, Venezuela, Zimbabwe,	Belarus
2008	Belarus, Egypt	Bangladesh, Belarus, Bulgaria, Colombia, Croatia, Czech Republic, Dominican Republic, Egypt, Equatorial Guinea, Georgia, Guatemala, Indonesia, Iran, Iraq, India, Japan, Mexico, Paraguay, Sudan, Sweden, Uganda, United Kingdom, Zambia, Zimbabwe	Bangladesh, Zimbabwe
2009	Belarus, Myanmar, Venezuela	Belarus, Chile, China, Colombia, Congo, Costa Rica, Ethiopia, Guatemala, Iran, Israel, Italy, Kuwait, Malaysia, Mauritania, Myanmar, Nigeria, Pakistan, Panama, Peru, Philippines, Russia, South Korea Swaziland, Turkey, Venezuela	Iran, Myanmar, Swaziland
2010	Belarus, Myanmar, Venezuela	Belarus, Burundi, Cambodia, Canada, Central African Republic, Costa Rica, Czech Republic, Egypt, Georgia, Guatemala, India, Iran, Mauritania, Mexico, Morocco, Myanmar, Peru, Russia, Sudan, Swaziland, Thailand, Turkey, Ukraine, Uzbekistan, Venezuela	Central African Republic, Myanmar, Swaziland
2011	Belarus, Uzbekistan, Zimbabwe (by PRC Worker Representative)	Azerbaijan, Belarus, Cambodia, Canada, Congo, Fiji, Greece, Guatemala, Honduras, Malaysia, Mexico, Myanmar, Nigeria, Pakistan, Panama, Paraguay, Romania, Saudi Arabia, Serbia, Sri Lanka, Swaziland, Turkey, Uruguay, Uzbekistan, Zimbabwe	Congo, Guatemala, Myanmar, Swaziland, Uzbekistan

As revealed in the table above, China's support primarily went to select countries belonging to the Non-Aligned Movement and a number of countries that were members of

the Like-Minded Group, described in Chapter 4.⁸³⁰ Of the countries Beijing defended, only Colombia and Venezuela were not LMG members. A former senior ILO official described the group of countries that China has spoken on behalf of as “China’s friends” or “similarly situated dictatorships.”⁸³¹ A Western European national trade union representative noted that this was “always the same group of countries helping each other,” and that these countries generally had similarly “closed political systems.”⁸³² Another international trade union official pointed out that these countries shared similar, more absolutist views of sovereignty.⁸³³

According to a PRC official working on international labor issues, these countries approached China for “assistance” in the CCAS, and after weighing the “merits” of the case Beijing determined whether to make a statement supportive of the country being examined.⁸³⁴ Such requests from other countries were not unusual since “countries try to gather as much help as possible.”⁸³⁵ Despite the claim that the Chinese government reviewed each request and considered the merits of the case, over the last four years this official was unable to recall a single instance when Beijing refused to make a statement

⁸³⁰ Potter noted that this group includes approximately 40-50 developing countries that believe the supervisory process “picks on them too much.” He suggested that although a number of countries have been active, “the initiators are Cuba and Venezuela.” Potter, interview. Bruaas noted political divisions in the Conference Committee between Industrialized Market Economy Countries (IMEC) and NAM countries. Bruaas, interview. As noted in Chapter 4, the Like-Minded Group included Algeria, Bangladesh, Belarus, Bhutan, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Sudan, Vietnam, and Zimbabwe.

⁸³¹ Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland. All of these countries would be classified as “Not Free” or only “Partly Free” according to Freedom House’s classification. Freedom House, “Freedom in the World: Map of Freedom, 2013,” Freedom House, 2013, <http://www.freedomhouse.org/sites/default/files/Map%20of%20Freedom%202013%2C%20final.pdf>.

⁸³² Quotes from Debrulle, interview. Making a similar observation, the Director of External Relations for the International Trade Union Confederation also noted that that she expected China to speak for the same group of countries year after year. Allison Tate (Director External Relations, International Trade Union Confederation), interview by author, March 21, 2012, Brussels, Belgium.

⁸³³ Dereymaeker, interview.

⁸³⁴ Interviewee #40, Chinese government official, June 12, 2011, Beijing, China.

⁸³⁵ Ibid.

when asked by another country for “assistance.”⁸³⁶ Yet, even as China was willing to help friends, its comments on Guatemala in 1985 demonstrated that it sometimes spoke negatively toward governments with which that it had strained relations.⁸³⁷

Myanmar, in particular, received vocal Chinese support. From 1999-2011, Chinese representatives offered four statements on behalf of Myanmar during the CCAS examination of countries, captured in table 5, and eight statements during the CCAS special sitting mandated by a 2000 ILC resolution. Table 7 below provides a picture of the PRC’s defense of Myanmar during the special sittings. China’s enthusiastic support for Myanmar may be partially due to its concern and disagreement with the intensified level of scrutiny Myanmar was receiving from other parts of the ILO. As noted earlier, the ILO Governing Body organized a 1998 Commission of Inquiry, which is one of the most serious actions this body can take, and the ILC passed a resolution in 2000 that expressed concern and mandated annual special sittings of the Conference Committee on forced labor.⁸³⁸ China’s 2008 statement on behalf of the government of Myanmar during the special sitting is illustrative of PRC comments. The government representative of China stated that:

Her Government was delighted that the Government of Myanmar had been working closely with the ILO... A referendum had been conducted in May 2008 on the new Constitution which clearly prohibited all forms of forced labour, thereby resolving the remaining legal issue. The ILO’s Liaison Office was working closely with local focal points to prevent the use of forced labor. The complaints

⁸³⁶ Ibid.

⁸³⁷ Guatemala had granted recognition to the Republic of China.

⁸³⁸ International Labour Conference, “International Labour Conference adopts Resolution targeting forced labour in Myanmar (Burma),” press release, June 14, 2000, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007899/lang--en/index.htm. The PRC spoke in the ILC plenary against a draft resolution on Myanmar, expressing concern with the intense ILO scrutiny being focused on Myanmar. International Labour Organization, “Record of Proceedings, International Labour Conference, 88th Session, 2000,” 2000, p. 268.

mechanism was functioning smoothly... All these efforts indicated the Government's sincere political will to eradicate forced labour. As seen in the cooperation between the Government and the ILO, there was effective collaboration based on mutual trust for the sustained well-being of the people. Her Government hoped that the ILO and the international community would remain committed to continuing the constructive dialogue and would provide encouragement and assistance, especially in terms of infrastructure. These would help to eradicate forced labour and guarantee fundamental rights and equality of access to development and its benefits.⁸³⁹

According to an International Trade Union Confederation official, China's comments on Myanmar amounted to "portraying minute actions, even some taken one day before the annual ILO Conference, as signals of great progress and a demonstration of serious commitment," and that given the severity of the labor rights situation in Myanmar, these comments appeared to be "purely political acts to protect their friends."⁸⁴⁰ This international trade union official further conjectured that the negative attention Myanmar was receiving may have triggered China's defensive actions on behalf of its ally.⁸⁴¹ In

⁸³⁹ International Labour Organization, "Record of Proceedings: International Labour Conference, 97th Session, 2008," 2008, p. 908. Even though in some years the PRC did not defend Myanmar during the special sitting, it often came to the junta's defense in other venues. For example, in 2003 during Governing Body deliberations, the Chinese government made a statement that noted "the actions of the Government of Myanmar, and the progress made, showed that it had a true political will to eradicate forced labour. The Government of China had always maintained that this eradication could not be achieved through sanctions, but through dialogue and the provision of technical assistance and training. While being strongly opposed to all forms of forced labour, the Government of China considered that the phenomenon of forced labour was the result of many complex factors, including economic, social and legal factors and educational and development levels, and it was therefore important to help countries in tackling these root causes. Myanmar was a relatively poor developing country. In order to eradicate forced labour, the international community should take into consideration the specific conditions of each country, and it was only through promoting dialogue and providing assistance and training that it would help the country to resolve the problem." International Labour Organization, "Record of Proceedings, International Labour Conference, 90th Session, 2002," 2002, p. 1155, <http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/pr-24p3.pdf>.

⁸⁴⁰ Tate, interview. Tate further noted that at this time Myanmar was an example of "a serious case of no progress" and that "it was a joke" to describe the limited actions of the Government of Myanmar as constituting progress.

⁸⁴¹ Tate, interview.

contrast, a Chinese official asserted that the PRC spoke on behalf of Myanmar because “we noticed that there was a lot of progress made.”⁸⁴²

Table 7: PRC Statements during the Annual Special sitting on Myanmar

Year	PRC Statement
2000	No statement
2001	No statement
2002	No statement
2003	No statement
2004	Government of Myanmar had been making efforts to meet the obligations of the Convention; encouraged further cooperation between ILO and Myanmar
2005	Myanmar’s actions demonstrated commitment to eradicating forced labor; progress result of cooperation between ILO and Myanmar; encouraged further cooperation
2006	PRC supports eradication of forced labor in general; Myanmar made progress yet not sufficient for the international community; Myanmar moving in right direction; regretted the previous year's conclusion of the Conference Committee had had a negative impact on cooperation between the ILO and the Government, and therefore hoped that cooperation would be strengthened
2007	Myanmar making efforts; encouraged dialogue and cooperation to eradicate forced labor; encouraged Myanmar to continue to cooperate with the ILO
2008	Delighted Myanmar working closely with the ILO; Myanmar has taken concrete steps, including important legal steps and training; these efforts indicated Myanmar’s “sincere political will to eradicate forced labour;” encouraged constructive dialogue and assistance
2009	Commended the close collaboration between Myanmar and the ILO, which had facilitated the adoption of concrete measures; stressed that this cooperation demonstrated Myanmar’s willingness to eliminate forced labor
2010	Noted cooperation between Myanmar and ILO; acknowledged forced labor as a fundamental violation of human rights; hoped ILO would continue its assistance to Myanmar
2011	Cooperation between ILO and Myanmar effective; further progress achieved, including awareness raising; forced labor a violation of fundamental rights and needed to be eliminated; encouraged continued ILO assistance and cooperation with Myanmar

⁸⁴² Interviewee #40, Chinese government official, June 12, 2011, Beijing, China. Interviewee #40 specifically noted efforts to revise laws and give access to the ILO to visit Myanmar.

Despite the PRC's efforts on behalf of other countries, Beijing has been careful not to overplay its protection of these countries. A PRC government official claimed that the Chinese government sought to play a constructive role, and while it spoke on behalf of other countries "it would never do it in such a way that other groups in the ILO would see them as protecting wrongdoing."⁸⁴³ Indeed, even those observers who took note of the PRC's defense of what they saw as problematic countries also acknowledged that China was not a frequent intervener and its conduct was not particularly destructive.⁸⁴⁴ This impression of China suggests the degree to which China had become adept at making these interventions without drawing undue attention to itself as a country disrupting the work of the CCAS. Beijing appeared to use a number of strategies to achieve this. First, table 6 shows that Beijing intervened in only a small minority of cases before the CCAS. Second, the PRC's artful choice of words might also have softened impressions of its interventions. For instance, Beijing's 2006 statement on Myanmar is illustrative of the PRC's cautious approach in couching its words within the context of general support for labor rights, including offering platitudinous support for labor rights, as it encouraged its ally to make further progress. The Chinese delegate stated that:

...forced labour was a violation of fundamental human rights and therefore had to be eradicated, which was the objective of Convention No. 29, adopted by the ILO in 1930. The experiences of the ILO since the adoption of the Convention showed that a global alliance needed to be forged to eradicate forced labour, as reported the previous year in the Director-General's Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. He stated that the ILO had been assisting the Government of Myanmar to eradicate forced labour, based

⁸⁴³ Interviewee #40, Chinese government official, June 12, 2011, Beijing, China.

⁸⁴⁴ Benedict, interview and Tate, interview. The CCAS Employer Spokesperson noted that China's behavior did not harm the CCAS. Potter, interview.

on the spirit of dialogue and cooperation. The Government had made progress, although the speed of that progress might not be sufficient from the viewpoint of the international community. He expressed his Government's view that the Government was in general terms moving in the right direction. He regretted that the previous year's conclusion of the Conference Committee had had a negative impact on cooperation between the ILO and the Government, and he therefore hoped that cooperation would be strengthened.⁸⁴⁵

In addition to Myanmar, China gave regular and strong vocal support to other countries, particularly Belarus, which the PRC defended seven times, making a statement every year between 2005 and 2011. In 2005, the government representative of China noted that:

...the Government of Belarus was taking positive steps to give effect to the recommendations of the Commission of Inquiry and had made progress in this respect. The government had also reiterated its willingness to cooperate with the ILO.⁸⁴⁶

Its words in 2007 offered even more robust backing to Belarus, by stating that:

His government noted with satisfaction that the Government had been faithfully implementing the recommendations of the Commission of Inquiry since the Conference in 2006. The Government had been engaged in the drafting of the Trade Union Law in cooperation with the social partners and the Office, as well as the establishment of a tripartite dialogue mechanism and the protection of trade union rights. He considered that meaningful measures had been put in place and positive progress was being made. He called on the Committee to recognize and encourage these efforts and the progress made by the Government and its willingness to continue the ongoing cooperation with the Office. He expressed the hope and belief that further cooperation between the Government and the Office would promote the effective application of Conventions Nos. 87 and 98.⁸⁴⁷

⁸⁴⁵ International Labour Organization, "Record of Proceedings: International Labour Conference, 94th Session, 2006," 2006, p. 1014. For a similar statement, see International Labour Organization, "Record of Proceedings: International Labour Conference, 93rd Session, 2005," 2005, p. 1064.

⁸⁴⁶ International Labour Organization, "Record of Proceedings: International Labour Conference, 93rd Session, 2005," 2005, p. 996.

⁸⁴⁷ International Labour Organization, "Record of Proceedings: International Labour Conference, 96th Session, 2007," 2007, p. 879.

Like Myanmar, the ILO had increased scrutiny of Belarus, including sending a 2004 Commission of Inquiry to investigate violations of freedom of association, protection of the right to organize and respect for the right to collective bargaining.⁸⁴⁸ In another demonstration of PRC support for its allies, Beijing joined Cuban-led efforts to alter the working methods of the CCAS, especially the public review of countries. In 2004, China signed on to a statement made by Cuba, on behalf of 18 countries, including Algeria, Belarus, Burundi, Egypt, Ethiopia, India, Indonesia, Libya, Malaysia, Myanmar, Pakistan, Syria, Sudan, Venezuela, Vietnam and Zimbabwe.⁸⁴⁹ Specifically, this group, which overlaps with the Like-Minded Group outlined in chapter 4, sought to give governments greater influence relative to the worker and employer groups; urged the use of clear and technical criteria in determining the countries to examine, including greater geographical balance; pushed for greater state control over the Committee's report and conclusions; and emphasized that the CCAS review should be inquisitorial rather than condemnatory.⁸⁵⁰ Notably, however, Beijing took a measured approach, and although it signed onto this Cuban-led effort, it was not a vigorous supporter.⁸⁵¹ As a longtime CCAS participant put

⁸⁴⁸ "Reports of Commissions of Inquiry," International Labour Organization, http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/WCMS_160781/lang--en/index.htm. The PRC also has a number of strategic interests with Belarus. See, for example, Jan Cieski, "Belarus Looks to China for Investment in Infrastructure," *Financial Times*, July 22, 2013.

⁸⁴⁹ International Labour Organization, "Record of Proceedings: International Labour Conference, 92nd Session, 2004," 2004, p. 1013-19.

⁸⁵⁰ Ibid., 1016. For the ILO's response, see Ibid., C.App/D.1.

⁸⁵¹ Ibid., 1016. A number of observers noted that China has generally not attempted to alter the CCAS, while other countries, notably Cuba and Belarus, have been very critical. Bruaas, interview; Interviewee #39, ILO official for employers' activities, May 27, 2011, Geneva, Switzerland; Interviewee #38, North American governmental representative to the CCAS, June 2, 2011, Geneva, Switzerland; and Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland. Interviewee #37 noted that China "has never tried to subvert the system by political means." Interviewee #38 suggested that because Cuba and Zimbabwe have received much attention, they have instigated efforts to discredit or undermine the supervisory system.

it, unlike a few other countries, China has been “rather careful in limiting criticism of the system.”⁸⁵²

In contrast to its laudatory statements on behalf of other foreign governments, in 1985, 1998 and 2011, the PRC Worker representative offered comments on three occasions that sympathized with workers. As shown in table 5, the Chinese Worker representative emphasized respect for labor standards during reviews of Guatemala, Russia and Zimbabwe. In 1998, during Russia’s examination, the PRC Worker representative stated that:

Chinese workers and unions were deeply concerned about the non-payment and late payment of wages to workers in the Russian Federation. He wondered how workers could survive without payment of their wages. Moreover, this phenomenon affected various other persons including the families of the workers. The Government should take decisive measures to solve this problem and the national economy should not be promoted at the expense of the workers. While he acknowledged that this problem was multifaceted, the Government had the major responsibility for solving it. He hoped the Government would take forceful measures in this area.⁸⁵³

In similar vein, as noted earlier, in 1985 the PRC Worker representative backed the demands of the workers in Guatemala, stating “that the demands of the workers of Guatemala to obtain the right to organize, in particular, was perfectly legitimate” and encouraged the ILO to support Guatemala in ensuring this right.⁸⁵⁴ Again championing labor rights, the PRC Worker representative stated during Zimbabwe’s review that:

⁸⁵² Bruaas, interview.

⁸⁵³ International Labour Organization, “Record of Proceedings: International Labour Conference, 86th Session, 1998,” 1998, p. 773.

⁸⁵⁴ International Labour Organization, “Record of Proceedings: International Labour Conference, 71st Session, 1985,” 1985, pp. 867-68. He encouraged the ILO to assist the Government of Guatemala to ensure the right of workers to organize.

He urged the Government and the social partners to accept the need for tripartism and the appeal by the [Zimbabwe Congress of Trade Unions]. He feared that the signing and launching of the Kadoma Declaration and labour law reform was window dressing rather than substance. He recalled that social dialogue structures and processes could resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress. For this dialogue to be effective, there needed to be respect for the fundamental rights of freedom of association and collective bargaining. Autonomous, independent and strong workers' organizations were critical for effective social dialogue, and he urged the Government to take the necessary measures to ensure that the POSA was not used to infringe upon the legitimate rights of workers organizations to express their views on the Government's economic and social policy.⁸⁵⁵

Because the workers and employers representing the PRC come from what can be described as "government-organized mass organizations," these PRC Worker statements likely reflect PRC government positions rather than independent, civil society views.⁸⁵⁶ As noted previously, aside from using this venue instrumentally to assist allies, Beijing also criticized governments it had strained relationships with.

Throughout its three decades of participation in the CCAS, Beijing has been examined only four times and has not been included in a special paragraph.⁸⁵⁷ During those examinations, the PRC's behavior has been described as "quiet and cooperative," and an observer noted that it "prepares and participates in a very professional way."⁸⁵⁸ Similarly, a former senior ILO official noted that "China has never complained about being examined and when called it has appeared before the Committee," and that it had been

⁸⁵⁵ International Labour Organization, "Record of Proceedings, International Labour Conference, 100th Session, 2011," 2011, p. 746. POSA refers to the Public Order and Security Act.

⁸⁵⁶ For example, the International Trade Union Confederation does not regard the All China Confederation of Trade Unions (ACFTU) as independent. Dereymaeker, interview.

⁸⁵⁷ Other parts of the ILO have expressed concern about reports of serious rights violations in China.

⁸⁵⁸ Tate, interview.

“compliant” during these reviews.⁸⁵⁹ Similarly, other observers described China’s appearances in the CCAS as “not controversial, not lengthy and not very interesting,”⁸⁶⁰ “not unusual,”⁸⁶¹ and “a soft and constructive discussion, since it was not the most urgent case.”⁸⁶² There is also no evidence that China lobbied to be removed from the list of countries to be examined.⁸⁶³

The CCAS has not focused heavily on China in part because, as noted earlier, the Committee’s remit is restricted to ratified conventions, and Beijing has only ratified four of the eight fundamental ILO conventions: Conventions 100 (equal remuneration), 111 (discrimination), 138 (minimum age) and 182 (worst forms of child labor).⁸⁶⁴ Table 8, which captures the fundamental ILO conventions ratified by the PRC, shows that it has failed to ratify Conventions 87 (freedom of association), 98 (right to organize), 29 (forced labor) and 105 (abolition of forced labor).

⁸⁵⁹ Interview #37, former senior ILO official, May 25, 2011, Geneva, Switzerland. Interviewee #37 also noted that there is “very little place [in the CCAS] for China to exercise influence on its own case,” because even approaching the Chair of the Committee would not result in different treatment.

⁸⁶⁰ Interviewee #38, North American governmental representative to the CCAS, June 2, 2011, Geneva, Switzerland.

⁸⁶¹ Elmiger, interview. Similar comments offered by Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland. Interviewee #37 also described China’s review as “not unusual or different from other countries.”

⁸⁶² Interviewee #39, ILO official for employers’ activities, May 27, 2011, Geneva, Switzerland. In contrast, according to Akpokavie a small number of countries are defiant or uncooperative with the Committee, deny any problems or claim that the examination is politically motivated. Akpokavie, interview.

⁸⁶³ Benedict, interview; Interviewee #37 former senior ILO official, May 25, 2011, Geneva, Switzerland; and Potter, interview. Although occasionally governments try to influence the workers’ or employers’ group to avoid being examined, Potter, who has been involved with the CCAS since 1986, could not recall such attempts by China.

⁸⁶⁴ International Labour Organization, “Ratifications by Country,” <http://www.ilo.org/ilolex/english/docs/declAS.htm>.

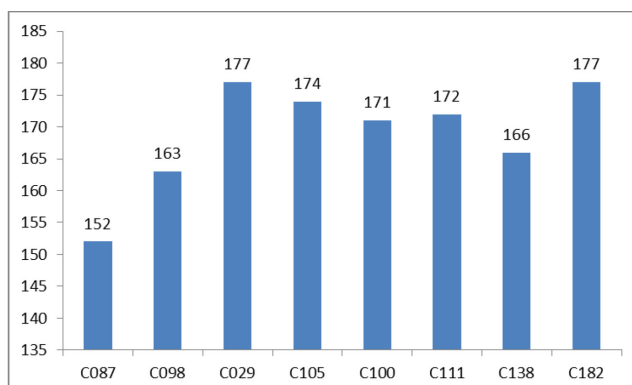
Table 8: ILO Fundamental Conventions Ratified by China

Convention	Convention Established	Status
C100 Equal Remuneration	1951	Ratified, November 2, 1990
C111 Discrimination (Employment and Occupation)	1958	Ratified, January 12, 2006
C138 Minimum Age Convention	1973	Ratified, April 28, 1999
C182 Worst Forms of Child Labour	1999	Ratified, August 8, 2002

As noted previously, the Conference Committee on the Application of Standards has concentrated on suspected violations of the eight fundamental ILO conventions, especially Conventions 87 (freedom of association) and 98 (the right to organize), which are of such importance that they comprise the majority of cases (roughly 50 percent) dealt with by the CCAS.⁸⁶⁵ Figure 2, which shows the number of countries that have ratified the Conventions, illustrates the extent to which the PRC lags behind other countries in ratifying the four fundamental ILO conventions that deal with freedom of association (Convention 87), the right to organize (Convention 98), and forced labor (Conventions 29 and 105). On all four of these unratified conventions, the PRC is in a minority of less than 35 countries out of 185 that have not ratified these conventions.

⁸⁶⁵ Debrulle, interview, and Interviewee #37, former senior ILO official, May 25, 2011, Geneva, Switzerland. Interviewee #37 suggested that these two conventions make up roughly fifty percent of the cases handled by the CCAS.

Figure 2: Number of Countries that Have Ratified Conventions 87, 98, 29, 105, 100, 111, 138 and 182 ⁸⁶⁶



As a result of Beijing's failure to ratify conventions of particular importance to the CCAS, it received minimal scrutiny from this body, and even after the 1989 Tiananmen Square crackdown, when the UN human rights bodies, particularly the Sub-Commission and later the Commission on Human Rights, focused on China, Beijing did not come under increased scrutiny in the Conference Committee. However, other parts of the ILO criticized the use of violence to suppress workers protesting in Tiananmen Square.⁸⁶⁷ Further, while other parts of the ILO, particularly the Committee on Freedom of Association has encouraged Beijing to ratify more fundamental ILO conventions, this pressure has not come from the CCAS itself.⁸⁶⁸

As noted earlier, when called before the Committee, the PRC's reviews have been straightforward and not controversial, especially in contrast to other countries.⁸⁶⁹ As

⁸⁶⁶ International Labour Organization, "Information System on International Labour Standards," www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1::NO::

⁸⁶⁷ Ann Kent, "China, International Organizations and Regimes: The ILO as a Case Study in Organizational Learning," *Pacific Affairs* 70, no. 4 (Winter 1997-1998): 517-32.

⁸⁶⁸ International Labour Organization, "Committee on Freedom of Association," <http://www.ilo.int/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang--en/index.htm>

⁸⁶⁹ Interviewee #38, North American governmental representative to the CCAS, June 2, 2011, Geneva, Switzerland; Elmiger, interview; Interviewee #37, former senior ILO official, May 25, 2011, Geneva,

shown by table 9 below, which summarizes the statements made by other CCAS participants during China’s review, the PRC, in fact, received minimal attention. For example, only a handful of Worker representatives from other countries, including the U.S. Worker representative, offered statements that pointed to the PRC’s non-compliance and urged that labor standards be upheld.

Table 9: China Reviews Before the CCAS, Including Hong Kong

	Convention	Statements by other participants
1994	Convention 26 (Minimum Wage Fixing)	U.S. Worker Representative: CCAS should not be satisfied with PRC’s indications of how it intended to meet obligations; cited reports of low wages and unpaid wages; noted PRC repression of genuine trade unions, lack of collective bargaining and use of prison and forced labor; urged PRC to take effective action, not just announcing new laws and proposals
2004	Convention 98 (Right to Organize and Collective Bargaining)	Italy Worker Representative: Expressed concern about the lack of collective bargaining; Hong Kong government has not taken recommended steps or action taken did not constitute genuine collective bargaining
2007	Convention 182—The Worst Forms of Child Labor	Senegal Worker Representative: Degrading of women fueled trafficking in women and children; lack of any meaningful action to redress these problems; urged PRC to combat this problem and to ratify Convention 29 (forced labor)
		France Worker Representative: Cited problem of forced labor in schools, including specific cases and detailed information; urged PRC government action
		Germany Worker Representative: Expressed concern about “work-study schools,” “re-education through labor” camps, and sexual abuse; urged PRC government to take steps to address problem and abolish forced labor among children
		U.S. Worker Representative: Underlined the severity of child labor in China; noted link to other issues, including provision of decent work for adult population and public school fees; encouraged PRC government to take steps

Switzerland; and Interviewee #39, ILO official for employers’ activities, May 27, 2011, Geneva, Switzerland.

2009	Convention 122 (Employment Policy)	U.S. Worker Representative: Raised reports of imprisonment, harassment and intimidation of workers who had expressed political opinions that differed from those adopted by the PRC government; expressed concern regarding lack of public education and awareness of labor-related laws; encouraged greater government consultation with public; urged greater transparency
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The limited number of instances when the PRC was examined and its mild treatment by the Committee contrasts with the acrimonious reviews and strongly-worded interventions associated with other countries, such as Myanmar. For example, in 2005, in addition to a strong expression of concern from the United States, Luxembourg, speaking on behalf of the European Union, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Norway, Romania, Turkey, Serbia and Montenegro, Switzerland and Ukraine reprimanded Myanmar, citing “no progress” and expressing regret that Myanmar ignored the ILO’s pressing demands for specific steps.⁸⁷⁰ The PRC’s cooperative behavior also contrasts with India’s combative behavior during its examination on child labor when it took the floor for three hours and “distorted the procedure by speaking so long.”⁸⁷¹ Also, unlike some countries that were examined in consecutive years, the PRC government provided satisfactory responses to the CCAS, and as a result, China has not been examined repeatedly.

Surprisingly, during its public examinations the PRC did not receive the kind of assistance it provided other countries. During the four instances when China was summoned to answer to the Committee, no other foreign governments spoke on the PRC’s

⁸⁷⁰ International Labour Organization, “Record of Proceedings: International Labour Conference, 93rd Session, 2005,” 2005, p. 1008.

⁸⁷¹ Dereymaeker, interview.

behalf.⁸⁷² This kind of assistance may have been deemed unnecessary because China's reviews were not controversial. Thus, PRC officials may not have requested such assistance and other countries may have surmised that this help was not needed.

However, China has benefitted from reciprocal assistance in other venues, such as the UN Commission on Human Rights, where Beijing's ability to fend off human rights resolutions was largely dependent on the backing of developing countries, including members of the LMG.⁸⁷³ Table 10 below captures the countries that supported the PRC in preventing a China resolution from being considered as well as those that offered supportive comments for the PRC in the UNCHR. As noted in Chapter 4, the PRC and its allies used no-action motions, which is a procedural maneuver, to prevent passage of UNCHR resolutions expressing concern about China's human rights record.

⁸⁷² International Labour Organization, "Record of Proceedings: International Labour Conference, 81st Session, 1994," 1994, www.ilo.org/public/libdoc/ilo/P/09616/09616%281994-81%29.pdf, p. 934-35; International Labour Organization, "Record of Proceedings: International Labour Conference, 92nd Session, 2004," 2004, www.ilo.org/public/libdoc/ilo/P/09616/09616%282004-92%29.pdf, p. 1107-08; International Labour Organization, "Record of Proceedings, International Labour Conference, 96th Session, 2007," 2007, www.ilo.org/public/libdoc/ilo/P/09616/09616%282007-96%29.pdf, p. 948-49; International Labour Organization, "Record of Proceedings, International Labour Conference, 98th Session, 2009," 2009, www.ilo.org/public/libdoc/ilo/P/09616/09616%282009-98%29.pdf, p. 998-99.

⁸⁷³ For example, Peter Van Ness argued that in 1996, the support of developing countries was critical in preventing the passage of a UNCHR resolution on China. He specifically noted support from Egypt, Zimbabwe, Pakistan and Belarus. Peter Van Ness, "China and the Third World: Patterns of Engagement and Indifference," in *China and the World: Chinese Foreign Policy Faces the Millennium*, ed. Samuel Kim (Boulder, Colorado: Westview Press, 1998), 159.

Table 10: UN Commission on Human Rights voting on PRC resolution no-action motion

Year	Sponsor of No-Action Motion	Voting	Voting in favor to prevent consideration of China resolution	Voting in favor of considering a China resolution	Comments in Support of China
1990	Pakistan	17 in favor, 15 against, 11 abstentions	Bangladesh, China, Cuba, Cyprus, Ethiopia, Ghana, India, Iraq, Madagascar, Nigeria, Pakistan, Sao Tome and Principe, Somalia, Sri Lanka, Ukrainian Soviet Socialist Republic, USSR, Yugoslavia	Belgium, Bulgaria, Canada, France, Germany, Hungary, Italy, Japan, Panama, Portugal, Spain, Swaziland, Sweden, United Kingdom, United States	Cuba, Somalia
1991	No Resolution	--	--	--	--
1992	Pakistan	27 in favor, 15 against, 10 abstentions	Angola, Bangladesh, Burundi, Chile, China, Cuba, Cyprus, Gambia, Ghana, India, Indonesia, Iran, Iraq, Kenya, Lesotho, Libya, Madagascar, Mauritania, Nigeria, Pakistan, Philippines, Somalia, Sri Lanka, Syria, Tunisia, Yugoslavia, Zambia	Australia, Austria, Canada, Costa Rica, Czech and Slovak Federal Republic, France, Germany, Hungary, Italy, Japan, Netherlands, Portugal, Russia, United Kingdom, United States	Cuba, Gambia, Iran, Libya, Mauritania, Sri Lanka, Syria
1993	China	22 in favor, 17 against, 12 abstentions	Angola, Bangladesh, Burundi, China, Cuba, Cyprus, Gabon, Guinea-Bissau, India, Indonesia, Iran, Kenya, Libya, Malaysia, Mauritania, Nigeria, Pakistan, Sri Lanka, Sudan, Syria, Tunisia, Zambia	Australia, Austria, Bulgaria, Canada, Costa Rica, Czech Republic, Finland, France, Germany, Japan, Netherlands, Poland, Portugal, Romania, Russia, United Kingdom, United States	Cuba, Bangladesh, Iran, Malaysia, Mauritania, Nigeria, Pakistan, Sudan, Syria,
1994	China	20 in favor, 16 against, 17 abstentions	Angola, Bangladesh, Cameroon, China, Cote d'Ivoire, Cuba, Gabon, Hungary, Indonesia, Iran, Kenya, Libya, Malaysia, Mauritania, Nigeria, Pakistan, Sri Lanka, Sudan, Syria, Togo	Australia, Austria, Bulgaria, Canada, Costa Rica, Finland, France, Germany, Guinea-Bissau, Hungary, Italy, Japan, Netherlands, Russia, United Kingdom, United States	Cuba, Iran, Mauritania, Nigeria, Pakistan, Sri Lanka, Syria

1995	China	Vote on no-action motion: 22 in favor, 22 against, 9 abstentions (rejected) Vote on resolution: 20 in favor, 21 against, 12 abstentions	Algeria, Angola, Bangladesh, Bhutan, Cameroon, China, Côte d'Ivoire, Cuba, Egypt, Ethiopia, Gabon, India, Indonesia, Malaysia, Mauritania, Nepal, Pakistan, Peru, Sri Lanka, Sudan, Togo, Zimbabwe	Australia, Austria, Bulgaria, Canada, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Guinea-Bissau, Hungary, Italy, Japan, Netherlands, Nicaragua, Philippines, Poland, Romania, Russia, United Kingdom, United States	Cuba, Bangladesh, India, Mauritania, Pakistan, Sri Lanka, South Korea, Sudan
1996	China	27 in favor, 20 against, 6 abstentions	Algeria, Angola, Bangladesh, Belarus, Benin, Bhutan, Cameroon, China, Côte d'Ivoire, Cuba, Egypt, Ethiopia, Gabon, Guinea, India, Indonesia, Madagascar, Malaysia, Mali, Mauritania, Nepal, Pakistan, Peru, Sri Lanka, Uganda, Ukraine, Zimbabwe	Australia, Austria, Brazil, Bulgaria, Canada, Chile, Denmark, Dominican Republic, Ecuador, El Salvador, France, Germany, Hungary, Italy, Japan, Malawi, Netherlands, Nicaragua, United Kingdom, United States	Angola, Bangladesh, Cuba, India, Mauritania, Pakistan, Sri Lanka
1997	China	27 in favor, 17 against, 9 abstentions	Algeria, Angola, Bangladesh, Belarus, Benin, Bhutan, Cape Verde, China, Colombia, Cuba, Egypt, Ethiopia, Gabon, Guinea, India, Indonesia, Madagascar, Malaysia, Mali, Mozambique, Nepal, Pakistan, Sri Lanka, Uganda, Ukraine, Zaire, Zimbabwe	Austria, Bulgaria, Canada, Chile, Czech Republic, Denmark, El Salvador, France, Germany, Ireland, Italy, Japan, Netherlands, Nicaragua, South Africa, United Kingdom, United States	Angola, Algeria, Bangladesh, Cuba, Egypt, Malaysia, Nepal, Pakistan, South Korea, Sri Lanka
1998	No Resolution	--	--	--	--
1999	China	22 in favor, 17 against, 14 abstentions	Bangladesh, Bhutan, Botswana, Cape Verde, China, Colombia, Congo, Cuba, Democratic Republic of the Congo, India, Indonesia, Madagascar, Morocco, Mozambique, Nepal, Pakistan, Peru, Qatar, Russia, Sri Lanka, Sudan, Venezuela	Austria, Canada, Czech Republic, El Salvador, France, Germany, Ireland, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Rwanda, South Africa, United Kingdom, United States	Cuba, Bangladesh, Nepal, Pakistan, Sri Lanka, Sudan

2000	China	22 in favor, 18 against, 12 abstentions	Bangladesh, Bhutan, Botswana, Burundi, China, Congo, Cuba, India, Indonesia, Madagascar, Morocco, Nepal, Niger, Nigeria, Pakistan, Peru, Qatar, Russia, Sri Lanka, Sudan, Venezuela, Zambia	Canada, Colombia, Czech Republic, El Salvador, France, Germany, Guatemala, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Portugal, Spain, Swaziland, United Kingdom, United States	Cuba, Bangladesh, Pakistan, Russia, Sri Lanka, Sudan
2001	China	23 in favor, 17 against, 12 abstentions	Algeria, Burundi, Cameroon, China, Cuba, India, Indonesia, Kenya, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Niger, Nigeria, Pakistan, Qatar, Russia, Saudi Arabia, Syrian Arab Republic, Thailand, Venezuela, Viet Nam, Zambia	Belgium, Canada, Costa Rica, Czech Republic, France, Germany, Guatemala, Italy, Japan, Latvia, Norway, Poland, Portugal, Romania, Spain, United Kingdom and United States	Cuba, Indonesia, Libya, Pakistan, Russia, Syria
2002	No Resolution	--	--	--	--
2003	No Resolution	--	--	--	--
2004	China	28 votes in favor, 16 against, 9 abstentions	Bahrain, Bhutan, Brazil, Burkina Faso, China, Congo, Cuba, Egypt, Eritrea, Ethiopia, Gabon, India, Indonesia, Mauritania, Nepal, Nigeria, Pakistan, Qatar, Russia, Saudi Arabia, Sierra Leone, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, Zimbabwe	Australia, Austria, Costa Rica, Croatia, France, Germany, Guatemala, Honduras, Hungary, Ireland, Italy, Japan, Netherlands, Sweden, United Kingdom, United States	Congo, Cuba, Indonesia, Mauritania, Pakistan, Russia, Sri Lanka, Sudan, Zimbabwe
2005	No Resolution	--	--	--	--

Three important points emerge from the table above. First, the PRC's support came primarily from non-western, developing countries. Thus, China's efforts to make common cause with these countries helped it defeat passage of UNCHR resolutions. Second, some of the countries Beijing spoke in defense of in the CCAS were also the countries that voted in support of China to prevent consideration of a UNCHR resolution.

During the years that they sat on the Commission, Egypt, Zimbabwe, Bangladesh and Belarus, which benefitted from sympathetic PRC comments in the CCAS, always voted to block consideration of a China resolution. Colombia also voted for the no-action motion in 1997 and 1999 but otherwise abstained.⁸⁷⁴ Venezuela sided with the PRC in 1999 and 2001 yet voted against China's position in 2000 and otherwise abstained.⁸⁷⁵ Third, by 1999 when the PRC began offering laudatory comments on behalf of these countries, it was prevailing in the UNCHR vote by comfortable margins.⁸⁷⁶ As noted in Chapter 4, by the late 1990s, there was a distinct easing of human rights pressure on China in this body. Thus, even if Beijing considered that backing like-minded countries in the CCAS might pay dividends in other venues, the support of other countries was not as critical as it may have been in the early to mid-1990s when the margins in the Commission were much tighter.

Even in the Human Rights Council, some of these countries came forth with platitudinous statements, and even praise, during China's Universal Periodic Review in 2009. Table 11 below, which includes statements made by select countries during China's review, shows that five of the eight countries that China defended in the ILO Conference Committee offered comments that were sympathetic to the PRC. Moreover, two other countries that received PRC assistance in the CCAS, Bangladesh and Belarus, had signed up to speak, but were unable to speak due to time constraints. Of the countries China

⁸⁷⁴ Colombia was on the UNCHR from 1983-1997 and again from 1999-2001. It abstained in 1990, 1992, 1993, 1994, 1995, and 1996. In 2000, it voted to bring a China resolution to the floor.

⁸⁷⁵ Venezuela was a UNCHR member from 1985-1996, and again from 1998-2003. It abstained in 1990, 1992, 1993, 1994, 1995, 1996, and 2001.

⁸⁷⁶ Baker, "Human Rights, Europe and the People's Republic of China," 55-56.

defended in the Conference Committee, only Egypt did not make a statement or offer a statement in the HRC.⁸⁷⁷

Although Beijing may have been grateful for this support, and there may be a correlation between the PRC's protective comments in the CCAS and these countries' support in the UNCHR and Human Rights Council, this does not amount to causation. Beijing may have been reciprocating in some way in the Conference Committee, but there is no direct causal evidence.

Table 11: Statements by Select Countries During China's February 2009 UPR⁸⁷⁸

Country	Statement
Uzbekistan	Welcomed the PRC's efforts in promoting and protecting human rights, which attested to the PRC's commitment to human rights; stressed positive results related to women, children, the disabled, education and human rights, civil society, and health; drew attention to the PRC's National Human Rights Action Plan for 2009-2010
Zimbabwe	Praised China's economic and human rights achievements; recommended that the PRC continue its poverty reduction programs and foreign language media, which would help the outside world understand China; PRC is often deliberately and grossly misunderstood
Venezuela	Commended China for attaching same importance to economic, social and cultural rights and the right to development; noted efforts to reduce poverty; encouraged China to continue poverty reduction work; noted that China put people at the center of its policies
Colombia	Drew attention to China's national report; praised efforts in the area of economic and social rights; stressed importance China attached to rights of women and children; requested further information on progress and results in regard to children and development

⁸⁷⁷ UN General Assembly, "Report of the Working Group on the Universal Periodic Review, China," October 5, 2009, A/HRC/11/25, paragraph 26.

⁸⁷⁸ For these statements in full, see Ibid.

Myanmar	Welcomed the significant progress made in education, culture and public health, which is a testimony to China's political will to promote and protect human rights; praised China for "remarkable results" in improving the wellbeing of its population; reaffirmed "One China Policy," sympathized with and understood human rights challenges facing China; opposed politicizing human rights issues and using them to interfere in internal affairs
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Aside from the possibility of shoring up support, these PRC statements defending other countries may have been guided by broader bilateral interests, such as trade, geostrategic location, and energy.⁸⁷⁹ Yet, given China's growing economic, military and political power, Beijing has many other tools at its disposal to advance bilateral ties, including: foreign assistance, investment, trade, market access, military patronage, and diplomatic support.⁸⁸⁰ Thus, although its laudatory statements were likely helpful in earning further goodwill, they were probably not Beijing's most powerful tools.

As shown in this chapter, China did not pursue changes to the Conference Committee and accepted this part of the regime, suggesting a taker role. Yet,

⁸⁷⁹ Several observers suspected a link between Beijing's bilateral relationships and its statements before the CCAS. Tate, interview; Elmiger, interview; and Benedict, interview. Tate and Elmiger noted that they suspected that China's economic interests, particularly trade and energy, guided PRC behavior. For more on China's interests with the developing world, see David Zweig, "The Rise of a New 'Trading Nation,'" in *China, the Developing World, and the New Global Dynamic*, eds. Lowell Dittmer and George T. Yu (Boulder, Colorado: Lynne Rienner, 2010), 55 and Mel Gurtov, "Changing Perspectives and Policies," in *China, the Developing World, and the New Global Dynamic*, eds. Lowell Dittmer and George T. Yu (Boulder, Colorado: Lynne Rienner, 2010), 23. For example, Myanmar is strategically important to the PRC, serving as a land bridge to the Indian Ocean, a key trading partner, and a source of natural gas. "China relations with Myanmar, Welcome neighbor," *The Economist*, September 9, 2010, <http://www.economist.com/node/16996935>. Venezuela is a key source of oil for China and has come to receive significant Chinese energy investment. See also, Lowell Dittmer, "China and the Developing World," in *China, the Developing World, and the New Global Dynamic*, eds. Lowell Dittmer and George T. Yu (Boulder, Colorado: Lynne Rienner, 2010), 6.

⁸⁸⁰ For China's tactics to secure access to oil, see Chung-chian Teng, "Democracy, Development and China's Acquisition of Oil in the Third World," in *Dancing with the Dragon: China's Emergence in the Developing World*, eds. Dennis Hickey and Baoguang Guo (Boulder, Colorado: Rowman & Littlefield Publishers, Inc. 2010), 105. For example, the PRC's support to Myanmar has included providing more than \$1 billion in military weapons and vetoing a 2007 Security Council resolution criticizing the myriad human rights violations in Myanmar. Bronson Percival, *The Dragon Looks South: China and Southeast Asia in the New Century* (Westport, Connecticut: Praeger Security International, 2007), 39 and Gurtov, "Changing Perspectives and Policies," 23.

paradoxically, even as a taker, as shown by the PRC's instrumental use of this venue, the impact of its behavior did not necessarily uphold and strengthen the purposes and intentions of the regime. For example, it used its participation in the CCAS to agree to requests from other countries seeking supportive PRC statements.

Explaining Chinese Behavior

As with the other parts of the human rights regime examined in this thesis, China's behavior as a taker was influenced by a concern with international image, its ideas about human rights, and the degree of its familiarity with the regime. In the ILO Conference Committee on the Application of Standards, Chinese international image concerns and its ideas and preferences on human rights, particularly acceptable forms of monitoring, were especially prominent explanatory factors that inclined the PRC toward a taker posture. Its increased familiarity also influenced its posture, but this was a weaker explanatory variable. China's ability and willingness to aid other countries in this venue acted as a scope condition that affected the manner in which the PRC acted out its role as a taker.

The Chinese government's concern with image carried much explanatory weight. Unlike other parts of the human rights regime, in this case the PRC was inclined toward a taker role because the CCAS did little harm to China's image. As noted previously, because the PRC had not ratified the conventions that were of high interest to the CCAS, particularly Conventions 87 (freedom of association) and 98 (right to organize), it received minimal scrutiny in this body. Further, the CCAS did not criticize or pressure Beijing for its failure to ratify these two foundational conventions. Even after the 1989 Tiananmen Square crackdown when the PRC faced international condemnation, the CCAS did not

focus on China. Moreover, as noted earlier Beijing's questioning before the Committee has been mild and infrequent and it has not been highlighted for violations in a special paragraph section of the CCAS report. This finding suggests that when Beijing's image is not at risk, it may be more likely to accept the regime.

Image may also partially account for Beijing's defense of other countries. A Western European national trade union official with nearly fifteen years of experience in the CCAS argued that Beijing's defense of countries that "are hard to defend" is China's way of "defending itself" from facing this kind of negative attention in the future.⁸⁸¹ Beijing's actions may have been preventive in nature as it sought to challenge approaches to human rights monitoring that could potentially result in image-damaging attention, such as intrusive monitoring or mandatory follow-up action.⁸⁸² Echoing the above sentiment, a PRC scholar suggested that "when you protect someone like you, you are protecting yourself."⁸⁸³ Further, because the Conference Committee receives less publicity than other human rights bodies, such as the UN Human Rights Council, its behavior in shielding other states, such as Belarus, Myanmar and Venezuela, received little public scrutiny.⁸⁸⁴ Finally, the goodwill Beijing gained through its laudatory comments on behalf of other countries may have translated into protection and assistance in other parts of the human rights regime, such as the UNCHR, where China's image came under greater threat. There is, however, no direct evidence to support this supposition.

⁸⁸¹ Dereymaeker, interview. He further elaborated that Beijing reiterated the importance of sovereignty and non-interference.

⁸⁸² Tate, interview.

⁸⁸³ Interviewee #44, Chinese Academy of Social Sciences Scholar, July 12, 2013, Beijing, China.

⁸⁸⁴ Although interview subjects noticed Beijing's defense of states that many of them see as having serious labor rights violations, they described China as not destructive and tending toward a lower-profile.

Image may also have influenced Beijing's decision to participate in the CCAS in two distinct ways. First, Beijing's interest in projecting an image as an engaged regime member likely influenced its decision to participate as it sought to demonstrate full participation in ILO activities.⁸⁸⁵ Second, as a Chinese government official noted, this venue provided China with an opportunity to "present China's story to the ILO and to let other parts of the world understand China and the difficulties we face and the achievements we have made."⁸⁸⁶

China's human rights preferences and ideas also carry relatively strong explanatory weight. In contrast to other parts of the human rights regime, the institutional characteristics of the Conference Committee conformed more closely to PRC preferences. First, the Committee's limited jurisdiction, which was restricted to addressing only ratified conventions, dovetailed with the PRC's views that states should have greater control over the manner and degree in which the regime is applied to them. Thus, by not ratifying key conventions Beijing had some influence over the level of scrutiny it received from the Committee. This contrasts with the Human Rights Council, which can censure any UN member state. Second, another area of congruity between Beijing's preferences and the CCAS's institutional features was the emphasis on geographical balance and an even-handed approach in selecting countries for examination. This accorded with the PRC's oft-stated preference for universal monitoring. Third, Beijing has regularly voiced its

⁸⁸⁵ As Interviewee #38 noted, governments at the ILC generally try to participate in as many activities as they can. Interview #38, North American government official, June 2 2011, Geneva, Switzerland.

⁸⁸⁶ Interviewee #40, Chinese government official, June 12, 2011, Beijing, China.

preference for dialogue and cooperation rather than condemnation, and the ILO itself has described the CCAS as engaging in dialogue with states.⁸⁸⁷

PRC human rights preferences influenced its posture in another way as it also used the Conference Committee as a venue to advance its human rights views. In particular, Chinese representatives verbalized a preference for technical assistance, cooperation, and capacity-building over sanctions or condemnation; the importance of the principle of non-interference; and opposition to intrusive human rights monitoring.⁸⁸⁸ The PRC was also able to use the CCAS to deliver strenuous interventions on behalf of Myanmar to counter selective scrutiny from other parts of the ILO. As a Chinese Academy of Social Sciences scholar offered, “we don’t care about human rights—we just don’t want to set the precedent” that interference and enforcement action are appropriate.⁸⁸⁹ Because the PRC began offering laudatory statements for embattled allies at a time when support in the UNCHR was less critical, it may, in fact, have been using these statements as a platform to express its human rights preferences and beliefs. For example, in its protective statement of Myanmar in 2008, the PRC delegate stated that

...As seen in the cooperation between the Government and the ILO, there was effective collaboration based on mutual trust for the sustained well-being of the people. Her government hoped that the ILO and the international community would remain committed to continuing the constructive dialogue and would provide encouragement and assistance, especially in terms of infrastructure.⁸⁹⁰

⁸⁸⁷ The International Labour Organization, *The Committee on the Application of Standards of the International Labour Conference: A Dynamic and Impact Built on Decades of Dialogue and Persuasion* (Geneva: International Labour Organization, 2011), 12.

⁸⁸⁸ Tate, interview.

⁸⁸⁹ Interviewee #44, Chinese Academy of Social Sciences Scholar, July 12, 2013, Beijing, China.

⁸⁹⁰ International Labour Organization, “Record of Proceedings: International Labour Conference, 97th Session, 2008,” 2008, p. 908.

This intervention allowed the PRC to repeat its refrain favoring dialogue and cooperation and the building of state capacity.

Beijing's degree of familiarity played a weaker role in influencing its posture. Initially, as a newcomer, the PRC was inclined to accept the regime, which helps explain its relatively quiet role until the late 1990s. As a PRC official noted, China was initially "not too familiar" with the ILO, and so it was natural for it to "listen and observe and try to understand the whole organization."⁸⁹¹ This official noted that its early quiescent years allowed it to gain "a better understanding of multilateral organizations, the rules and regulations of the organization," providing China with a "better position to participate" in the ILO.⁸⁹² In contrast to China's shift from taker to maker described in Chapter 3, even as Beijing became increasingly familiar with this part regime, it continued to accept the regime and did not pursue a more assertive posture. Moreover, as the PRC gained familiarity with the Conference Committee, it was likely inclined to continue acting as a taker in part because it saw that the CCAS's institutional features largely aligned with its human rights preferences and that it was not likely to suffer damage to its image in this body. Further, its familiarity, including becoming conversant with the CCAS rules and procedures, enabled it to emerge in the late 1990s as an active participant that was able to use the CCAS review as an opportunity to shield friendly countries.

Finally, Beijing's ability and willingness to cooperate with other countries in the Conference Committee acted as a scope condition as it responded to requests for assistance in the form of sympathetic comments.⁸⁹³ Although this did not determine its posture, it

⁸⁹¹ Interviewee #40, Chinese government official, June 12, 2011, Beijing, China and Potter, interview.

⁸⁹² Interviewee #40 Chinese government official, June 12, 2011, Beijing, China.

⁸⁹³ Ibid.

influenced Beijing's overall instrumental conduct as it delivered positive comments to bolster allies as they were questioned in the Conference Committee. China and the eight countries that it spoke on behalf of—Bangladesh, Belarus, Colombia, Egypt, Myanmar, Venezuela, Uzbekistan, and Zimbabwe—were bound by shared human rights views. Thus, Beijing may also have been acting out of its affinity for these countries and an instinctual desire to show mutual support.⁸⁹⁴ One aspect of Beijing's overall relationship with these countries is solidarity against what is perceived as unfair and selective human rights scrutiny and resisting aspects of the human rights regime that chafe against their views, such as opposition to country-specific criticism. The opportunity to use this forum as a platform to shield allies likely further reinforced Beijing's role as a taker, as it realized that this venue could be used instrumentally. As noted in the section above, there were important bilateral considerations in these relationships that were likely reinforced through other kinds of support.

Conclusion

This final empirical chapter examines the PRC's behavior in yet another distinct component of the human rights regime, which differs significantly from the Commission on Human Rights and the Human Rights Council covered in the previous chapter. In contrast to these entities, the Conference Committee's more restricted mandate encompassed only ratified ILO conventions. This chapter also addressed labor rights, an

⁸⁹⁴ Tate, interview, and Elmiger interview. Elmiger described Beijing's actions as expressions of solidarity. Both Potter and Elmiger remarked that China's behavior was somewhat reminiscent of the Cold War when communist countries would come to each other's defense in the Committee. Potter, interview and Elmiger, interview.

area not yet explored in the other chapters, and also a collective right, which is assumed to enjoy greater PRC support.

In this case, all the explanatory variables—Beijing’s concern with its image in the world, its ideas about international human rights monitoring and its familiarity with the regime—inclined it to act as a taker. The absence of threats to its international image meant that Beijing was inclined to accept this part of the regime. This suggests that China will more likely be a taker when its image is not threatened by the regime, but it was also important that the CCAS aligned fairly closely with its domestic human rights preferences.⁸⁹⁵ Unlike its behavior *vis-à-vis* OPCAT and the UN human rights bodies, in this case, increased familiarity did not incline the PRC toward a more assertive role, suggesting that the other two variables were more powerful.

This case study also allows us to see a pragmatic, even instrumental dimension of Chinese behavior in the human rights regime. Not only did China act as a taker, it used the CCAS to shield other states while they were being examined. This behavior supports the idea that states, particularly once they have accepted the regime, might use regime rules and procedures to their advantage.⁸⁹⁶ Significantly, this instrumental behavior also indicates that although Beijing acted as a taker of the regime in the CCAS, its behavior did not appear to amount to an internalization of human rights norms.

⁸⁹⁵ Foot and Walter make a similar point that the PRC adheres to international norms that do not contradict domestic beliefs, which is primarily defined by the Chinese Communist Party-led government. Rosemary Foot and Andrew Walter, “Global Norms and Major State Behavior: the Cases of China and the United States,” *European Journal of International Relations* 19, no. 2 (June 2013): 329-52.

⁸⁹⁶ Also, as posited in Chapter 1, “Takers might also benefit from the arrangements under the regime and may even adjust their policies in order to maximize their objectives.” For similar point, see Krasner, “U.S. Commercial and Monetary Policy,” 52, and Kim, “China’s Organizational Behavior,” 431.

As with the other empirical chapters, I find strong evidence for the salience of international image and the PRC's human rights ideas as explanatory variables. In this case, the scope condition adds further nuance to the explanation: Beijing spoke on behalf of other countries in order to advance its bilateral relationships—potentially useful in other issue areas—and also to advocate its human rights views. Beijing's defense of these other countries could in part be explained by their willingness to provide the PRC with support in other human rights venues, including voting in its favor on UNCHR resolutions. China's use of the CCAS to reiterate its own human rights views, particularly its concerns about selective attention, also suggests that the constructivist argument regarding the importance of ideas and domestic beliefs has much validity.

Chapter 6

Conclusion

China's behavior as documented in this thesis confounds the predictions of pessimists, who have argued that China would be a disruptive presence in international society, and optimists, who have suggested that it would act as a status quo power. China has, in fact, assumed multiple roles in the international human rights regime. Of the possible roles of maker, promoter, taker, constrainer and breaker, I argue that China acted as a taker and maker in the creation of two different international torture conventions; a constrainer during the establishment of the UN Human Rights Council; and a taker in the ILO's Conference Committee on the Application of Standards, where states are held to ratified labor conventions. In all three cases studies, Chinese leaders' concern with international image, the PRC government's preexisting ideas and preferences on human rights, and the degree of its familiarity with the regime influenced China's posture. Although the PRC has not been as disruptive as some observers predicted, in cooperation with other like-minded states it has been able to shape some aspects of the human rights regime. In several instances this meant that Beijing diluted the force of the regime, including blocking proposed improvements.⁸⁹⁷

The diversity of the case studies and the time period covered in this thesis strengthens the credibility of these findings. This thesis not only traces the PRC's role over time from being a novice to a more experienced regime participant, it also documents

⁸⁹⁷ My findings show that although the PRC did manage to influence some parts of the regime, this influence was not as extensive as some scholars suggest. See for example Nathan, "China and International Human Rights: Tiananmen's Paradoxical Impact."

its behavior before and after the 1989 Tiananmen Square crackdown—a defining moment in its relationship with the regime. This time period also covers China’s emergence as an increasingly powerful actor in the international system. Additionally, this thesis addresses varied components of the human rights regime, including the drafting sessions for two torture conventions, the UN’s primary venue for addressing human rights, and part of the ILO’s system for monitoring state compliance with ratified treaties. These diverse case studies allows us not only to investigate China’s response to a variety of human rights areas, ranging from torture to labor rights, but also to investigate its response to components of the human rights regime that embody varied settings and institutional characteristics, including private drafting groups composed of interested states and NGO representatives, and more public venues, such as the UN Human Rights Council. The case studies also include different approaches to human rights monitoring, such as the investigative trips outlined under OPCAT, the state reporting mandated by CAT, and the ILO Conference Committee’s public review.

Chapter 3, which covers 1982-2002, shows China’s evolution from a quiescent and timid regime participant in the early 1980s during the CAT negotiations to a more vocal and sophisticated actor able to coordinate with similarly-minded countries during the creation of OPCAT, which spanned 1992-2002. As a novice in the 1980s, China was disposed toward the safer and less demanding role of taker. In contrast, roughly ten years later, during the OPCAT negotiations, China, working in concert with other countries behaved as a maker, an effort that met with only limited success.

As documented in Chapter 4, China later emerged as a constrainer during the 2005-2007 negotiations to establish the UN Human Rights Council, a body that was to serve as

the successor to the UN Commission on Human Rights. Even though the PRC resisted efforts to strengthen the regime, and even attempted to weaken it, especially country-specific approaches, it generally allowed other countries to take a more prominent role and it was successful in these efforts when its positions dovetailed with the positions of other countries.

Covering a slightly longer timeframe, Chapter 5 traces China's posture toward the ILO Conference Committee on the Application of Standards from 1982-2011. As with Chapter 3, it shows the PRC's transformation from a timid, unfamiliar actor to a more conversant and adept regime participant. Yet, in this case, the PRC remained a taker throughout the entire period, and even with greater familiarity, it did not deviate from this role. However, beginning in the late 1990s, it began to use this venue to offer protective, laudatory comments for countries friendly to it while they were being reviewed. This suggests that even taker states may not internalize the regime's norms or uphold the regime's underlying principles.

Explanatory Variables and Scope Condition

Although Beijing played three distinct roles, the explanatory variables for its behavior remained remarkably consistent. Together, Chinese leaders' concern with the country's international image, PRC ideas about human rights, and the degree of its familiarity with the regime account for its posture and reveal important influences and motivations. Its image concerns and its preexisting ideas about human rights were particularly robust influences, while its degree of familiarity was a weaker factor. Aside from the three variables, a scope condition—the PRC's ability and willingness to work

with other countries—helps sharpen the analysis of China’s behavior. Although this scope condition did not determine the PRC’s posture, it influenced the manner in which the PRC played its particular role.

PRC concern with projecting a positive global image stands as one of the most prominent explanatory variables, and influenced its behavior with the regime in a number of ways. First, it helps explain the PRC’s decision to increase its involvement with the regime even after the Tiananmen Square bloodshed. Chinese leaders appeared to have calculated that remaining in the regime provided them with opportunities to present their case and also have some influence on the regime, which would help them protect their global image.⁸⁹⁸ Further, because the norms and standards endorsed by the regime would likely be the metric that China and other states were measured against, remaining in the regime provided an opportunity to influence the regime’s development and direction.⁸⁹⁹ PRC leaders were also able to point to their involvement in the regime as they sought to burnish an image of China as an engaged and supportive member of international society. Second, Chinese representatives in the UNCHR concentrated on protecting the PRC’s image, especially after the international opprobrium following the Tiananmen Square crackdown. This objective manifested itself in a number of ways. For example, the PRC representatives took positions that would enable them to easily deter or counter scrutiny, such as objecting to country-specific resolutions. They continued this approach as the Commission was replaced by the Human Rights Council. As detailed in Chapter 4, they insisted that the universal review process being instituted in the Human Rights Council be

⁸⁹⁸ Because a number of regime mechanisms, such as country-specific resolutions, could be applied to any UN member state, the PRC could potentially face certain forms of censure whether or not they participated.

⁸⁹⁹ Interviewee #56 PRC Ministry of Foreign Affairs official, June 6, 2014, Beijing, China. Interviewee commented that participation in the regime enabled China to have some influence, and was therefore beneficial to China.

truly universal and based on a rotational system so that it could not be used to draw selective attention to particular countries.

Chapter 4 also details the PRC's uncharacteristically prominent and controversial stance delaying agreement on the Institution-Building package in its effort to curtail the use of country-specific resolutions in the Human Rights Council. This effort aligns with the PRC's efforts after 1989, when PRC representatives became more assertive in advancing ideas such as "cooperation" and "dialogue" as being preferable to "confrontation" and began opposing country-specific resolutions. Beijing took the opportunity to advance these ideas during the HRC negotiations.

Third, image concerns inclined the PRC toward a lower-profile behavior in order to project an image of the PRC as an agreeable and unassuming participant. In several instances, such as the CAT drafting process, this caused China to back down on its minority position on universal jurisdiction. Moreover, even when it pushed for changes in the regime, it sought to do so without drawing attention to itself.⁹⁰⁰ Instead, the PRC often relied on other countries to take a more visible and active role or joined groups of countries to avoid standing out.

Fourth, China was attentive to the size of the audience, and was more circumspect in larger, higher-profile venues, especially those that included a broader audience, such as NGOs. China was also more cautious in the UN General Assembly as opposed to smaller

⁹⁰⁰ Kent has also suggested that PRC image concerns had a constraining effect on its behavior. She noted, "China's need for moral stature and a good international reputation thus helps tone down the realism of its foreign policy... In many cases, this does not mean that it has internalized international norms, but that it is prepared to be more pragmatic about its interests than its statements of principle would suggest." Kent, "China's Participation in International Organisations," 156.

UN bodies, or where there was a record of proceedings.⁹⁰¹ At the same time, in smaller venues that included only a limited number of state participants it was often more strident. This behavior was particularly obvious during the OPCAT adoption process when Beijing toned down its resistance as the OPCAT resolution was taken up by increasingly larger UN bodies.

Finally, in instances when the PRC perceived that the regime would do little damage to its image, it was more likely to accept the regime. Thus, China did not challenge the ILO Conference Committee because it received little scrutiny in this body. In contrast, Beijing's boldest role was that of a constrainer in the negotiations leading to the creation of the Human Rights Council. As the successor body to the UNCHR, where China received the most serious threats to its image, Chinese diplomats sought to dilute the ability of this part of the regime to focus on any single country as a way of protecting itself.

This variable sometimes resulted in conflicting behavior. For example, despite the PRC's preference to act in a low-profile manner, as noted previously, during the final stages of the Institution-Building Process, Beijing sought to weaken country-specific resolutions to reduce the likelihood that image-damaging resolutions on China would be introduced in the UN Human Rights Council. Yet this unpopular position began to cause damage to China's image as no other countries supported it and its recalcitrance jeopardized agreement on the Institution-Building package. China finally acquiesced when it saw news articles portraying it as being uncooperative and holding up progress on the

⁹⁰¹ My findings concur with those of Samuel Kim, who noted that "China is more cooperative in a high-profile multilateral institutional or negotiating settings than in low-profile bilateral negotiations." Kim, "China and the United Nations," 81.

establishment of the new Council. Thus, Chinese representatives have had to balance tactics, and even when they sought to introduce changes or constrain the regime they sought to do so without incurring significant image costs.

Chinese human rights beliefs as defined by the CCP-led government also strongly shaped its posture.⁹⁰² As noted in Chapter 1, the relevant features of China's human rights thinking included the primacy of a Westphalian view of state sovereignty (notably, non-interference in internal affairs), greater emphasis on economic, social and cultural rights, and the importance of taking into account differing national conditions. Despite nearly three decades in the human rights regime, the PRC displayed little evolution in its human rights views and often resisted parts of the regime that did not align with its views. For example, during the decade long OPCAT negotiations, the PRC did not relent in its resistance to granting strong visiting authority to the proposed Sub-Committee for the Prevention of Torture and continued to show discomfort with inspections it perceived as being intrusive. Further, China did not act as a taker toward any part of the regime that differed significantly from its human rights ideas. In this vein, it even acted as a maker in its attempt to create a version of OPCAT that more closely conformed to its views. In this case study, Beijing's views on state sovereignty were especially powerful in shaping PRC positions, particularly its efforts to wrestle control away from the treaty body, limit the regime's ability to conduct investigative trips, and include language affirming respect for national legislation.

⁹⁰² Other research has also pointed to the importance of Chinese domestic values and norms, particularly that China is less likely to accept norms that contradict its domestic values, as defined by PRC leaders. Foot and Walter, "Global Norms and Major State Behavior: the Cases of China and the United States," 329-352.

Similarly, Beijing's constrainer posture during the HRC negotiations emanated from its belief that this part of the regime sometimes infringed on state sovereignty, extending beyond what the PRC perceived to be acceptable limits and eroding state control over the regime. In addition, a common refrain from the PRC was that the UNCHR focused too much on political and civil rights as opposed to economic, social and cultural rights.

In contrast to these positions toward the UNCHR and the Human Rights Council, the PRC remained a taker toward the ILO Conference Committee on the Application of Standards largely because the CCAS's approach to human rights monitoring was in closer conformity to PRC views, particularly the CCAS's reliance on information provided by state officials, holding states accountable only for ratified conventions, and an emphasis on taking an even-handed approach and striving for geographical diversity in selecting the countries to be reviewed. Likewise, the PRC was prone to accept CAT because, despite some concerns about universal jurisdiction, this treaty was also in closer alignment with PRC preferences, particularly the option for states to opt out of several provisions and the reliance on state reporting.

Between these two dominant explanatory factors, when forced to make a choice the PRC's international image concerns appear to have prevailed over its human rights ideas. In the case of the Convention against Torture, when the PRC expressed discomfort with universal jurisdiction, it ultimately relented when it realized it was the only holdout. Similarly, image prevailed again when Beijing dropped its opposition to country-specific resolutions during the Institution-Building Process in order to avoid being seen as blocking progress and clinging to a minority position. Moreover, the PRC's boldest posture—that

of constrainer—was primarily dictated by concern that its image could be damaged in the Human Rights Council as it had been in the UNCHR.⁹⁰³

A number of scholars have argued that international image matters to China without substantiating these claims. Thus, my findings address this empirical gap. The PRC's preoccupation with image points to the necessity of further research on the PRC's image concerns, including the origins and basis of this concern, especially whether it is tied to material interests, domestic legitimacy concerns or a PRC belief in the intrinsic value of a positive image.

Beijing's degree of familiarity with the human rights regime was another factor, but a weaker one. Initially, when the PRC had very limited familiarity it was inclined to act as a taker, which confirms other scholarship suggesting that novice states are likely to mimic other states or take a more passive role.⁹⁰⁴ As the PRC's familiarity increased, it was able to play a greater range of roles. Chapter 3, which traced the PRC's shift from taker to maker, demonstrates the increased flexibility the PRC enjoyed once it had gained a more sophisticated understanding of the regime, which enabled it to be more conversant with the issues and more comfortable in presenting its positions. Consequently, with higher levels of familiarity, the influence of the other two variables outlined above became more prominent. As a result, this variable played a lesser role in accounting for PRC conduct in the case studies involving later time periods such as the ILO Conference Committee on the Application of Standards and the proposed Human Rights Council. Thus, familiarity may

⁹⁰³ PRC scholar Wu argued that the PRC is more focused on practical considerations. Wu Xinbo, "Four Contradictions Constraining China's Foreign Policy Behavior," in *Chinese Foreign Policy: Pragmatism and Strategic Behavior: Pragmatism and Strategic Behavior*, ed. Suisheng Zhao (New York: M.E. Sharpe, 2004), 62.

⁹⁰⁴ Johnston, *Social States*.

play a stronger role in the early stages of a state's entrance into the regime, primarily by inclining states toward a taker position. Familiarity may also have influenced the scope condition discussed below as China become more adept at working with other states.⁹⁰⁵

I find no evidence that as China's economic power grew in strength, this material change influenced the way it approached human rights issues. Familiarity with the human rights regime does not necessarily equate to greater material power, though it can suggest greater social influence, including an ability to cooperate with other states, which is outlined below. Despite the finding that greater familiarity with the human rights regime gave the PRC the skills, ability and interest to play a wider range of roles, I found no evidence that China has become more assertive alongside its growing material strength, at least for the time period of my study.⁹⁰⁶ This runs counter to realist assumptions about states using their power to alter international regimes. However, it could also reflect PRC thinking that it still has not amassed sufficient power to implement such drastic changes. In addition, other Chinese influences, such as Deng's admonition to maintain a low-profile, may have acted to restrain PRC behavior.

The PRC's cooperation with other countries emerged in the late-1990s, when during the OPCAT negotiations it made joint statements with other countries and in the ILO it began offering statements in defense of friendly states.⁹⁰⁷ This scope condition was not determinative but rather influenced the manner in which the PRC acted out its

⁹⁰⁵ Kent suggests that with increasing familiarity, China's ability to influence the content of regimes increased. Kent, *China, the United Nations, and Human Rights*, 81.

⁹⁰⁶ Sceats and Breslin find some evidence that China is shifting to a more assertive and confident posture in the HRC. Sceats and Breslin, *China and the International Human Rights System*, 56.

⁹⁰⁷ My findings in this area track with Johnston's observation about China's tendency to build coalitions. He noted that "Such a coalition not only helps muster bargaining power, but the larger it is, the lower the obstructionist behavior to China's image." Johnston, "Learning Versus Adaptation," 58.

particular roles. For example, during the negotiations to establish the UN Human Rights Council this scope condition enabled the PRC to play a more subdued role as it either let other countries with similar views take a more vocal stance or it simply signed onto joint statements made by a group of similarly-minded countries. In the ILO Conference Committee on the Application of Standards, this scope condition influenced PRC behavior in markedly different ways. In this venue, the PRC responded to requests by other countries for assistance in the form of supportive statements. As a result, the PRC acted as a defender of Bangladesh, Belarus, Colombia, Egypt, Myanmar, Venezuela, Uzbekistan, and Zimbabwe. While in some instances this scope condition often moderated PRC behavior, the existence of other countries holding similar views, such as these eight countries in the ILO, the seven countries in OPCAT that made joint statements delivered by Cuba, the Like-Minded Group in the UNCHR, and the Cross-Regional Group which came together during the five-year review of the HRC, may also have reinforced PRC views by providing them with a community to identify with and find mutual support.⁹⁰⁸ The PRC's ability to work with other countries helped it influence outcomes. As noted in Chapter 4, the PRC was successful when its views aligned with other countries but failed on the issue of country resolutions when it acted without the support of others and eventually had to acquiesce. Aside from providing insight into PRC behavior, my findings, especially regarding the way these countries worked together and their ability to ease normative pressure on each other, are also relevant to scholarship on international regimes more generally, which is discussed in a later section.

⁹⁰⁸ During the OPCAT negotiations, the seven countries were Cuba, Algeria, Egypt, Saudi Arabia, Sudan, Syria and China. The LMG included Algeria, Bangladesh, Belarus, Bhutan, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, Vietnam, and Zimbabwe. The CRG included China, Cuba, Venezuela, Bolivia, Nicaragua, Belarus, Syria, Iran, Vietnam, Algeria, Yemen, and Russia.

Chinese Foreign Policy Behavior and Motivations

My research also uncovers important Chinese motivations behind its foreign policy behavior and also point to areas for future research. Significant findings include the tenacity of domestic PRC human rights beliefs, the high importance PRC leaders have attached to its global image, and its tendency toward a low-profile role.

The tenacity of the PRC's preexisting ideas about human rights suggest that in this area China was resistant to external influences. This was especially evident during the decade-long negotiations over the Optional Protocol to the Convention against Torture, where the PRC's positions on key issues, such as the treaty body's degree of access and the importance of language affirming national sovereignty, remained unaltered. One of the most prominent and unchanging features of PRC human rights thinking was the primacy of state sovereignty in relationship to the international human rights regime. PRC leaders consistently took positions to limit the regime's reach and resisted infringements of state sovereignty. This contrasts with scholarship showing some evidence of full PRC socialization in certain other issue areas,⁹⁰⁹ and leads to questions such as whether PRC views on arms control and trade are more responsive to outside influences. Moreover, this points to the worth of scholarship on whether the PRC is a difficult case that is more resistant to the power of international regimes.⁹¹⁰ Because the effectiveness of international regimes likely varies from state to state, identifying particular characteristics that facilitate this process is worth further exploration.

⁹⁰⁹ Johnston, *Social States*.

⁹¹⁰ Kent described China as possibly being a "least likely" case with regard to the effectiveness of international organizations. Kent, *Beyond Compliance*, 32. Foot noted "material power, demographic size, degree of openness, and political culture" as possible relevant factors. Foot, *Rights Beyond Borders*, 13. Other relevant factors might include PRC nationalism and its status as a rising power.

The inability of the regime to alter PRC human rights beliefs is somewhat surprising given the PRC's high sensitivity to image, which is a crucial requisite or stage along the route to full socialization of the human rights norm.⁹¹¹ Even prior to the Tiananmen Square crackdown, the PRC was attentive to its global image. Yet, despite PRC concerns with its image in the world and strong desire to be seen in a positive light in the regime, the hoped-for consequential norm-compliant behavior and transformation of PRC ideas has not materialized. Rather than trying to abide closely with the behavior enshrined in the regime, the PRC used its knowledge of the regime and diplomatic skills to either limit scrutiny or to manage the PRC's image in the regime. PRC representatives acted more as public relations managers rather than transmitters of norms. This finding suggests ongoing questions about how or when image translates into norm-compliant behavior, as well as factors that might block the process of socialization and internalization of regime norms. It further points to the under-explored area of Chinese leaders' strong attachment to a positive global image, particularly understanding the genesis of this concern. For example, what are the particular material or social interests that they perceive as being served through a positive image? Or are there particular cultural or political reasons that cause them to value the inherent worth of a positive image?

Related to image is the question of China's persistent tendency toward a lower-profile. As with its foreign policy behavior in other areas, Beijing appeared to continue to heed Deng Xiaoping's dictum to "maintain a low profile, hide brightness, not seek

⁹¹¹ Shambaugh, *China Goes Global*, 153. As David Shambaugh noted, "Philosophically, China does not really support the liberal concepts of global governance and public goods, but it is increasingly sensitive to the implications for a global image of its role in global governance."

leadership...”⁹¹² Yet, is it that Deng’s words continue to guide PRC behavior or are there other reasons it inclined toward a more modest role? The PRC’s tendency toward a restrained profile may be linked with its efforts to manage external perceptions of its rise, such as the use of the term “peaceful rise” and “peaceful development.”⁹¹³

My findings concur with those of other scholars who suggest that China primarily appeared to learn instrumentally, meaning that it mastered the rules and procedures in a way that enabled it to use the regime for its own ends. This contrasts with adaptive learning which suggests absorption of the underlying principles.⁹¹⁴ Aside from reacting to the regime instrumentally as it sought to avoid attention, the PRC used the regime to build its relationship with the developing world. For example, aside from statements championing developing world causes in the UNCHR and the Human Rights Council, in the ILO Conference Committee it made laudatory, protective comments when key states were being reviewed by the Conference Committee.

China’s reactions may reflect that, unlike other regimes, the human rights regime is particularly problematic for the CCP-led government. A number of scholars contend that this regime may be the most difficult for Chinese officialdom to embrace.⁹¹⁵ As Susan

⁹¹² The full quote ends with “...but do some things.” See, for example, Zhao Suisheng, “Chinese Foreign Policy under Hu Jintao: The Struggle between Low-Profile Policy and Diplomatic Activism,” *The Hague Journal of Diplomacy* 5, issue 4 (2010) and Shambaugh, *China Goes Global*, 18. For thinking within China about its role in the world, see Shaun Breslin, “China and the global order: signaling threat or friendship?” *International Affairs* 89, issue 3 (May 2013): 615-634.

⁹¹³ See for example, Amrita Narlikar, *New Powers: How to Become One and How to Manage Them* (New York, Columbia University Press, 2010).

⁹¹⁴ Ann Kent even suggests that China’s procedural learning may impede cognitive learning. Kent, *China, the United Nations and Human Rights*, 8. This can also be described as simple or tactical learning as opposed to cognitive or normative learning. A few scholars have suggested, in fact, that Beijing’s rationale for engaging in the regime was not motivated by an acceptance to the underlying principles of the regime. For example, a Chinese scholar noted that “...engaging in the international discourse is seen as a way of resisting foreign influence and keeping Chinese culture distinct.” Xin Chunying, “A Brief History of the Modern Human Rights Discourse in China,” *Human Rights Dialogue* 3 (December 1995), 3.

⁹¹⁵ Zhu, “China and International Human Rights Diplomacy,” 219-220.

Shirk observed, “human rights was the one issue on which Chinese officials could bend the least because it was intertwined with the survival of the Communist Party autocracy.”⁹¹⁶ Beijing has not forgotten the international fallout after the use of force against protestors, which led to “direct costs on China in terms of trade, investments dual-use technologies, development assistance, tourist income, and a mass defection of elite students and scholars.”⁹¹⁷ Thus, the international human rights regime may threaten the PRC’s image among other states, its domestic stability as well as the CCP’s legitimacy.

International Regimes and Norms

My research contributes more broadly to scholarship on international regimes, including offering a fresh lens to view state behavior toward regimes. It also points to areas for future investigation. The different roles developed and elaborated in this thesis provide a valuable framework to parse PRC behavior in the human rights regime and could be applied to investigations of other states and other regimes. The five state roles of maker, promoter, taker, constrainer and breaker provide a nuanced spectrum, rather than a simplistic dichotomous choice, to consider state behavior toward regimes. This framework also provides a useful metric beyond that of compliance to consider state acceptance of regimes and internalization of international norms. States that have absorbed international norms might not only be compliant and accept the regime, but might also act as makers or promoters. At the same time, because states might act in compliance even if they do not genuinely support the regime, examining their behavior toward this regime and asking

⁹¹⁶ Shirk, *China: Fragile Superpower*, 224.

⁹¹⁷ Wan, *Human Rights in Chinese Foreign Relations*, 136.

whether they sought to constrain or even break a regime while remaining compliant provides an opportunity for richer exploration.

Although I am working solely with the case of China, my findings about China's ability to work with other countries provides insight into the ways that states work cooperatively with each other within regimes and the degree to which the human rights regime remains contested. I documented cooperation among the PRC and other countries as they sought to make and constrain the regime. Moreover, surprisingly, even when these countries were not trying to overturn or decrease the power of the regime, this behavior in the ILO Conference Committee demonstrates that they also might not necessarily uphold the core principles of the regime. Together, these countries may have been able to prevent a tipping point from being reached, which is thought to usher in greater acceptance of international human rights norms.⁹¹⁸ These norm resisters may have been sufficiently significant as state actors and cohesive that they were able to shield each other from normative pressure. Such findings also reinforce the intuitive point that highly contested regimes are less powerful in shaping state behavior since the norm signals are inconsistent.

My findings additionally suggest the value of research on variations in the ability of different regimes to affect state behavior, including examining whether particular regime characteristics or issues areas are more effective in influencing state behavior. Unlike other regimes, such as trade and arms control, a state's non-compliance in the human rights area does not necessarily lead to losses for other states.⁹¹⁹ As a result, in the human rights

⁹¹⁸ Risse and Sikkink, "The Socialization of International Human Rights Norms into Domestic Practice," 20-25.

⁹¹⁹ Kent noted that the human rights regime lacks "the bargaining counter of reciprocity." Kent, *Beyond Compliance*, 25. Kent also notes the "hardness" and "softness" of regimes. Softer regimes do not "directly and immediately affect the security of the state, or the interests of other states." Ibid., 24.

regime states may be less active in policing each other or using pressure to bring about norm compliant behavior. Moreover, the human rights regime does not have strong mechanisms to encourage compliance or respond to severe violations of human rights norms.⁹²⁰ For example, there are few consequences for late or incomplete reporting, as shown by the PRC's routinely tardy submission of its CAT reports outlined in chapter 3. Further, as shown by the PRC's machinations in the UNCHR, it was able to marshal sufficient support to block passage of UNCHR resolutions and other countries have followed suit in employing similar tactics. Along these lines, the Universal Periodic Review process does not include any binding follow-up action even in cases when severe human rights violations are uncovered. Thus, countries are not consistently admonished for severe human rights abuses. As a result, in the human rights regime, the cost of non-compliance and the motivations driving a state to comply differs from some other regimes.⁹²¹ In this regime, non-compliance mainly hurts global views of that country. Yet, as noted earlier, the international community's response to the Chinese government's use of force against the Tiananmen protestors, when various actors imposed political and economic sanctions, showed that a damaged human rights image can hurt material interests.⁹²² These questions, as well as my research, have a direct bearing on the key question of the ability of international regimes to alter state behavior.⁹²³

⁹²⁰ As Interviewee #3 former Middle Eastern diplomat, May 25, 2011, Geneva, Switzerland noted that the UN human rights treaty body system operates at 70% non-compliance.

⁹²¹ In contrast, for example, the WTO has a dispute settlement mechanism that helps bring states into compliance.

⁹²² In some instances, the international community has enacted sanctions, such as those used against South Africa to oppose apartheid. Also, the EU and the U.S. have maintained Tiananmen-era arms embargoes that restrict sales to the PRC.

⁹²³ Other scholars point to the power of international organizations. As Ann Kent noted, "international organisations are seen to contribute significantly to the international socialisation of participating states. International organizations not only ensure transparency, cut transaction costs, build capacity, and enhance dispute settlement but also, through a process of 'jawboning', persuade parties to 'explore, redefine and

The regime appeared to have a limited ability to transform state thinking, at least a state as powerful as China. Although China was concerned with its global image, as noted earlier its ideas about human rights and its perceptions of acceptable state behavior were less malleable.⁹²⁴ In a number of instances, when the PRC accepted prevailing international human rights ideas, such as universal jurisdiction under CAT or the continued use of country-specific resolutions, it acted predominantly out of image concerns, not because its ideas were transformed. China and other states have asserted that the monitoring and enforcement of international human rights norms should not contravene other powerful global norms, particularly the norm of sovereign equality among states.

Theoretical Implications

My findings, particularly the prominence of global image and PRC human rights beliefs as explanatory factors, has a number of implications for the international relations theories outlined in the introductory chapter. My research especially points to constructivism as a useful lens through which to consider China's foreign policy behavior.

These findings provide evidence for the relevance of constructivist approaches in three respects. First, the importance of image is in line with constructivist arguments that focus on socialization and social standing as facilitating norm diffusion. I argue, for

sometimes discover' their own, and mutual interests." Kent, China's Participation in International Organisations," 133. See also Chayes and Chayes, *The New Sovereignty*. Similar ideas offered by Hu, Chan, and Zha, who argued that international regimes can create "constraints on its foreign conduct as well as incentives to adapt to prevailing norms in contemporary international relations." Weixing Hu, Gerald Chan, and Daojiong Zha, "Understanding China's Behavior in World Politics: An Introduction," in *China's International Relations in the 21st Century: Dynamics of Paradigm Shifts*, eds. Weixing Hu, Gerald Chan, and Daojiong Zha (Lanham, MD: University Press of America, 2000), 2.

⁹²⁴ Leonard also describes some important variants of PRC thinking. Mark Leonard, *What Does China Think?* (New York: Public Affairs, 2008).

example, that China's sensitivity to image may be an indication of the initial effects of socialization and that the PRC has come to appreciate the inherent value of a positive international image. This PRC focus on image aligns closely with constructivist arguments that portray states as social entities. Second, the enduring role of China's pre-existing ideas about human rights as shaping state behavior supports other constructivist arguments, especially those that take seriously the ability of local norms to shape international behavior. Yet, in contrast, to other constructivists who focus on the power of international norms, China has shown limited acceptance of international human rights ideas. It further calls into question the power of the international regime fundamentally to change the Chinese government's domestic beliefs on human rights.

Third, I also argue that the importance the Chinese leadership attached to a positive global image in the human rights area was grounded in a realist world outlook that led the leadership to adopt an instrumentalist logic. Constructivists, such as Johnston, have noted the power of China's *realpolitik* strategic culture and the way that has shaped its interpretations of international behavior.⁹²⁵ This worldview was reinforced when the international opprobrium following the 1989 crackdown resulted in negative material consequences for China which PRC leaders interpreted as efforts to undermine its rule and rise to power and not as efforts genuinely to promote the cause of human rights. Thus, maintaining a positive international image had special significance because it was appraised through this realist lens and because a negative image was seen to have negative material consequences.

⁹²⁵ Alastair Iain Johnston, "Cultural Realism and Strategy in Maoist China," in *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (New York: Columbia University Press, 1996): 216-268 and Alastair Iain Johnston, *Cultural Realism: Strategic Culture and Grand Strategy in Chinese History* (Princeton: Princeton University Press, 1998).

Evidence in support of the PRC's realpolitik beliefs as a strong influence on its behavior is also found in the PRC's view that it could make instrumental use of the regime to advance its own interests. For example, as noted previously, in the ILO the PRC accepted requests from friendly countries to speak in their defense during their reviews regarding reports of failure to meet ratified labor rights commitments. A number of countries that Beijing spoke on behalf of also provided China with support in other human rights venues. In contrast to arguments favoring the power and sway of international regimes, and the ability of norms contained in them to alter state behavior, thinking and even identity, the PRC's strongly-held instrumentalist world view suggested that rather than being changed by the regime, the PRC would perceive the regime as useful for its own purposes.

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Interviews

Please note that in addition to the interviews listed below, an additional 65 interviews were conducted on a confidential basis. Full details have been made available to the examiners.

Name	Position	Date	Location
Claudine Haenni Dale	Secretary General, Association on the Prevention of Torture and participant in the Optional Protocol to the Convention against Torture Drafting Group, 1995-2001	June 2, 2010	Geneva, Switzerland
Cecelia Jimenez	Program Officer, Association on the Prevention of Torture and participant to the Optional Protocol to the Convention against Torture Drafting Group, 1998-2002	June 2, 2010	Geneva, Switzerland
Christian Guillermet	Diplomat, Costa Rican and participant in the Optional Protocol to the Convention Against Torture Drafting Group, 1998-2002	June 8, 2010	Geneva, Switzerland
Lord David Hannay	Member, UN High Level Panel on Threats, Challenges and Change	November 8, 2011	London, United Kingdom
J. Herman Burgers	Chairperson-Rapporteur, Convention Against Torture Drafting Group, 1982-1984	August 31, 2010	The Hague, Netherlands
		April 8, 2010	By e-mail correspondence
Brent Sorenson	Member, UN Committee Against Torture	July 26, 2010	Copenhagen, Denmark

Elizabeth Odio Benito	Chairperson, Optional Protocol to the Convention Against Torture Drafting Group, 1992 and 2001-2002	June 23, 2010	By e-mail correspondence
Ann-Marie Bolin Pennegard	Chairperson, Informal Drafting Group to the Optional Protocol to the Convention Against Torture, 1994-1999	August 31, 2010	Brussels, Belgium
Debra Long	UN and Legal Program Officer, Association for the Prevention of Torture and participant in the Optional Protocol to the Convention Against Torture, 2000-2002	May 11, 2011	By e-mail correspondence
Tomas Husak	Ambassador, Permanent Mission of the Czech Republic to the UN in Geneva, and Special Procedures Human Rights Council Working Group Facilitator, 2006-present	May 25, 2011	Geneva, Switzerland
Mohammed Loulichiki	Ambassador, Permanent Mission of Morocco to the UN in Geneva and Human Rights Council Working Group Facilitator, 2005-2008	June 29, 2011	New York, United States
Sebastian von Einsiedel	Staff member, UN High Level Panel on Threats, Challenges and Change	September 19, 2011	By e-mail correspondence
Tarun Chabra	Staff member, UN High Level Panel on Threats, Challenges, and Change	September 10, 2011	By e-mail correspondence
Munir Akram	Ambassador, Permanent Mission of Pakistan to the UN Geneva, 2004-2007	January 16, 2012	Interview material in possession of author
John Bolton	Ambassador, Permanent Mission of the U.S. to the UN New York, 2005-2006	October 14, 2011	Washington DC
Claude Akpokavie	Senior Advisor, Bureau for Workers' Activities, International Labour Organization, 2002-present	May 24, 2011	Geneva, Switzerland
Maged Abdelaziz	Ambassador, Permanent Mission of Egypt to the UN in New York, 2005-2012	August 9, 2012	By phone
Luis Alfonso de Alba	Ambassador, Permanent Mission of Mexico to the UN in Geneva,		By skype

	2005-2008		
Ed Potter	Employer Spokesperson in the ILO Conference Committee on the Application of Standards(CCAS), 2005-present; member of the U.S. delegation to the ILC since 1982; and participant in the CCAS 1986-1995 and 1999-2011	May 11, 2011	By phone
Dame Justice Laura Mary Cox	Member, ILO Committee of Experts on the Application of Standards, 1998-2012	November 9, 2011	London, United Kingdom
Paul F. van der Heijden	Chairperson, ILO Committee of Freedom of Association, 2002-present	May 27, 2011	Geneva, Switzerland
Jan Dereymaeker	Development Cooperation and Education Officer, International Trade Union Confederation, 2007-present	March 21, 2012	Brussels, Belgium
Stephen Benedict	Director for Human and Trade Union Rights, International Trade Union Confederation, 2009-present	March 16, 2012	By phone
Andree Debrulle	Senior advisor to the Worker Spokesperson, Confederation of Christian Trade Unions, 1990-present	March 23, 2012	Brussels, Belgium
Odd Bruaas	Former Advisor, Ministry of Local Government, Norway and participant in the ILO Conference Committee on the Application of Standards, 1972-2007	June 13, 2011	Oslo, Norway
Jean-Jacques Elmiger	Swiss Ambassador, State Secretariat for Economic Affairs, Federal Department of Economic Affairs, 2008 to present and ILC participant, 1986-present	June 1, 2011	Geneva, Switzerland
Rudi Delarue	Director, ILO office in Brussels, Belgium, 2008-present and former EU Commission representative to the ILO, 1999-2008	March 21, 2012	Brussels, Belgium
Allison Tate	Director External Relations, International Trade Union Confederation, 2006-present	March 21, 2012	Brussels, Belgium
Chen Jian	Ambassador, Permanent Mission	June 11,	Beijing, China

	of China to the UN in New York, 1992-1994 and former UN Secretary-General of the United Nations, 2001-2007	2012	
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