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"Authoritarian International Law" in Action? Tribal Politics in the Human Rights Council

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“Authoritarian International Law” in Action? Tribal Politics in the Human Rights Council

Yu-Jie Chen*

ABSTRACT

The international human rights regime, a product of post-war liberalism, is increasingly falling under the shadow of authoritarian countries that try to influence the regime in favor of their illiberal agendas. This Article uses the United Nations Human Rights Council (HRC) as a prism to examine the changing dynamics among leading authoritarian and democratic actors as they contend to shape global human rights norms and institutions. This Article argues that China, the most resourceful authoritarian party-state, is engaging in what can be understood as tribal international politics, forming coalitions with authoritarian governments and developing countries that have different state interests but share a common distaste for human rights scrutiny. These countries have coalesced as the “Like-Minded Group” in the HRC and thereby sought to blunt the force of the international human rights system. Democracies and other nonstate stakeholders, however, can and should respond to this challenge by taking a proactive approach that engages more alliances to rebuff these authoritarian advances. This Article contributes to the timely discussion of the possibility of “authoritarian international law” by discussing how authoritarian countries affect the international legal order, proposing the importance of studying group dynamics in any given political international institution.

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I. INTRODUCTION

The global protection of human rights is often intertwined with international politics. Governments develop foreign policy strategies that dictate how they pursue their agendas in the multilateral international system. Major powers often have designs to influence the international regime in their favor and invest great resources to that effect. Their agendas, however, do not always converge in the direction of better protection of human rights. Contentions and contestations among countries of different regime types and ideologies are inevitable, and they, in turn, have a bearing on the norms, institutions, and politics of the international human rights regime. It is essential to understand these political dynamics to evaluate their impact on global human rights governance.

As one of the world's most important intergovernmental human rights institutions, the United Nations (UN) Human Rights Council (HRC) provides an excellent window for examining the multilateral politics of the international human rights system. The HRC, established in 2006 to promote "universal respect for the protection of all human rights and fundamental freedoms for all,"¹ is an institution with forty-seven member states. Each member state, unsurprisingly, has its own perceived interests in, and ideas about, human rights.

As the influence of the major powers in the international system ebbs and flows, the dynamics that shape human rights norms, institutions, and politics in the HRC also change. In recent years,

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

observers have been alarmed by the growing efforts of authoritarian states to promote their agendas in key international fora, including the human rights system. The goals pursued by autocracies, however, are often incompatible with internationally recognized human rights principles.

This concern has been heightened since the United States withdrew its membership from the HRC in June 2018.² On the other hand, the People's Republic of China (China)—an increasingly authoritarian, repressive state—has sought to dictate the global governance agenda. International attention has turned to whether and how Xi Jinping, China's Communist Party General Secretary and President, views the United States' retreat from the HRC as evidence of democratic weakness and an opportunity for China to push its "international discursive power" (*huayu quan*).³

Human rights have long been the weakest link in China's foreign relations. Beijing sees human rights criticisms as obstacles to its bilateral and multilateral diplomatic goals, undermining the "great power" image it wants to project and delegitimizing the Chinese Communist Party's standing on the international stage. This gambit of enhancing China's "international discursive power" seeks to tilt the international order in favor of the Chinese party-state's interests in monopolizing its own domestic rule, diminishing international scrutiny of its human rights practices and enhancing its international legitimacy.⁴

2. *Remarks on the UN Human Rights Council*, U.S. MISSION TO UNITED NATIONS (June 19, 2018), <https://usun.usmission.gov/remarks-on-the-un-human-rights-council/> [<https://perma.cc/2ECU-KKVF>] (archived Aug. 30, 2021).

3. See Zhang Luewen, *China should strengthen its international discourse power: expert*, PEOPLE'S DAILY (May 22, 2018), en.people.cn/n3/2018/0522/c90000-9462747.html [<https://perma.cc/H6D8-WCLK>] (archived Aug. 30, 2021).

4. See generally PITMAN B. POTTER, EXPORTING VIRTUE? CHINA'S INTERNATIONAL HUMAN RIGHTS ACTIVISM IN THE AGE OF XI JINPING (2021) (discussing how China uses its international influence to export authoritarian values to the international human rights norms and institutions); Yu-Jie Chen, *China's Challenge to the International Human Rights Regime*, 51 N.Y.U. J. INT'L L. & POL. 1179 (2019) (discussing China's contemporary human rights theory and practice in the United Nations with a focus on Beijing's strategies in the Human Rights Council); TED PICCONE, BROOKINGS INST., CHINA'S LONG GAME ON HUMAN RIGHTS AT THE UNITED NATIONS 1 (2018), <https://www.brookings.edu/research/chinas-long-game-on-human-rights-at-the-united-nations> [<https://perma.cc/JAU8-WLJM>] (archived Aug. 30, 2021) ("Consistent with its ambitions to play a central role in leading the international order, China is emerging as a pivotal player in the international human rights system. In the past few years, China has shifted from its traditionally more defensive posture to a more activist role, particularly on the U.N. Human Rights Council. This stems from a two-part strategy that seeks to 1) block international criticism of its repressive human rights record, and 2) promote orthodox interpretations of national sovereignty and noninterference in internal affairs that weaken international norms of human rights, transparency, and accountability. While these goals are not new, the more proactive tactics that Chinese officials are using, especially since the reappointment of President Xi Jinping, suggest the start of a more wholesale campaign to reshape the rules and

The changing dynamics that exist between authoritarian and democratic countries in the international system should not be surprising. International law, after all, is formally neutral among regime types, as pointed out by Tom Ginsburg's recent, thought-provoking work *Authoritarian International Law*?⁵ Both democracies and autocracies try to exert influence in the international regime to shape norms, institutions, and politics to their advantage. Yet, as the post-war international human rights system has mainly been created and developed by liberal democracies and nonstate actors for the better protection of human rights, greater influence wielded by autocracies has the potential to undermine human rights norms many consider universal.

In Ginsburg's argument, a future authoritarian international order that is now being shaped by autocracies may likely have the following characteristics: "the development of new norms to facilitate internal repression, regulation of cyberspace, and the dilution of democratic concepts and institutions."⁶ Moreover, cooperation among authoritarian states appears to favor weaker commitments and non-mandatory dispute resolution.⁷ Most to the point of this Article is Ginsburg's observation that authoritarian states are likely to cooperate across borders to repress regime opponents.⁸

Indeed, the utmost priority for autocracies is their own survival and monopoly on power. Dictatorial leaders therefore seek to repress dissent in order to guarantee domestic rule without challenge, and the logic of repression impels crushing different voices not only at home but also abroad so as to maintain the regime's domestic and

instruments of the international human rights system."); HUM. RTS. WATCH, THE COSTS OF INTERNATIONAL ADVOCACY: CHINA'S INTERFERENCE IN UNITED NATIONS HUMAN RIGHTS MECHANISMS 1 (2017), <https://www.hrw.org/report/2017/09/05/costs-international-advocacy/chinas-interference-united-nations-human-rights> [<https://perma.cc/V3QD-5PWH>] (archived Aug. 30, 2021) ("Even as it engages with UN human rights institutions, however, China has worked consistently and often aggressively to silence criticism of its human rights record before UN bodies and has taken actions aimed at weakening some of the central mechanisms available in those institutions to advance rights. Because of China's growing international influence, the stakes of such interventions go beyond how China's own human rights record is addressed at the UN and pose a longer-term challenge to the integrity of the system as a whole."); Björn Ahl, *The Rise of China and International Human Rights Law*, 37 HUM. RTS. Q. 637, 639 (2015) ("As China's authoritarian political system is built on nonliberal values, there is an intrinsic tension between such a political system and the international human rights regime that assumes a liberal framework.").

5. Tom Ginsburg, *Authoritarian International Law?*, 114 AM. J. INT'L L. 221 (2020).

6. *Id.* at 251.

7. *See id.* at 257.

8. *See id.* at 231 (discussing the possibility that authoritarian use of international law will support normative development that enhances authoritarianism).

international security.⁹ Shaping international norms to accommodate or even legitimate such repression appears to be a near-definite feature of an authoritarian international order.

This Article contributes to the theoretical discussion of a potential authoritarian international order with a case study of China's practice and interaction with other countries in the HRC. Furthermore, while the existing discussion focuses on *what* an authoritarian international order would look like, this Article narrows in on *how* such an order may be shaped, examining the mechanisms that authoritarian countries—such as China—use to influence the international system, “turn[ing] general international law more authoritarian.”¹⁰ More specifically, this Article examines *how* an international organization can be used to promote certain authoritarian ideas.

The finding of the Article suggests the importance of studying group dynamics and political coalitions in any given intergovernmental organization to better understand competition (as well as cooperation) between democracies and non-democracies and where the power lies in that organization that shapes international norms. This finding points to new territories of future study of the international system that is increasingly under authoritarian influence.

Why China? While there are many states that are considered authoritarian in their regime type,¹¹ the Chinese party-state is the most resourceful among them.¹² It is also making more headlines than ever with its increasingly egregious human rights violations, including state crimes in Xinjiang,¹³ repression of liberties and freedom in Hong

9. See *id.* at 225 (“The result may be a more stable set of authoritarian regimes, interacting across borders to repress each other’s opponents, with less room for international human rights or democracy promotion. This will eventually lead to the development of new norms and practices.”).

10. *Id.* at 231.

11. See, e.g., ECONOMIST INTEL. UNITED, DEMOCRACY INDEX 2020: IN SICKNESS AND IN HEALTH? 3 (n.d.).

12. China is the world’s second-largest economy behind the United States. *GDP (current US\$) - China*, THE WORLD BANK, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CN&most_recent_value_desc=true (last visited Aug. 6, 2021) [<https://perma.cc/4WGW-MM3Z>] (archived Aug. 30, 2021). China also has the economic power to develop projects and institutions outside its borders, such as the Belt and Road Initiative and the Asian Infrastructure Investment Bank.

13. China has been widely criticized for building internment camps in the Xinjiang region of northwest China that have reportedly detained more than one million of China’s Muslim citizens while keeping the rest of Xinjiang society under strict surveillance. Some former detainees have been dispatched into work placements both inside and outside Xinjiang that constitute forced labor. There is a significant body of literature and investigative reports on state crimes, violence, forced labor, and surveillance in Xinjiang. See, e.g., SEAN ROBERTS, *THE WAR ON THE UYGHURS: CHINA’S INTERNAL CAMPAIGN AGAINST A MUSLIM MINORITY* 1 (2020); James Leibold, *Surveillance in China’s Xinjiang Region: Ethnic Sorting, Coercion, and Inducement*, 29 J. CONTEMP. CHINA 46, 46 (2020); Joanne Smith Finley, *Securitization, Insecurity and Conflict in cContemporary Xinjiang: Has PRC Counter-Terrorism Evolved Into State Terror?*, 38 CENT. ASIAN SURV. 1, 1 (2019); Adrian Zenz, *Thoroughly Reforming Them Towards a*

Kong,¹⁴ and continuing crackdowns targeting rights activists and lawyers.¹⁵ It is a prime example of how an authoritarian regime uses various mechanisms to promote its own illiberal agenda on the international stage.

The Article also investigates in particular the interactions between China and other countries as well as leading democratic actors in the HRC (i.e., the United States and the European Union (the EU))

Healthy Heart Attitude: China's Political Re-Education Campaign in Xinjiang, 38 CENT. ASIAN SURV. 102, 102 (2019); Darren Byler, *Violent Paternalism: On the Banality of Uyghur Unfreedom*, ASIA-PACIFIC J. 1, 1 (2018); see also NATHAN RUSER & JAMES LEIBOLD, FAMILY DE-PLANNING: THE COERCIVE CAMPAIGN TO DRIVE DOWN INDIGENOUS BIRTH-RATES IN XINJIANG, AUSTRALIAN STRATEGIC POLICY INSTITUTE 1, 3 (2021), <https://www.aspi.org.au/report/family-deplanning-birthrates-xinjiang> [<https://perma.cc/DJ4V-ZDQU>] (archived Aug. 30, 2021) (enable cookies); HUM. RTS. WATCH, "BREAK THEIR LINEAGE, BREAK THEIR ROOTS": CHINA'S CRIMES AGAINST HUMANITY TARGETING UYGHURS AND OTHER TURKIC MUSLIMS 1 (2021), <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting> [<https://perma.cc/G8MP-ZMKF>] (archived Aug. 30, 2021); Matthew Hill, David Campanale, & Joel Gunter, *Their Goal is to Destroy Everyone: Uighur Camp Detainees Allege Systematic Rape*, BBC (Feb. 2, 2021), <https://www.bbc.com/news/world-asia-china-55794071> [<https://perma.cc/FXW9-DLMS>] (archived Aug. 30, 2021); William Yang & Sandra Petersmann, *Exclusive: China's Systematic Tracking, Arrests of Uighurs Exposed in New Xinjiang Leak*, DEUTSCHE WELLE (Feb. 17, 2020), <https://www.dw.com/en/exclusive-chinas-systematic-tracking-arrests-of-uighurs-exposed-in-new-xinjiang-leak/a-52397824> [<https://perma.cc/K6S2-ZXJ2>] (archived Aug. 30, 2021); JAMES MILLWARD & DAHLIA PETERSON, CHINA'S SYSTEM OF OPPRESSION IN XINJIANG: HOW IT DEVELOPED AND HOW TO CURB IT, BROOKINGS 1 (2020), <https://www.brookings.edu/research/chinas-system-of-oppression-in-xinjiang-how-it-developed-and-how-to-curb-it/> [<https://perma.cc/3TY7-U7BS>] (archived Aug. 30, 2021); VICKY XIUZHONG XU, DANIELLE CAVE, JAMES LEIBOLD, KELSEY MUNRO, & NATHAN RUSER, UYGHURS FOR SALE, AUSTRALIAN STRATEGIC POLICY INSTITUTE 1 (2020), <https://www.jstor.org/stable/resrep23090.1> [<https://perma.cc/R6RQ-EW8R>] (archived Aug. 30, 2021).

14. See generally LYDIA WONG AND THOMAS E. KELLOGG, HONG KONG'S NATIONAL SECURITY LAW: A HUMAN RIGHTS AND RULE OF LAW ANALYSIS, CENTER FOR ASIAN LAW, GEORGETOWN L. (2021), <https://www.law.georgetown.edu/law-asia/hong-kongs-national-security-law-used-to-instill-fear/> [<https://perma.cc/2PVB-G74R>] (archived Aug. 30, 2021); Yu-Jie Chen, *'Gangban Guo'an Fa': Xianggang Fazhi de Podong, Renquan de Quekou* [*The National Security Law for Hong Kong: Infringements of Hong Kong's Rule of Law and Human Rights*], 5(4) TAIWAN RENQUAN XUEKAN [TAIWAN HUM. RTS. J.] 131 (2020); MICHAEL C. DAVIS, MAKING HONG KONG CHINA: THE ROLLBACK OF HUMAN RIGHTS AND THE RULE OF LAW (2020); Carole J. Petersen, *The Disappearing Firewall: International Consequences of Beijing's Decision to Impose a National Security Law and Operate National Security Institutions in Hong Kong*, 50 H.K. L.J. 633 (2020); Cora Chan, *Can Hong Kong Remain a Liberal Enclave within China? Analysis of the Hong Kong National Security Law*, in PUBLIC LAW 271, 271–92 (4th ed. 2020).

15. For discussions of China's repression of criminal defense lawyers and human rights activists, see generally Yu-Jie Chen, *Human Rights in the Chinese Administration of Justice: Formalizing Ideology in the Political and Legal System and Institutionalizing and Normalizing Human Rights Abuses*, in CHINA HUMAN RIGHTS REPORT 2020 89 (Taiwan Foundation for Democracy ed., 2021); SIDA LIU & TERENCE C. HALLIDAY, CRIMINAL DEFENSE IN CHINA: THE POLITICS OF LAWYERS AT WORK (2016); EVA PILS, CHINA'S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE (2014).

to understand the evolving political dynamics in the HRC and the interplay among authoritarian and democratic regimes.

Selecting these three actors—China, the United States, and the EU—as the main subject of this Article is not to deny that other countries can also influence the agenda of the HRC nor does it reject the agency of other countries and nonstate stakeholders. Yet, given that China and the United States are two of the world's superpowers and that the EU has long represented the most substantial bloc of support for the multilateral human rights system as known today, a focus on their practice in the HRC for analytical purposes helps shed light on the politics and competition among different political regimes in this important human rights institution.

Moreover, this Article examines the implications of such dynamics for the development of international human rights norms and institutions. China is playing what the Article calls *tribal international politics* in the HRC, aligning itself with other authoritarian countries and some developing countries under the umbrella of the so-called "Like-Minded Group" (LMG)¹⁶ to blunt the power of the existing international human rights system.

The concept of "tribalism" or "tribal politics" is not new.¹⁷ According to the *Blackwell Encyclopedia of Sociology*, the term tribalism has been used, extended, and discredited among the community of anthropologists over time, but a contemporary idea of tribalism has been revived in other disciplines to refer to in-group members who own a collective identity based on shared ideologies.¹⁸

In the realm of politics nowadays, tribalism is commonly used to emphasize the divide between different groups whose views are "seen

16. See *infra* III. E.

17. For a timely discussion of "tribal politics," see generally AMY CHUA, *POLITICAL TRIBES: GROUP INSTINCT AND THE FATE OF NATIONS* (2018).

18. Susan R. Trencher, *Tribalism*, WILEY ONLINE LIBRARY (Nov. 19, 2019), onlinelibrary.wiley.com/doi/10.1002/97811405165518.wbeost051.pub2 [<https://perma.cc/8NJZ-P6DR>] (archived Aug. 30, 2021). ("Tribalism was historically defined by scholars to refer to African and North and South American indigenous populations focused on customs and beliefs transmitted and enacted in groups (tribes) that share kinship, a way of life, property held in common, and an absence of recognized political authority beyond the group. Such tribes borrow ideas and practices from each other, as well as adopting members of other groups. British and South African social anthropologists cum sociologists, working in Africa, focused on aspects of everyday life, including ethnicity and stratification, while American anthropologists primarily studied patterns of kinship and social relationships among indigenous populations in the Americas. By the latter half of the 1960s, 'tribalism' had been so inconsistently used and misapplied in scholarly work that American anthropologists called for the term to be abandoned. Simultaneously, indigenous populations themselves used tribalism to refer to 'the people,' that is, groups with shared kinship, religion, property, and worldview. Tribalism and 'retribalization' reemerged in the 1990s to refer to groups with shared ideologies, including religious, political, and social views, seen as incommensurate with those of nongroup members.")

as incommensurate with those of nongroup members.”¹⁹ The concept is repurposed to emphasize the loyalty to the in-group members based on not only some collective identity but also a sense of insecurity against those who are thought to belong to out-groups.²⁰ This accompanies distinguishing “them” from “us.” Borrowing this concept, this Article uses “tribal international politics” to denote the phenomenon of the current entrenched division between authoritarian states and liberal democracies in the international system as well as the sense of victimization shared by China and countries in the global South.

It is worth noting that the term “tribal” in this Article intends no negative connotation often associated with tribalism.²¹ In particular, it is not meant to refer to LMG as a primitive grouping. Rather, the term tribal international politics is deliberately chosen to describe the tactic of the LMG to distinguish “us” from liberal democracies. The LMG supposedly shares a collective agenda that emphasizes a state-centered, repressive approach meant to protect authoritarian rule. It also appears to share common grievances against the rich global North or the West (“they”), with the global South (“we”) portrayed as the victim under the oppression of the global North, as discussed in more detail below.

The Article is structured as follows: Part II offers necessary background on the HRC, with special attention to its membership composition and politics. Part III discusses the differing approaches of the United States, China, and the EU towards the HRC since the HRC’s creation in 2006 as well as their interactions in the context of the HRC’s political environment. It then looks at the makeup of each actor’s political alliances within the HRC and the extent of their political influence. Part IV raises the question of what an “authoritarian international human rights system”—an obvious contradiction in terms—would likely look like by analyzing China’s agenda in the HRC and its immediate and potential implications for the global protection of human rights. Part V then discusses the implications of this research to the theoretical discussion of authoritarian international law. In conclusion, this Article suggests an approach of taking *politics* seriously in addressing the authoritarian advance in the international human rights system.

19. *See id.*

20. *See, e.g.,* Fareed Zakaria, *Trump’s Misbehavior Fits a Global Trend*, WASH. POST (Sept. 26, 2019), www.washingtonpost.com/opinions/global-opinions/trump-isnt-the-only-leader-putting-democracy-to-the-test/2019/09/26/8d74002e-e09f-11e9-8dc8-498eabc129a0_story.html [<https://perma.cc/CC4A-MKUD>] (archived Aug. 30, 2021).

21. For a critique of the use of the term “tribal politics,” *see, e.g.,* Devaka Premawardhana, *Op-Ed: A cure for tribal politics? Try learning from actual ‘tribal’ people*, L.A. TIMES (Feb. 20, 2020), www.latimes.com/opinion/story/2020-02-20/tribalism-metaphor-partisanship-politics-colonial-era [<https://perma.cc/K463-LZSV>] (archived Aug. 30, 2021).

II. THE UNITED NATIONS HUMAN RIGHTS COUNCIL²²

The HRC was established by the UN General Assembly in 2006 to replace the UN Commission on Human Rights which had been widely faulted for its politicization, lack of credibility, and myriad failures to fulfill its mandate.²³ It was hoped that a new organization with different institutional arrangements would be more effective at preventing government abuses and promoting universal respect for human rights.²⁴

The negotiations to set up the HRC were contentious, involving vastly different proposals submitted by various states. In short, the main point of contention was what qualified a state for a seat on the HRC. In particular, the United States and the EU advocated stricter membership criteria (to exclude states with atrocious human rights records) as well as higher electoral requirements (a two-thirds majority of UN member states). The United States especially insisted that the HRC be a small institution in order to enable it to operate more effectively.²⁵

On the other hand, China, along with many other states, supported a competing proposal that called for a larger body that would have provided for widespread geographic representation. The representation, according to this proposal, would more closely match the diversity of UN membership.²⁶ As a result, it would reduce the proportion of seats held by Western states. Their proposal also preferred less rigorous membership criteria as well as a lower electoral threshold.²⁷

22. Part of Part II is based on Yu-Jie Chen, *The United States, China and the European Union at the UN Human Rights Council: Trilateral Dynamics over International Human Rights Norms, Institutions and Politics*, in *MULTILATERALISM IN PERIL: THE UNEASY TRIANGLE OF THE US, EU AND CHINA* (Chien-Huei Wu, Francesco Giumelli, & Frank Gaenssmantel eds.) (forthcoming 2021).

23. See, e.g., U.N. Secretary-General, Secretary-General's Address to the Commission on Human Rights, UNITED NATIONS (Apr. 7, 2005), <https://www.un.org/sg/en/content/sg/statement/2005-04-07/secretary-generals-address-commission-human-rights> [hereinafter Secretary-General's Address] [<https://perma.cc/8QGD-CHCS>] (archived Aug. 30, 2021).

24. See *id.*

25. See Scott R. Lyons, *The New United Nations Human Rights Council*, AM. SOC'Y INT'L L. INSIGHTS (Mar. 27, 2006), <https://www.asil.org/insights/volume/10/issue/7/new-united-nations-human-rights-council> [<https://perma.cc/F9QN-7AY2>] (archived Aug. 30, 2021).

26. See Rosemary Foot & Rana Siu Inboden, *China's Influence on Asian States during the Creation of the U.N. Human Rights Council: 2005–2007*, 54 *ASIAN SURV.*, 849, 855 (2014) (discussing China's support for the geographic redistribution of seats during negotiations for a new U.N. human rights body); Press Release, General Assembly, General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstention, U.N. Press Release GA/10449 (Mar. 15, 2006).

27. See Lyons, *supra* note 25.

After some drawn-out discussions and compromises, the weak membership criteria proposal favored by China and others won the most support in the General Assembly.²⁸ In addition, the HRC would consist of forty-seven members,²⁹ almost 25 percent of all UN member states. This resulted in an institution only slightly smaller than the fifty-three-member UN Commission on Human Rights.

The HRC's membership is distributed among five regional groups: African States (thirteen seats), Asia-Pacific States (thirteen seats), Latin American and Caribbean States (eight seats), Western Europe and Other States (seven seats), and Eastern European States (six seats). Candidates are nominated by their regional groups.³⁰

The HRC's composition, in comparison with that of its predecessor, saw a notable reduction of seats in the "Western Europe and Other States" category, to which the United States and many EU member states belong.³¹ The reduction would forecast a decline in the power of the political alliance of the United States and the EU in the HRC in the years to come.

In addition, the US and EU proposal for higher electoral requirements also failed. The election of states to the HRC only requires a simple majority vote of General Assembly member states (through direct and secret ballots).³² The HRC's member states are elected for staggered three-year terms with the prospect of serving two consecutive terms.³³ While the election must "take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto,"³⁴ there is no effective mechanism to prevent abusive governments from being seated in the HRC. All UN members are eligible to run for a seat on the HRC.³⁵ Only when an HRC member commits "gross and systematic violations of human rights," the General Assembly, by a two-thirds majority of the members present and voting, may suspend its rights of membership in the HRC.³⁶ Yet, states are generally

28. *See id.*

29. G.A. Res. 60/251, ¶ 7 (Apr. 3, 2006).

30. *Id.*

31. The 53 seats of the UN Commission on Human Rights were distributed as follows: African States (15), Asian States (12), Eastern European States (5), Latin American & Caribbean States (11), Western Europe & Other States (10). *Membership*, UNITED NATIONS HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/CHR/Pages/Membership.aspx> (last visited Aug. 6, 2021) [<https://perma.cc/K6EQ-QM7M>] (archived Aug. 30, 2021).

32. G.A. Res. 60/251, ¶ 7 (Apr. 3, 2006).

33. *Id.*

34. G.A. Res. 60/251, ¶ 8 (Apr. 3, 2006).

35. *Id.*

36. *Id.*

unwilling to resort to the suspension option. Since the HRC was established, only Libya was removed from membership in 2011.³⁷

In practice, elections have become almost a formality, since most regional groups match their nominations to available vacancies, thereby ensuring membership for all their chosen candidates.³⁸ This has resulted in the repeated elections of states widely considered to be human rights abusers in the HRC. In the most recent election for the 2021–2023 membership, for instance, the only state that failed in its bid was Saudi Arabia, while China, Cuba, and Russia all won a seat in the HRC, among others.³⁹

The HRC was created with the expectation that it would address the institutional problems that had plagued its predecessor. In reality, however, many challenges have proven persistent, especially the problem of seating member states that have repeatedly committed serious human rights violations.⁴⁰ In addition, the HRC, like its predecessor, has also been criticized for growing politicization, ineffectiveness, and inability to act in some egregious cases.⁴¹

37. See Ted Piccone, *Assessing the United Nations Human Rights Council*, BROOKINGS INST. (May 25, 2017), <https://www.brookings.edu/testimonies/assessing-the-united-nations-human-rights-council/> [<https://perma.cc/FB28-LMPF>] (archived Sept. 5, 2021) (Ted Piccone testimony before U.S. Senate Committee on Foreign Relations' Subcommittee on Multilateral International Development, Multilateral Institutions, and International Economic, Energy, and Environmental Policy on the United Nations Human Rights Council stating "Finally, in egregious cases, they should mobilize support to remove a state responsible for gross and systematic abuses, as in they did with Libya in 2011.").

38. See Thalif Deen, *Slate for U.N. Rights Body Packed with Ringers*, INTER PRESS SERV. NEWS (Nov. 12, 2012), <http://www.ipsnews.net/2012/11/slate-for-u-n-rights-body-packed-with-ringers/> [<https://perma.cc/MTD7-J3YD>] (archived Aug. 30, 2021).

39. *Election of the Human Rights Council* (Oct. 13, 2020), UNITED NATIONS (Oct. 13, 2020), <https://www.un.org/en/ga/75/meetings/elections/hrc.shtml> [<https://perma.cc/PKC6-8L4N>] (archived Aug. 30, 2021).

40. See Piccone, *supra* note 37 ("Currently, about 45 percent of Council members are rated as free in Freedom House's annual ratings and 23 percent are graded as not free.").

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

Despite these flaws, the HRC has an important mandate and still wields tools that can make an impact. The two most frequently used include (1) issuing resolutions concerning human rights conditions in individual states (“country-specific resolutions”) as well as general human rights standards and (2) holding the Universal Periodic Review (UPR), an innovative peer-review mechanism in which the human rights performance of each and every state of the UN’s 193 members is periodically examined by other states.⁴² The creation of the UPR was meant to address concerns that only a small number of countries were selectively scrutinized in the UN Commission on Human Rights.⁴³

In addition to these functions, the HRC has retained “Special Procedures,” a legacy of the UN Commission on Human Rights.⁴⁴ Special Procedures consist of independent human rights experts or working groups concerned with the monitoring of thematic human rights issues and the situation of individual countries.⁴⁵ Unlike the political processes—mainly controlled by state actors—that underlie the HRC’s two major mandates mentioned above, the Special Procedures have an independent mandate and are generally less vulnerable to political maneuvering.

Given the focus of this Article on the political dynamics and the growing authoritarian forces in the HRC, the subsequent discussion will be devoted to the political processes of the HRC (i.e., its resolutions and UPR mechanism). Specifically, HRC resolutions are made through a process of state discussion and negotiations. They can be passed by consensus, but, in the case where a consensus cannot be reached, a vote is required.⁴⁶ Similarly, UPR is a political process in that each country’s human rights record is reviewed by other countries,⁴⁷ rather than independent human rights experts. This peer-review mechanism’s original purpose was to prevent bias and selectivity in

42. Another function of the HRC is to receive complaints concerning consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms through its Working Group on Communications and its Working Group on Situations. This complaint procedure, however, is rarely used. For an overview of the HRC’s work, see generally U.N. HUMAN RIGHTS COUNCIL, <https://www.ohchr.org/en/hrbodies/hrc/pages/home.aspx> (last visited Mar. 25, 2020) [<https://perma.cc/L3VP-CMG3>] (archived Aug. 30, 2021).

43. See Secretary-General’s Address, *supra* note 23.

44. See G.A. Res. 60/251, ¶ 6 (Apr. 3, 2006).

45. For an introduction of Special Procedures, their mandates and reports, see *Special Procedures of the Human Rights Council*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMMISSIONER, <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> [<https://perma.cc/T7NL-3AQ4>] (archived Aug. 30, 2021).

46. PERMANENT MISSION OF SWITZERLAND TO THE UNITED NATIONS OFFICE AND TO THE OTHER INTERNATIONAL ORGANISATIONS IN GENEVA, THE HUMAN RIGHTS COUNCIL: A PRACTICAL GUIDE 14, 18–23 (2015), www.eda.admin.ch/dam/eda/en/documents/publications/InternationaleOrganisationen/Uno/Human-rights-Council-practical-guide_en [<https://perma.cc/8MY3-8AYW>] (archived Aug. 30, 2021).

47. See G.A. Res. 60/251, ¶ 5(e) (Apr. 3, 2006).

singling out certain countries,⁴⁸ but in practice, it has become a platform for autocracies to sing each other's praises by mobilizing authoritarian political influence, as discussed below. These reasons merit the Article's focus on the resolution-making process and the UPR to study international politics in the HRC.

III. POLITICAL DYNAMICS IN THE HUMAN RIGHTS COUNCIL

Autocracies and democracies have different values and agendas when it comes to the protection of human rights. As mentioned above, a crucial priority for autocracies is to ensure regime survival by maintaining their domestic power monopolies while simultaneously enhancing their international standing to create the impression that their rule is considered legitimate in the eyes of both international and domestic society. On this particular point, democracies generally think and behave differently from autocracies. This is not to say that certain individuals or political parties in a democracy would not act similarly in accordance with the above authoritarian logic—in fact, the authoritarian inclination possessed by many democratically elected leaders is one of the many reasons for democratic backsliding that the present-day world is witnessing.⁴⁹ But generally speaking, it can be expected that autocracies and democracies behave differently when it comes to their international human rights agendas.

Indeed, as shown in this Part, the United States, China, and the EU have differed greatly in their posture towards the HRC since the institution's creation, reflecting their distinctive approaches towards global human rights governance. The differences emerge not only from divergent ideals and ideologies between democratic and authoritarian regimes but also different interests each actor has in seeking international legitimacy and expanding its own global influence.

In addition, domestic politics matter—the leadership changes in the United States and China have also led to changes in their human rights diplomacy. As discussed below, all of the aforementioned factors have a bearing on each actor's normative positions and strategic goals.

A. *The United States*⁵⁰

While the US government has continually maintained a policy to promote democratic values and human rights in the international order, at least rhetorically, its actual support for the HRC has

48. See *id.* (“... in a manner which ensures universality of coverage and equal treatment with respect to all States . . .”).

49. See, e.g., Tom Ginsburg, *The Machinery of International Law and Democratic Backsliding: The Problem of Term Limits*, 14 *LAW & ETHICS HUM. RTS.* 1 (2020); Nancy Bermeo, *On Democratic Backsliding*, 27 *J. DEMOCRACY* 5 (2016).

50. A, B, and C of Part III are based on Chen, *supra* note 22.

fluctuated under different administrations. In 2006, George W. Bush's Republican administration voted against the General Assembly resolution creating the HRC⁵¹ because the US proposals for the HRC composition were rejected. The Bush administration then decided not to run for the HRC membership and further withheld US funding to the HRC.⁵² In fact, the Bush government already felt isolated within the UN Commission on Human Rights, in which the United States found itself in the voting minority around 80 percent of the time.⁵³ In 2001, the Bush government also failed to be elected for the first time since the UN Commission on Human Rights was established.⁵⁴ It was little wonder that the Bush government was reportedly concerned about not being elected to the newly-created HRC, especially in light of the administration's deteriorating human rights record, which had attracted severe criticism for documented torture and other human rights violations in the Abu Ghraib prison and the Guantanamo Bay detention camp.⁵⁵ The Bush administration's foreign policy priorities in fighting the war on terror ultimately undermined US credibility in global human rights affairs.⁵⁶

By contrast, President Barack Obama's Democratic administration favored a work-from-within approach with the goal to make the HRC "a more effective body."⁵⁷ Accordingly, the United States actively sought membership and was elected as a member in 2009 for two terms (2009–2015).⁵⁸ It was elected for a third term in

51. See Press Release, *supra* note 26.

52. See LUISA BLANCHFIELD & MICHAEL A. WEBER, CONG. RSCH. SERV., RL33608, THE UNITED NATIONS HUMAN RIGHTS COUNCIL: BACKGROUND AND POLICY ISSUES 11 (2020) fas.org/sgp/crs/row/RL33608.pdf [<https://perma.cc/T8GW-9TN6>] (archived Aug. 30, 2021).

53. See Karen E. Smith, *The European Union at the Human Rights Council: Speaking with One Voice but Having Little Influence*, 17 J. EUR. PUB. POL'Y 224, 228 (2010).

54. See David E. Sanger, *House Threatens to Hold U.N. Dues in Loss of a Seat*, N.Y. TIMES (May 9, 2001), www.nytimes.com/2001/05/09/world/house-threatens-to-hold-un-dues-in-loss-of-a-seat.html [<https://perma.cc/UG8P-K2RX>] (archived Aug. 17, 2021) ("China had quietly lobbied to get the United States removed, striking back for the annual resolution that Washington sponsors condemning Beijing's treatment of dissidents and, this year, the Falun Gong movement.").

55. See e.g., THE ROAD TO ABU GHRAIB, HUM. RTS. WATCH (2004), <https://www.hrw.org/report/2004/06/08/road-abu-ghraib> [<https://perma.cc/7FV9-XNCU>] (archived Aug. 17, 2021); Rita Maran, *Detention and Torture in Guantanamo*, 33(4) SOC. JUST. 151 (2006); Kleanthis Kyriakidis, *Guantanamo and Abu Ghraib Revisited*, OPEN DEMOCRACY (Mar. 30, 2012), <https://www.opendemocracy.net/en/guantanamo-and-abu-ghraib-revisited/> [<https://perma.cc/5R7A-86FP>] (archived Aug. 17, 2021).

56. See Kathleen Roberts, *The United States and the World: Changing Approaches to Human Rights Diplomacy under the Bush Administration*, 21 BERKELEY J. INT'L L. 631, 631–32 (2003).

57. Press Statement: U.S. to Run for Election to the UN Human Rights Council, U.S. DEPT STATE (Mar. 31, 2009), <https://2009-2017.state.gov/r/pa/prs/ps/2009/03/121049.htm> [<https://perma.cc/VUS2-DACX>] (archived Aug. 30, 2021).

58. See BLANCHFIELD & WEBER, *supra* note 52, at 7.

2016 when President Obama was still in office.⁵⁹ While the Obama administration's active engagement in the multilateral human rights framework was a signature foreign policy position that received accolades from many international actors, its human rights legacy was blemished by some less-than-robust policies in reality.⁶⁰ Domestically, the Obama administration's HRC engagement was met with vocal criticism from the Republican Party, which insisted that US participation did not improve the HRC's performance and that the HRC was a biased institution, especially with regard to the treatment of Israel.⁶¹

After President Donald Trump came into office, the US approach towards the HRC experienced yet another reversal. The Trump administration withdrew from the HRC in June 2018, citing concerns that the HRC harbored a chronic bias against Israel and that countries with abysmal human rights records continued to be elected as members.⁶² China, Russia, Cuba, and Egypt were singled out for undermining the US-led efforts to reform the HRC.⁶³ In addition to withdrawing from the HRC, the Trump administration also withheld Council funding for over two years, a total of \$15.2 million.⁶⁴

While the US government was not a member under the Trump administration, it did not entirely boycott the HRC and—along with other non-member states—continued to participate in some HRC activities, including the UPRs.⁶⁵ On the other hand, the Trump administration sought to establish its own human rights mechanism that would realize Republican Party policy goals, the Commission on Unalienable Rights.⁶⁶ Established in 2019, the commission's charter⁶⁷ made no mention of the Universal Declaration of Human Rights and took conservative positions on issues of abortion and same-sex

59. See *id.*

60. See generally Kenneth Roth, *Barack Obama's Shaky Legacy on Human Rights*, FOREIGN POLY (Jan. 4, 2017), foreignpolicy.com/2017/01/04/barack-obamas-shaky-legacy-on-human-rights/ [<https://perma.cc/UC9G-JL7C>] (archived Aug. 17, 2021).

61. E.g., *Editorial: The United Nations' human 'rights' council*, WASH. POST (Mar. 26, 2011), www.washingtonpost.com/opinions/the-united-nations-human-rights-council/2011/03/25/AFSRyPeB_story.html [<https://perma.cc/ZQ5T-QZV6>] (archived Aug. 17, 2021); Steven Groves & Brett Schaefer, *The U.N. Human Rights Council: No Better for Obama's Engagement*, HERITAGE FOUND. (Nov. 9, 2009), www.heritage.org/report/the-un-human-rights-council-no-better-obamas-engagement [<https://perma.cc/Q5VV-E5U9>] (archived Aug. 17, 2021).

62. See *Remarks on the U.N. Human Rights Council*, *supra* note 2.

63. See *id.*

64. See BLANCHFIELD & WEBER, *supra* note 52, at 7.

65. See *id.* at 5.

66. See *Commission on Unalienable Rights*, U.S. DEP'T OF STATE (2019), <https://2017-2021.state.gov/commission-on-unalienable-rights/index.html> [<https://perma.cc/N9MN-ASGZ>] (archived Aug. 17, 2021).

67. See *Charter for the Commission on Unalienable Rights*, U.S. DEP'T OF STATE (2017), <https://2017-2021.state.gov/charter-for-the-commission-on-unalienable-rights/index.html> [<https://perma.cc/L34Y-UDAC>] (archived Aug. 17, 2021).

marriage.⁶⁸ Many critiqued it for straying from the liberal values underlying the international human rights system and therefore undermining protections for women, LGBTQ groups, and minorities.⁶⁹

Joe Biden's 2020 election as president has already brought another reversal in US human rights policy. The new administration has announced that the US government will re-engage with the HRC "immediately,"⁷⁰ by first acting as an observer to work with allies to introduce new resolutions as well as seeking election to the HRC for the 2022–2024 term.⁷¹ This policy is situated within Biden's broader policy pledge to re-engage other international treaties and organizations that the Trump administration had neglected or abandoned.⁷² Biden has also launched a plan to hold an international summit on democracy in the hope of gathering democratic allies to address challenges confronted by democracies at present, including curbing authoritarianism and promoting human rights.⁷³

All in all, the swings in the US human rights agenda represent vastly different policy priorities of Republicans and Democrats and can be expected to recur in the future. However, this lack of a consistent

68. See e.g., Katherine M. Marino, *How Mike Pompeo's New Commission on 'Unalienable Rights' Butchers History*, WASH. POST (Aug. 15, 2019), <https://www.washingtonpost.com/outlook/2019/08/15/how-mike-pompeos-new-commission-unalienable-rights-butchers-history/> [https://perma.cc/AQP8-GPKP] (archived Aug. 17, 2021); Robin Wright, *The Unbelievable Hypocrisy of Trump's New "Unalienable Rights" Panel*, NEW YORKER (July 9, 2019), newyorker.com/news/our-columnists/the-unbelievable-hypocrisy-of-trumps-new-unalienable-rights-panel [https://perma.cc/TC2K-XD9B] (archived Aug. 29, 2021); Jennifer Hansler, *Human Rights Organizations File Suit Over Pompeo's 'Unalienable Rights' Commission*, CNN (Mar. 6, 2020), edition.cnn.com/2020/03/06/politics/human-rights-organizations-lawsuit-unalienable-rights-commission/index.html [https://perma.cc/9GEZ-FDM8] (archived Aug. 30, 2021).

69. See e.g., Marino, *supra* note 68; Wright, *supra* note 68; Hansler, *supra* note 68.

70. Bill Chappell, *Biden Orders U.S. To Reengage with U.N. Human Rights Council 'Immediately'*, NPR (Feb. 8, 2021), <https://www.npr.org/2021/02/08/965314723/biden-orders-u-s-to-reengage-with-u-n-human-rights-council-immediately> [https://perma.cc/AE8W-3VS3] (archived Aug. 29, 2021).

71. See Katie Rogers, *Biden Administration Moves to Rejoin U.N. Human Rights Council*, N.Y. TIMES (Feb. 7, 2021), www.nytimes.com/2021/02/07/us/politics/human-rights-council-biden-administration.html [https://perma.cc/JD89-BUSQ] (archived Aug. 29, 2021); Stephanie Nebehay, *U.S. Aims to Return to U.N. Rights Body, Shield Israel*, REUTERS (Feb. 24, 2021), <https://www.reuters.com/article/un-rights-usa-int-idUSKBN2A016O> [https://perma.cc/W9FW-KYGF] (archived Aug. 29, 2021).

72. See generally Jack V. Hoover, Kevin Krotz, Pierce MacConaghy, Kyle McGoey, Margaret Shin, & Lucianna Stamper, *Biden Administration Reengages with International Institutions and Agreements*, 115(2) AMERICAN J. INT'L L. 323 (2021) (explaining Biden's policy pledges to re-engage with foreign matters that the Trump administration had neglected).

73. See Joseph R. Biden, Jr., *Why America Must Lead Again: Rescuing U.S. Foreign Policy After Trump*, FOREIGN AFF. (Mar./Apr., 2020), <https://www.foreignaffairs.com/articles/united-states/2020-01-23/why-america-must-lead-again> [https://perma.cc/RA4A-SEDK] (archived Aug. 29, 2021).

policy towards international institutions makes the United States an unreliable partner for other democracies. Moreover, regular US disengagement presents ample opportunities for authoritarian regimes to fill the vacuum left when the United States vacates the stage.

B. *The People's Republic of China*

By contrast, China, formerly a repeated target for censure in the UN Commission on Human Rights for its 1989 massacre of Tiananmen Square protestors, has been an active participant before and after the establishment of the HRC. China's participation, however, has often been oriented towards restricting the operation of the international human rights system in accordance with the party-state's strategy to avoid international criticism. To Beijing, the essential goal is to enhance China's legitimacy abroad and ensure the Chinese Communist Party's continuing dominance at home.⁷⁴

In the 2006 negotiations creating the HRC, China led many countries (under the umbrella of the so-called "Like-Minded Group")⁷⁵ to propose to eliminate all "country-specific resolutions,"⁷⁶ a mechanism that the UN Commission on Human Rights used to condemn blatant violations of human rights in specific countries, including China after 1989. This attempt to reduce international scrutiny did not succeed due to the forceful opposition from the United States and the EU, among other states. In practice, however, China and many developing countries continue to discourage country-specific resolutions, making it hard to initiate them in the HRC.⁷⁷

In the beginning years of the HRC, another proposal endorsed by China (together with Algeria, Pakistan, and Russia, among others) was to seek to limit the operation of the Special Procedures by introducing a code of conduct.⁷⁸ The code of conduct, which was passed in 2007,

74. See generally NADÈGE ROLLAND, CHINA'S VISION FOR A NEW WORLD ORDER (2020), www.nbr.org/publication/chinas-vision-for-a-new-world-order/ [<https://perma.cc/L27J-T3WN>] (archived Aug. 29, 2021).

75. See Rhona Smith, *Form Over Substance? China's Contribution To Human Rights Through Universal Periodic Review*, 17 ASIAN Y.B. OF INT'L L. 85, 87–95 (2011).

76. Philip Alston, *Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council*, 7(1) MELBOURNE J. INT'L L. 185, 196 (2006).

77. See Smith, *supra* note 53, at 229.

78. See Human Rights Council, Res. 5/2, *Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council* (June 18, 2007), https://ap.ohchr.org/documents/alldocs.aspx?doc_id=13360 [<https://perma.cc/L3R5-4YEL>] (archived Aug. 29, 2021); PERMANENT MISSION OF SWITZERLAND TO THE UNITED NATIONS OFFICE AND TO THE OTHER INTERNATIONAL ORGANISATIONS IN GENEVA, *supra* note 46, at 14 ("In fact, although Resolution 5/2 urges all states to cooperate with the special procedures it imposes formalities that place relatively strict limits on the latter: exact adherence to the law and the national regulations of the country in question,

requires Special Procedures' mandate holders in charge of monitoring human rights issues to "show restraint, moderation and discretion" in carrying out their mandate.⁷⁹ This raised concerns that authoritarian states were trying to clip the wings of the Special Procedures. Nevertheless, the Special Procedures have generally shown independence and integrity in carrying out their mandate and have not been compromised in terms of their independence and integrity. In practice, however, China often invokes the code of conduct to reproach Special Procedures.⁸⁰

Keen to shape the HRC agenda, Beijing sought to win a seat from the very beginning. It was an HRC member for the first two terms (2006–2012), followed by a necessary year's absence, and then renewed a two-term membership (2014–2019).⁸¹ It ran again in 2020 and was elected to the HRC (2021–2023).⁸² The first two terms (2006–2012) took place under the previous Chinese administration of Hu Jintao and Wen Jiabao, whose general approach, both in the earlier UN Commission on Human Rights and then in the HRC, remained relatively low-profile.⁸³ The government at the time rarely asserted its distinctive agenda on the international stage.⁸⁴ This was generally in line with former leader Deng Xiaoping's famous foreign policy expression that China should "hide its capabilities and bide its time."⁸⁵

President Xi Jinping's ascension to power in late 2012, however, marked a dramatically different policy direction, not only in China's domestic governance, but also in its international ambitions towards global governance.⁸⁶ In line with Xi's vision of "the rejuvenation of the

respect for the conditions governing the admissibility of communications serving as a basis for letters of allegation, duty to show 'restraint, moderation and discretion' in implementing their mandate, duty to give the state concerned the opportunity of 'commenting' on the report on their mission prior to its publication, etc.").

79. *Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*, *supra* note 78, at Art. 12 (b).

80. *E.g.*, *Chinese Mission spokesperson Liu Yuyin rejects accusations by HRC Special Procedure Mandate Holders*, PERMANENT MISSION TO THE UNITED NATIONS OFFICE AT GENEVA AND OTHER INTERNATIONAL ORGANIZATIONS IN SWITZERLAND (Dec. 27, 2019), <http://www.china-un.ch/eng/hom/t1728414.htm> [<https://perma.cc/KWY3-NKV5>] (archived, Aug. 29, 2021).

81. *See* List of past members of the Human Rights Council, UNITED NATIONS HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/PastMembers.aspx> [<https://perma.cc/U2J9-Q7BG>] (archived Aug. 29, 2021).

82. *See Current Membership of the Human Rights Council for the 15th cycle, 1 January - 31 December 2021*, UNITED NATIONS HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx> (last visited Sept. 5, 2021) [<https://perma.cc/6WVX-WEU6>] (archived Aug. 29, 2021).

83. *See* PICCONE, *supra* note 4, at 3.

84. *See id.*

85. HOWARD W. FRENCH, EVERYTHING UNDER THE HEAVENS: HOW THE PAST HELPS SHAPE CHINA'S PUSH FOR GLOBAL POWER 187 (2017).

86. *See generally* ROLLAND, *supra* note 74.

Chinese nation,"⁸⁷ Beijing's voice began to be heard more frequently in various international platforms, growing along with its increasing financial contributions to international organizations.⁸⁸

In the HRC, in particular, China is beginning to take a leading role in the production of resolutions and is energetically lobbying its allies in the UPRs to praise China's human rights performance.⁸⁹ Its increasing outward confidence, however, has been accompanied by ever more serious domestic human rights violations of not only civil and political rights but also economic, social, and cultural rights.

C. The European Union

Compared to the United States and China, the EU, as a collective entity and an observer in the UN and the HRC, has retained better human rights credibility than the world's two superpowers. It has also manifested fewer variations in policy as a steadfast actor in the international human rights system. Its standard position has been consistent in seeking to uphold the multilateral rules and rights-based international order by active engagement.⁹⁰ The 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy—the first comprehensive, unified framework to integrate a human rights agenda into all EU external policies—presents a wide-ranging plan of action and demonstrates a commitment to promoting human rights through multilateral institutions.⁹¹

While the EU differs from the United States in some of its human rights stances, such as the death penalty or children's rights, it finds the United States a necessary partner in strengthening the international human rights system. In the negotiations to create the HRC, for example, the EU took an almost identical position to that of the United States, demanding higher membership and electoral

87. *Full text of Xi Jinping's report at 19th CPC National Congress*, CHINA DAILY (Oct. 18, 2017), www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content_34115212.htm [<https://perma.cc/3N34-UCEF>] (archived Aug. 29, 2021).

88. See MAAIKE OKANO-HEIJMANS FRANS-PAUL VAN DER PUTTEN, NETHERLANDS INSTITUTE OF INTERNATIONAL RELATIONS 'CLINGENDAEL', A UNITED NATIONS WITH CHINESE CHARACTERISTICS? 3 (2018), clingendael.org/sites/default/files/2018-12/China_in_the_UN_1.pdf [<https://perma.cc/KX4C-H3FQ>] (archived Aug. 29, 2021).

89. See *infra* Section IV, B.

90. See SHARED VISION, COMMON ACTION: A STRONGER EUROPE. A GLOBAL STRATEGY FOR THE EUROPEAN UNION'S FOREIGN AND SECURITY POLICY, EUROPEAN UNION (2016).

91. See *EU Strategic Framework and Action Plan on Human Rights and Democracy*, COUNCIL EUR. UNION (June 25, 2012), https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf [<https://perma.cc/V9VT-AH3C>] (archived Aug. 29, 2021).

standards.⁹² But when this proposal failed to win the majority vote of the General Assembly, the EU, unlike the United States, accepted the compromise and continued to engage the HRC.⁹³

As an observer, the EU is not eligible to vote in the HRC.⁹⁴ It relies on its member states to vote in favor of EU positions. The EU may participate in the UPR process as well as regular and special sessions of the HRC.⁹⁵ In this capacity, the EU has actively engaged in HRC activities by making interventions, issuing statements, sponsoring resolutions, and lobbying countries during the voting process.⁹⁶ The internal coordination among twenty-seven EU member states is complicated, time consuming, and intensive,⁹⁷ but generally speaking, the EU has been able to secure unity in the HRC and prevent split positions.⁹⁸

Active participation, however, does not necessarily translate into effective action. First of all, the reduced seats in the “Western Europe and Other States” group in the HRC, as mentioned, represents a numerical disadvantage for the EU and the United States. As a result, the EU nowadays often finds itself in the minority on roll-call votes.⁹⁹ Second, the EU’s strategy in the HRC has often been to “go for consensus.”¹⁰⁰ This increases the risk of diluting its human rights stances, compromising or avoiding action altogether for the sake of seeking consensus.¹⁰¹ The EU, for example, has been criticized for its reluctance to put forward country-specific resolutions for fear that they would spark fierce opposition from HRC member states that generally dislike such resolutions, including China, Russia, and many developing states.¹⁰²

92. See generally Franziska Brantner & Richard Gowan, *Complex Engagement: The EU and the UN System*, in THE EUROPEAN UNION AND INTERNATIONAL ORGANIZATIONS 37 (Knud Erik Jørgensen ed., 2009).

93. See generally *id.*

94. See PERMANENT MISSION OF SWITZERLAND TO THE UNITED NATIONS OFFICE AND TO THE OTHER INTERNATIONAL ORGANISATIONS IN GENEVA, *supra* note 46, at 22; see also Jan Wouters & Katrien Meuwissen, *The European Union at the UN Human Rights Council. Multilateral Human Rights Protection Coming of Age?* 7 (Leuven Centre for Glob. Governance Stud., Working Paper No. 126, 2013), papers.ssrn.com/sol3/papers.cfm?abstract_id=2363523 [https://perma.cc/6QBL-JZYA] (archived Aug. 29, 2021).

95. PERMANENT MISSION OF SWITZERLAND TO THE UNITED NATIONS OFFICE AND TO THE OTHER INTERNATIONAL ORGANISATIONS IN GENEVA, *supra* note 94, at 9–12.

96. Smith, *supra* note 53, at 229 (noting that in the first years of the HRC the EU issued more statements and made more interventions on behalf of the EU more than it did in the Commission on Human Rights; it also spoke more often than any other single state or grouping in the HRC.).

97. See Wouters & Meuwissen, *supra* note 94, at 6–8.

98. See *id.* at 6.

99. Smith, *supra* note 53, at 234.

100. *Id.* at 232.

101. *Id.*

102. *Id.*

In addition, while the EU appears to be a principled actor in general, its record is not entirely without question. Its normative positions can sometimes be undermined by the need for strategic coalition. The EU's alignment with the United States sometimes puts it in an awkward position when it comes to human rights violations in the United States. It was, for example, unwilling to support proposed resolutions in the HRC against the United States regarding detainees in Guantanamo Bay.¹⁰³

D. HRC under Authoritarian Shadow

Globally, liberal democracies that consistently promote the development of the multilateral human rights regime are still in a minority. The widely cited Democracy Index 2020 determined that out of 167 countries globally, there are 23 "full democracies" (13.8 percent), 52 "flawed democracies" (31.1 percent), 35 "hybrid regimes" (21.0 percent), and 57 "authoritarian regimes" (34.1 percent).¹⁰⁴ In other words, "full democracies" and "flawed democracies" comprise 44.9 percent of national governments while "hybrid regimes" and "authoritarian regimes" total 55.1 percent. If one looks at *Freedom in the World 2020: Global Freedom Scores* published by Freedom House, "free" countries are similarly in a minority position, with 83 states comprising 39.5 percent, while the "partly free" category contains 63 countries (30 percent), and the "not free" category, 64 (30.5 percent).¹⁰⁵

Looking at the current composition of the HRC, it is thus unsurprising that the competition between democracies and authoritarian regimes is fierce, given that authoritarian regimes constitute a sizable membership, with the ability to mobilize some "hybrid regimes" or "partly free" countries to regularly win majorities in the HRC.

Take the year of 2021 HRC membership,¹⁰⁶ for example. Table 1 shows the breakdown of each regional group's member composition by Democracy Index 2020 standards:

103. Brantner & Gowan, *supra* note 92, at 31–32.

104. DEMOCRACY INDEX 2020: IN SICKNESS AND IN HEALTH?, *supra* note 11, at 3.

105. *Countries and Territories: Global Freedom Scores*, FREEDOM HOUSE, <https://freedomhouse.org/countries/freedom-world/scores> (last visited Sept. 5, 2021) [<https://perma.cc/MXS9-ZS62>] (archived Aug. 28, 2021).

106. *Current Membership of the Human Rights Council for the 15th cycle, 1 January - 31 December 2021*, *supra* note 82. The breakdown of the HRC member countries in 2021 is noted in *infra* notes 107–16.

**Table 1: Regime Type Breakdown of 2021 HRC Members
Based on the Democracy Index**

	Full Democracies	Flawed Democracies	Hybrid Regimes	Authoritarian Regimes	Uncategorized
African States (13 seats) ¹⁰⁷	0	1	3	8	1
Asia-Pacific States (13 seat) ¹⁰⁸	2	3	4	3	1
Latin American and Caribbean States (8 seats) ¹⁰⁹	1	3	1	2	1
Western Europe and Other States (7 seats) ¹¹⁰	6	1	0	0	0
Eastern European States (6 seats) ¹¹¹	0	3	2	1	0
Total number	9	11	10	14	3
Percentage	19.1%	23.4%	21.3%	29.8%	6.4%

Similarly, by Freedom House standards, the breakdown at the HRC largely tracks the “Free,” “Partly Free,” and “Not Free” global averages, as shown in Table 2.

107. Flawed democracies: Namibia (term to the year 2022). Hybrid regimes: Côte d'Ivoire (2023); Malawi (2023); Senegal (2023). Authoritarian regimes: Burkina Faso (2021); Cameroon (2021); Eritrea (2021); Gabon (2023); Libya (2022); Mauritania (2022); Sudan (2022); Togo (2021). Uncategorized: Somalia (2021).

108. Full democracies: Japan (2022); Republic of Korea (2022). Flawed democracies: India (2021); Indonesia (2022); Philippines (2021). Hybrid regimes: Bangladesh (2021); Fiji (2021); Nepal (2023); Pakistan (2023). Authoritarian regimes: Bahrain (2021); China (2023); Uzbekistan (2023). Uncategorized: Marshall Islands (2022).

109. Full democracies: Uruguay (2021). Flawed democracies: Argentina (2021); Brazil (2022); Mexico (2023). Hybrid regimes: Bolivia (Plurinational State of) (2023). Authoritarian regimes: Cuba (2023); Venezuela (Bolivarian Republic of) (2022). Uncategorized: Bahamas (2021).

110. Full democracies: Austria (2021); Denmark (2021); France (2023); Germany (2022); Netherlands (2022); United Kingdom of Great Britain and Northern Ireland (2023). Flawed democracies: Italy (2021).

111. Flawed democracies: Bulgaria (2021); Czechia (2021); Poland (2022). Hybrid regimes: Armenia (2022); Ukraine (2023). Authoritarian regimes: Russian Federation (2023).

**Table 2: Regime Type Breakdown of 2021 HRC Members
Based on the *Freedom in the World 2020: Global
Freedom Scores***

	Free	Partly Free	Not Free
African States (13 seats) ¹¹²	1	6	6
Asia-Pacific States (13 seats) ¹¹³	3	7	3
Latin American and Caribbean States (8 seats) ¹¹⁴	4	2	2
Western Europe and Other States (7 seats) ¹¹⁵	7	0	0
Eastern European States (6 seats) ¹¹⁶	3	2	1
Total number	18	17	12
Percentage	38.3%	36.2%	25.5%

As the “full democracies” or “free” countries—depending on which index one applies—struggle to cope with the disadvantage of being in the numerical minority in the HRC, especially in the wake of losing the United States as a leading actor capable of mobilizing other democracies, China, with its growing influence among authoritarian and developing states, is seeking to assume a leadership role in global human rights governance.

112. Free: Namibia (term to the year 2022). Partly Free: Burkina Faso (2021); Côte d’Ivoire (2023); Malawi (2023); Mauritania (2022); Senegal (2023); Togo (2021). Not Free: Cameroon (2021); Eritrea (2021); Gabon (2023); Libya (2022); Somalia (2021); Sudan (2022).

113. Free: Japan (2022); Marshall Islands (2022); Republic of Korea (2022). Partly Free: Bangladesh (2021); Fiji (2021); India (2021); Indonesia (2022); Nepal (2023); Pakistan (2023); Philippines (2021). Not Free: Bahrain (2021); China (2023); Uzbekistan (2023).

114. Free: Argentina (2021); Bahamas (2021); Brazil (2022); Uruguay (2021). Partly Free: Bolivia (Plurinational State of) (2023); Mexico (2023); Not Free: Cuba (2023); Venezuela (Bolivarian Republic of) (2022).

115. Free: Austria (2021); Denmark (2021); France (2023); Germany (2022); Italy (2021); Netherlands (2022); United Kingdom of Great Britain and Northern Ireland (2023).

116. Free: Bulgaria (2021); Czechia (2021); Poland (2022). Partly Free: Armenia (2022); Ukraine (2023). Not Free: Russian Federation (2023).

E. Political Coalitions and Group Dynamics in the HRC

Although the HRC was created in the hope to avoid the problems that had troubled the Commission on Human Rights,¹¹⁷ it has been confronted with similar challenges. Polarization is one of them. As in the broader UN system, there is a clear rich North and poor South divide in the HRC.¹¹⁸ On human rights issues, the global North—in particular the leading actors including the United States and EU members—is often at loggerheads with the global South's authoritarian countries—such as Cuba, Venezuela, and Egypt, with China now often projecting itself as a leading voice in this group.¹¹⁹

Member states rely on political coalitions to facilitate their own agendas in the HRC since, as mentioned earlier, any action of the HRC requires the support of its members by consensus and, if a consensus cannot be reached, then a majority vote. A state's influence in the HRC is thus often determined by how many other members it can mobilize to reach a consensus or produce a successful vote. Bloc voting is commonplace in the HRC and even countries with moderate positions find it hard to vote against the preference of their coalition.¹²⁰

It is notable that, contrary to common belief, money does not necessarily translate into political influence in international organizations. It depends on how money is used. If money indeed were to buy influence, it would have to be used in ways to garner political support of other member states whose vote matters. All in all, funding the international organization may not be the key. Rather, the power of political coalitions is the name of the game when it comes to political influence in the international system.

Group dynamics are therefore critical to understanding the HRC's politics. There are various groups within the international regime that operate as hubs for HRC coalition-building. Common regional groups, in addition to the EU, include the Organization of the Islamic Cooperation (OIC), the Non-Aligned Movement (NAM), the League of Arab States, and the African Union.¹²¹ A member of these groups has a wide variety of potential allies when it needs to mobilize other members in favor of a certain agenda.

In addition, there are informal groups that can also be relied upon when a member seeks support from other members. Of particular importance to the group dynamics in the HRC is the coalition of the "Like-Minded Group" (LMG), a loose, informal grouping that initially emerged within the UN Commission on Human Rights and has

117. *E.g.*, Secretary-General's Address, *supra* note 23.

118. Smith, *supra* note 53, at 18–19.

119. *Id.*

120. *Id.*

121. PERMANENT MISSION OF SWITZERLAND TO THE UNITED NATIONS OFFICE AND TO THE OTHER INTERNATIONAL ORGANISATIONS IN GENEVA, *supra* note 46, at 25–26.

reappeared in the HRC since 2013.¹²² The members of the LMG, which are estimated to be twenty-eight states according to one assessment,¹²³ commonly include China, Cuba, Egypt, Pakistan, Russia, Saudi Arabia, and Venezuela.¹²⁴ The LMG members appear to be connected by the shared goals of opposing the "naming and shaming" approach in country-specific resolutions, challenging the universality of human rights, prioritizing economic, social, and cultural rights, as well as the right to development over civil and political rights, and defending a sovereign-central position.¹²⁵ In recent years, the LMG, coordinated by China, Egypt and Russia, has been able to influence the HRC's agenda, frequently impairing the HRC's scrutiny of human rights issues.¹²⁶ Furthermore, LMG members often "horse-trade," voting to shield members from international censure in exchange for their support on issues of concern to themselves.¹²⁷

This is to emphasize that China, while powerful, cannot alone change international law and institutions single-handedly. The debate

122. For discussions of the operation of the LMG, *see id.*; *see also* Marc Limon & Toby Lamarque, *The 2015 Human Rights Council*, UNIVERSAL RIGHTS GROUP (Nov. 17, 2014), www.universal-rights.org/blog/the-2015-human-rights-council/#_ftn1 [<https://perma.cc/S7MD-J65F>] (archived Aug. 28, 2021); Amr Essam, *The Like Minded Group (LMG): Speaking Truth to Power*, UNIVERSAL RTS. GRP. (May 10, 2016), www.universal-rights.org/blog/like-minded-group-lmg-speaking-truth-power/ [<https://perma.cc/UQM2-NW3K>] (archived Aug. 28, 2021) ("The year 2013 was probably the year when the Council experienced its least-balanced membership. This fact encouraged many partners to test the limits of the capacity of the Council to absorb divisive ideas, many of which sought to destabilize the delicate balance achieved during the early years of the Council. Certainly, 2013 was a defining experience for the LMG, as many voiceless or under-resourced delegations needed to pool efforts to confront this unprecedented challenge. The vote on Council resolution 24/24 and later its suspension at the General Assembly were moments that significantly reinforced the cohesiveness of the group, elevated its status and helped define its *raison d'être*.").

123. Limon & Lamarque, *supra* note 122 (noting that "The Like Minded Group is a somewhat amorphous grouping and its membership can vary depending on the initiative being undertaken. The membership figure of 28 is an approximate amount calculated by URG on the basis of two joint statements (one thematic and one country-specific) delivered on behalf of LMG countries: one by Russia on 'preventative approaches in the UN system' on 4th March 2014, and one by the LMG Coordinator, Egypt, on 'the mandate given to the OHCHR by Res. 25/1 to carry out investigations on Sri Lanka' on 25th September 2014. The 28 states who endorsed one or both of these statements are as follows . . . : Algeria, Angola, Bangladesh, Bahrain, Belarus, Bolivia, China, Cuba, Ecuador, Ethiopia, Egypt, Indonesia, India, Iran, DPRK, Myanmar, Nicaragua, Pakistan, Russia, South Sudan, Sri Lanka, Sudan, Saudi Arabia, Thailand, Uganda, UAE, Venezuela, Zimbabwe.").

124. PERMANENT MISSION OF SWITZERLAND TO THE UNITED NATIONS OFFICE AND TO THE OTHER INTERNATIONAL ORGANISATIONS IN GENEVA, *supra* note 46, at 26.

125. Foot & Inboden, *supra* note 26, at 1190 n. 42; *see, e.g.*, *Statement on Behalf of the Like Minded Group during Dialogue with the UN High Commissioner for Human Rights*, PERMANENT MISSION OF CHINA TO THE U.N. OFFICE AT GENEVA AND OTHER INTERNATIONAL ORGANIZATIONS IN SWITZERLAND (June 25, 2019), www.china-un.ch/eng/hom/t1676719.htm [<https://perma.cc/R8JG-KAXD>] (archived Aug. 29, 2021).

126. *See infra* Part IV for detailed discussion.

127. HUM. RTS. WATCH, *supra* note 4, at 17.

of whether China is a revisionist power is meaningful,¹²⁸ but one should not lose sight of the importance of the company that China keeps when seeking to understand how China tries to influence international norms and institutions. The “international discursive power” pursued by Beijing requires the cooperation of other countries that it can rally to its various causes.

IV. AN “AUTHORITARIAN INTERNATIONAL HUMAN RIGHTS SYSTEM”? A CONTRADICTION IN TERMS

As mentioned, while it is normal that states pursue their own self-interest in the international arena, authoritarian countries look for a distinctive interest that contradicts the very purpose of human rights protection: repressing dissent both domestically and internationally to monopolize their domestic rule and enhance their international standing. The logic of repression therefore requires that they not only control their own domestic politics but also influence international norms and institutions to create an international environment that allows authoritarian governance to thrive. Furthermore, China distinguishes itself from other states in that it can leverage significant power that other authoritarian states cannot match—money, alliances, and accompanying influence—to do so.

In particular, Chinese leader Xi Jinping has pursued a more aggressive foreign policy platform than that of his predecessors. Specifically, he has proposed the notion of creating a “Community with a Shared Future for Mankind” (*renlei mingyun gongtongti*)¹²⁹ as a diplomatic, rhetorical framework for China’s active engagement with the world. Under this banner, China has implemented a number of signature global economic projects, including the Belt and Road Initiative (BRI) and the Asian Infrastructure Investment Bank (AIIB).¹³⁰

128. See, e.g., Feng Huiyun, *Is China a Revisionist Power?*, 2(3) CHINESE J. INT’L POL. 313 (2009); Scott L. Kastner & Phillip C. Saunders, *Is China a Status Quo or Revisionist State? Leadership Travel as an Empirical Indicator of Foreign Policy Priorities*, 56(1) INT’L STUD. Q. 163 (2012).

129. See, e.g., Cao Desheng, *Xi’s Discourses on Mankind’s Shared Future Published*, CHINA DAILY (Oct. 15, 2018), www.chinadaily.com.cn/a/201810/15/WS5bc38adca310eff303282392.html [<https://perma.cc/JDP3-KES5>] (archived Aug. 29, 2021).

130. See, e.g., Xi Jinping, President, People’s Republic of China, Keynote speech at the opening ceremony of the Second Belt and Road Forum for International Cooperation Beijing: Working Together to Deliver a Brighter Future for Belt and Road Cooperation (Apr. 26, 2019); *Xinhua Headlines: Changes, Challenges and Choices – China Is Driven by the Path It Takes*, XINHUANET (Aug. 28, 2019), www.xinhuanet.com/english/2019-08/28/c_138345879.htm [<https://perma.cc/37M8-U5R9>] (archived Aug. 29, 2021); Meng Yaping, *Six Years On, Xi’s ‘Shared Future’ Idea Still Resonates with the World*, CGTN (May 12, 2019), <https://news.cgtn.com/news/3d3d414f3545544e34457a6333566d54/>

This new, ambitious, international engagement is distinct from China's pre-Xi approach in a number of ways. It is now largely on China's own terms and is situated in Xi Jinping's broader vision of enhancing China's power and standing in order to end what Beijing sees to be a global order of Western hegemony.¹³¹ Viewed in these terms, China is motivated to boost its "international discourse power" to replace the West's discourse hegemony.¹³²

How does China pursue this goal in the HRC? It does so by mobilizing other states in the LMG. Some autocracies in the LMG naturally share with China complementary authoritarian objectives to weaken international scrutiny of their human rights record—one can understand this as *identity-based relationships*. Other states, regardless of whether they share authoritarian values or not, are aware of the importance of maintaining good relations with China, whose aid, loans, trade or investment in China's BRI or AIIB are important to these countries' development—these are not identity relationships but *transaction-based relationships*. It should be pointed out that while these two types of relationships can be distinguished for analytical purposes, they are likely to overlap in reality.

Of course, liberal democracies also use these types of relationships to attract alliances. What is distinctive about autocracies is that, in the international human rights arena, the political coalition of China and others in the LMG consistently erodes the effectiveness of liberal human rights norms and institutions to the point of virtually undermining the very essence of the HRC's mission.

The group dynamics in the HRC are tilted in China's favor. Authoritarian countries are—at present—largely reliable partners for Beijing because of their shared interest in regime survival. But it is possible that developing countries that cooperate with China may depart from Beijing's agenda if Beijing cannot deliver the benefits it has promised them. Cooperation built on transactional terms can fall apart when the transaction fails to deliver. This is worth monitoring going forward.

Moreover, China's influence and political coalitions need to be assessed issue by issue. While in the human rights field, China can gather support from many states, it may not be able to do so in other issue areas. Geopolitics are a good example: the South China Sea is a source of friction between China and other authoritarian states and developing countries in Southeast Asia that each has its own interests in tension with China's.¹³³

share_p.html [https://perma.cc/7L9G-P35J] (archived Aug. 29, 2021). This paragraph is adapted from Chen, *supra* note 4, at 1193.

131. See generally ROLLAND, *supra* note 74.

132. *Id.* at 12.

133. For discussions of the South China Sea disputes, see, e.g., Peter Dutton, *Three Disputes and Three Objectives – China and the South China Sea*, 64(4) NAVAL WAR C.

Yet, in the HRC, the LMG is generally aligned on its authoritarian agenda with China, and it currently outnumbers the Western alliance. Beijing has put this advantage to use. Under the leadership of Xi Jinping, China has partnered with the LMG to promote norms that are in tension with or flatly contradict traditional human rights principles, weaken the operation of HRC's institutions such as country-specific resolutions and the UPRs, and intensify the polarization between the global North and global South, to which this Article now turns.

A. Contesting Norms

China has consistently championed what it calls "Human Rights under Socialism with Chinese Characteristics," or simply, "Human Rights with Chinese Characteristics," which made its international debut in China's second UPR in 2013.¹³⁴ It is a distinctive Chinese theory that, implicitly and sometimes explicitly, challenges the universality of international human rights norms. Beijing's goal appears to be developing a competing concept of human rights that would supplant what it sees as a "Euro-American-centric notion of human rights."¹³⁵

The exact meaning of Human Rights with Chinese Characteristics is contingent on the particular agenda of the Chinese leadership at any given time, but general themes can be distilled from recurring Chinese narratives. Since 2009, Beijing has repeatedly expressed the following distinctive ideas about human rights.¹³⁶

First, underlying the concept of Human Rights with Chinese Characteristics is a cultural relativist argument to justify China's departure from conventional human rights principles.¹³⁷ In the official

REV. 42 (2011); Julian Ku, *The Significance of China's Rejection of the South China Sea Arbitration for Its Approach to International Dispute Settlement and International Law*, 34 CHINESE (TAIWAN) Y.B. INT'L L. & AFF. 72 (2016); Isaac B. Kardon, *China Can Say "No": Analyzing China's Rejection of the South China Sea Arbitration Toward a New Era of International Law with Chinese Characteristics*, 13(2) U. PA. ASIAN L. REV. 1 (2018).

134. See, e.g., China's 2013 and 2018 UPR reports. *Universal Periodic Review: China*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CNindex.aspx> (last visited Sept. 5, 2021) [<https://perma.cc/DS63-5AC4>] (archived Aug. 29, 2021). For a scholarly critique of this concept, see Chen, *supra* note 4, at 1208–14.

135. Andrea Worden, *The 2019 South-South Human Rights Forum: China Gathers Steam in Its Bid to Redefine the Concept of Human Rights*, CHINA CHANGE (Feb. 19, 2020), <https://chinachange.org/2020/02/19/the-2019-south-south-human-rights-forum-china-gathers-steam-in-its-bid-to-redefine-the-concept-of-human-rights/> [<https://perma.cc/2GQL-8USB>] (archived Aug. 29, 2021); *China's Approach to Human Rights: Dialogue with Yang Rui*, CHINA GLOBAL TELEVISION NETWORK (Dec. 12, 2019), news.cgtn.com/news/2019-12-12/China-s-approach-to-human-rights-MmC9rd9XDW/index.html [<https://perma.cc/K3XF-GHL9>] (archived Aug. 29, 2021).

136. See generally Chen, *supra* note 4.

137. Specifically, Beijing often juxtaposes itself with "the West," claiming that "China differs from the West in historical, cultural and religious background, economic development, political system and ideology. It is only natural that there exist differences

rhetoric, "Chinese Characteristics" are usually tied to "national conditions," which are meant to highlight China's differences from other countries, particularly Western liberal democracies.¹³⁸

This cultural relativist argument is not new. It harkens back to the perspective of "Asian Values." Chinese leaders vigorously supported "Asian Values" when the notion was promoted by leaders of Singapore, Malaysia, and Indonesia in the 1990s.¹³⁹ While China acknowledged the universality of human rights in the 1993 Vienna Declaration and Program of Action,¹⁴⁰ it has sought to limit that universality both at home and abroad. There have also been incidents wherein the Chinese party-state seems to completely renounce the principle of universality, including a leaked Chinese Communist Party Central Committee directive in 2013 that listed "universal values" of human rights as one of the "seven perils" that the party must combat in maintaining its power.¹⁴¹

Second, Beijing's notions of sovereignty and non-interference are expansive and are invoked by Chinese officials liberally to fend off international scrutiny. For example, when criticized about Xinjiang's internment camps and the treatment of human rights defenders and lawyers in the HRC's 2018 UPR, China's delegate responded:

We will not accept the politically driven accusations from a few countries that are fraught with biases, and in total disregard of facts; even less will we entertain attempts to use human rights as an excuse to interfere in China's internal affairs or undermine its sovereignty and territorial integrity.¹⁴²

In addition to the traditional notion of state sovereignty,¹⁴³ China (and Russia too) has proposed the controversial idea of "cyber

between them on the issue of human rights." *Different Views Between China and the West on Human Rights: Official*, PEOPLE'S DAILY ONLINE (Feb. 11, 2002), en.people.cn/200202/11/eng20020211_90299.shtml [https://perma.cc/3PNR-XRMX] (archived Aug. 29, 2021).

138. See, e.g., *Full Text: The Communist Party of China and Human Rights Protection – A 100-Year Quest*, THE ST. COUNCIL: THE PEOPLE'S REPUBLIC OF CHINA (June 24, 2021), http://english.www.gov.cn/news/topnews/202106/24/content_WS60d41f65c6d0df57f98dbcf.html [https://perma.cc/8LAM-7892] (archived Aug. 29, 2021).

139. Michael D. Barr, *Lee Kuan Yew and the "Asian Values" Debate*, 24(3) ASIAN STUD. REV. 309, 314 (2000).

140. *Id.*

141. Chris Buckley, *China Takes Aim at Western Ideas*, N.Y. TIMES (Aug. 19, 2013), www.nytimes.com/2013/08/20/world/asia/chinas-new-leadership-takes-hard-line-in-secret-memo.html (subscription required) [https://perma.cc/386J-FDPB] (archived Aug. 29, 2021).

142. Andrea Worden, *China Deals Another Blow to the International Human Rights Framework at Its UN Universal Periodic Review*, CHINA CHANGE (Nov. 25, 2018), <https://chinachange.org/2018/11/25/china-deals-another-blow-to-the-international-human-rights-framework-at-its-un-universal-periodic-review> [https://perma.cc/GQ2L-SUCT] (archived Aug. 29, 2021).

143. For discussions of Beijing's notions of sovereignty, see generally ALLEN CARLSON, UNIFYING CHINA, INTEGRATING WITH THE WORLD: SECURING CHINESE

sovereignty,” banned the use of VPNs, and punished those who used overseas social media to criticize the regime,¹⁴⁴ further buttressing China’s Great Firewall.¹⁴⁵ It has also used “judicial sovereignty” to reject international condemnation of its frequent arbitrary detention of Chinese activists and accordingly attacks criticism of its human rights record as interference with China’s domestic affairs.¹⁴⁶ China’s practice features expansive use of sovereignty and non-interference.

Third, Beijing sees economic development, along with poverty reduction,¹⁴⁷ as the foremost priority in human rights, and China prides itself in eliminating extreme poverty.¹⁴⁸ In recent years, development has further been linked to the expansion of China’s BRI, which China claims to contribute to the 2030 Agenda for Sustainable Development.¹⁴⁹

The above policies of China’s are apparently incompatible with many long-established international principles, including that all human rights are universal, indivisible, interdependent, and inter-related.¹⁵⁰ More specifically, not only is China’s suggestion that realizing civil and political rights must hinge on the level of overall

SOVEREIGNTY IN THE REFORM ERA (2008); MARIA ADELE CARRAI, *SOVEREIGNTY IN CHINA A GENEALOGY OF A CONCEPT SINCE 1840* chs. 5–6 (2019).

144. Chun Han Wong, *China Is Now Sending Twitter Users to Prison for Posts Most Chinese Can’t See*, WALL ST. J. (Jan. 29, 2021), <https://www.wsj.com/articles/china-is-now-sending-twitter-users-to-prison-for-posts-most-chinese-cant-see-11611932917> (subscription required) [<https://perma.cc/BPE6-YVDU>] (archived Aug. 28, 2021).

145. China’s Great Firewall is a censorship system that allows the Chinese government to decide what content can be seen online inside China. See, e.g., Xinmei Shen, *The Story of China’s Great Firewall, the World’s Most Sophisticated Censorship System*, SOUTH CHINA MORNING POST (Nov. 7, 2019), <https://www.scmp.com/abacus/who-what/what/article/3089836/story-chinas-great-firewall-worlds-most-sophisticated> (subscription required) [<https://perma.cc/35CN-9FNT>] (archived Aug. 28, 2021).

146. KATRIN KINZELBACH, *THE EU’S HUMAN RIGHTS DIALOGUE WITH CHINA: QUIET DIPLOMACY AND ITS LIMITS* 129 (2015). Take another recent example, China has warned the new Biden administration not to meddle in China’s handling of Hong Kong and Xinjiang. James T. Areddy, *China’s Top Diplomat Warns Biden Against Meddling in Hong Kong, Xinjiang*, WALL ST. J. (Feb. 2, 2021), <https://www.wsj.com/articles/chinas-top-diplomat-warns-biden-against-meddling-in-hong-kong-xinjiang-11612243592> (subscription required) [<https://perma.cc/5TPL-VW25>] (archived Aug. 28, 2021).

147. Xinhua, *Xi Declares “Complete Victory” in Eradicating Absolute Poverty in China*, XINHUANET (Feb. 26, 2021), http://www.xinhuanet.com/english/2021-02/26/c_139767705.htm [<https://perma.cc/U65W-FZ9J>] (archived Aug. 28, 2021).

148. *Xi Jinping Announces China’s Eradication of Extreme Poverty*, CGTN (Feb. 25, 2021), <https://news.cgtn.com/news/2021-02-25/Xi-Jinping-announces-China-s-eradication-of-extreme-poverty-YaaPRcrJiE/index.html> [<https://perma.cc/9WDW-V5Y4>] (archived Aug. 28, 2021).

149. See generally Yuanbo Li and Xufeng Zhu, *The 2030 Agenda for Sustainable Development and China’s Belt and Road Initiative in Latin America and the Caribbean*, 11 SUSTAINABILITY 2297 (2019).

150. Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna ¶ 5 (June 25, 1993), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> [<https://perma.cc/G9PX-G4TX>] (archived Aug. 28, 2021).

social development misguided, its development programs often bring about violations of human rights. Development is achieved at the expense of numerous house demolitions, poor working conditions of low-wage labor and migrant workers, and serious environmental degradation.¹⁵¹

In advancing the nation's development, the Chinese party-state adopts a top-down approach, allowing little bottom-up participation or diverse voices. Take the policy of poverty elimination, for example. China's efforts¹⁵² are commendable, including reversing income-suppressing and poverty-increasing policies under previous leader Mao Zedong, extending infrastructure including transport, electricity, water, and internet to remote regions, and promoting agricultural and agro-industrial development in rural areas.¹⁵³ Critics, however, have highlighted China's controversial methods in meeting poverty elimination goals. These methods include, among others, adopting a narrow definition of poverty¹⁵⁴ and offering handouts meant to satisfy local government key performance indicators without addressing root causes of poverty.¹⁵⁵

And even as China emphasizes development as the centerpiece of its supposedly highly regarded economic, social, and cultural rights agenda, human rights lawyers and independent NGO activists, who advocate for economic and social rights and specialize in anti-discrimination against vulnerable groups, have been detained and put behind bars,¹⁵⁶ an obvious violation of economic, social, and cultural rights as well. These approaches by China are a far cry from the necessarily human-centric perspective and open society emphasized in the international human rights system. Rather, China's view of

151. See generally EVA PILS, *HUMAN RIGHTS IN CHINA: A SOCIAL PRACTICE IN THE SHADOWS OF AUTHORITARIANISM* ch. 5 (2017).

152. For China's white paper on poverty reduction, see THE ST. COUNCIL INFO. OFF. OF THE PEOPLE'S REPUBLIC OF CHINA, *POVERTY ALLEVIATION: CHINA'S EXPERIENCE AND CONTRIBUTION* (2021), english.www.gov.cn/archive/whitepaper/202104/06/content_WS606bc77ec6d0719374afc1b9.html [http://perma.cc/PN3Y-RHD5] (archived Aug. 28, 2021).

153. BILL BIKALES, *REFLECTIONS ON POVERTY REDUCTION IN CHINA 2-4* (2021), https://www.eda.admin.ch/dam/countries/countries-content/china/en/20210608-Poverty-Reduction-China_EN.pdf [https://perma.cc/NZ2F-C2TX] (archived Aug. 30, 2021).

154. *Id.* at 28. For a timely discussion and critique of China's poverty reduction efforts, listen to: *Poverty Eradication by 2020: A Reality Check*, SUPCHINA (Sept. 3, 2020), <https://supchina.com/podcast/poverty-eradication-by-2020-a-reality-check/> [https://perma.cc/MT2H-JW2Y] (archived Aug. 30, 2021); *Reflecting on China's Poverty Reduction with Bill Bikales*, SUPCHINA (July 29, 2021), <https://supchina.com/podcast/reflecting-on-chinas-poverty-reduction-with-bill-bikales/> [https://perma.cc/4LL8-GEGH] (archived Aug. 30, 2021).

155. See Tsukasa Hadano & Shunsuke Tabeta, *China Ends Poverty with Help of Towering Debt And Big Handouts*, NIKKEI ASIA (Dec. 18, 2020), <https://asia.nikkei.com/Economy/China-ends-poverty-with-help-of-towering-debt-and-big-handouts> [https://perma.cc/9JV4-VEXL] (archived Aug. 30, 2021).

156. See Chen, *supra* note 15, at 105.

“human rights” is a highly controlled, instrumentalist policy aimed at securing the Chinese Communist Party’s domination of power, rather than empowering civil society.

In addition, China’s liberal use of the notion of sovereignty is also problematic. While a state is entitled to judicial jurisdiction over eligible cases, this obviously does not proscribe other countries from identifying and criticizing human rights violations in these cases. Judicial sovereignty is not a free pass for abusing personal liberty, protection from torture, and the right to a fair trial. The premise of international human rights protection is that human rights are no longer only a country’s domestic affairs.

Yet, the Chinese government has ramped up its efforts to promote this idiosyncratic view as an alternative model to the common understanding of international human rights, particularly to its audience of developing countries as well as authoritarian countries.¹⁵⁷

Its present normative thrust in the HRC exhibits at least two objectives: (1) establishing a development-first program (implying that the right to development should be prioritized over other rights) and (2) vindicating an ultra-statist view in matters of human rights.¹⁵⁸ These objectives have been clearly reflected in four resolutions initiated by China between 2017 and 2020.

In 2017, in an unusual move, China introduced a solo-sponsored resolution in the HRC, entitled “The Contribution of Development to the Enjoyment of All Human Rights” (2017 Development Resolution).¹⁵⁹ This was apparently the first HRC resolution that focused exclusively on development, and Chinese media praised the resolution as a “China Solution” to global human rights governance.¹⁶⁰ While the resolution appeared innocuous in its wording, some human rights observers criticized it for framing the right to development in the service of states, not of people.¹⁶¹ The criticism was based on Beijing’s track record of prioritizing a state-centered development

157. This and the following nine paragraphs discussing the HRC resolutions sponsored by China are based on Chen, *supra* note 4, at 1204–08 and Chen, *supra* note 22.

158. See Chen, *supra* note 4, at 1204.

159. See generally Human Rights Council Res. 35/21 U.N. DOC. A/HRC/RES/35/21 (July 7, 2017).

160. See, e.g., THE ST. COUNCIL INFO. OFF. OF THE PEOPLE’S REPUBLIC OF CHINA, PROGRESS IN HUMAN RIGHTS OVER THE 40 YEARS OF REFORM AND OPENING UP IN CHINA (2018), www.scio.gov.cn/zfbps/ndhf/37884/Document/1643472/1643472.htm [<https://perma.cc/KLE3-WZ9T>] (archived Aug. 30, 2021); Luo Yanhua (罗艳华), *Gaige Kaifang yu Zhongguo Canyu Guoji Renquan Hezuo de Jincheng* (改革开放与中国参与国际人权合作的进程) [*Reform and Opening-Up and the Progress of China’s Participation in International Human Rights Cooperation*], RENQUAN (人权) [HUM. RTS.] (Jan. 10, 2019), www.sis.pku.edu.cn/ResearchManagement6/ResearchNews30/1296901.htm, translation available at http://www.chinahumanrights.org/html/2019/MAGAZINES_0110/12533.html [<https://perma.cc/M63N-HQWP>] (archived Aug. 30, 2021).

161. PICCONE, *supra* note 4, at 4.

program while marginalizing human rights concerns in the name of economic development and social stability.

The resolution was not able to garner consensus, so a vote was called for. With the backing of many cosponsors, including Cuba, Egypt, Russia, and Saudi Arabia, the resolution was adopted by a vote of thirty to thirteen, with three abstentions. Those that voted against it were the United States, EU members, and their allies, who were outnumbered by the LMG states.¹⁶²

In 2019, China was the sole sponsor of a resolution under the same title (2019 Development Resolution).¹⁶³ The resolution built on the 2017 Development Resolution but further emphasized the need to end poverty as an indispensable requirement for sustainable development.¹⁶⁴ It also asked the UN High Commissioner for Human Rights to host a discussion on development and present a report to the HRC for consideration.¹⁶⁵ This move seems to serve conveniently as an international extension of the domestic propaganda on Xi's signature program of ending China's extreme poverty, using the HRC to burnish both its domestic and international reputation. This resolution, too, was voted on and adopted by a vote of thirty-three to thirteen.¹⁶⁶ The 2017 and 2019 Development Resolutions, which will likely be followed by similar ones in the years to come, plainly demonstrated China's goal to center economic development and poverty reduction in the global human rights agenda.

In April 2018, China successfully introduced another solo-sponsored HRC resolution entitled "Promoting Mutually Beneficial Cooperation in the Field of Human Rights" (2018 MBC Resolution).¹⁶⁷

162. Countries that voted in favor of the resolution included Bangladesh, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Congo, Côte d'Ivoire, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, India, Indonesia, Iraq, Kenya, Kyrgyzstan, Mongolia, Nigeria, Philippines, Qatar, Rwanda, Saudi Arabia, South Africa, Togo, Tunisia, United Arab Emirates, and Venezuela (Bolivarian Republic of). Those that voted against it were Albania, Belgium, Croatia, Germany, Hungary, Japan, Latvia, Netherlands, Portugal, Slovenia, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America. Abstentions included Georgia, Panama, and Republic of Korea. The delegation of Paraguay did not cast a vote. H.R.C. Res. 35/21, *supra* note 158, at 2–3.

163. See generally Human Rights Council Res. 41/19, U.N. Doc. A/HRC/RES/41/19 (July 12, 2019).

164. *Id.* ¶ 8.

165. *Id.* ¶ 14–15.

166. Countries that voted in favor of the resolution included Afghanistan, Angola, Argentina, Bahamas, Bahrain, Bangladesh, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Democratic Republic of the Congo, Egypt, Eritrea, Fiji, India, Iraq, Mexico, Nepal, Nigeria, Pakistan, Peru, Philippines, Qatar, Rwanda, Saudi Arabia, Senegal, Somalia, South Africa, Togo, Tunisia, and Uruguay. Those that voted against it were Australia, Austria, Bulgaria, Croatia, Czechia, Denmark, Hungary, Iceland, Italy, Japan, Slovakia, Spain, United Kingdom of Great Britain and Northern Ireland. *Id.* at 3.

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

The resolution calls for states to engage in intergovernmental cooperation on human rights¹⁶⁸ and requests that the HRC Advisory Committee conduct a study on “the role of technical assistance and capacity-building in fostering mutually beneficial cooperation.”¹⁶⁹ It was touted in the official Chinese media as symbolizing “China’s growing influence and ability to set the agenda in international human rights governance.”¹⁷⁰ Observers and human rights activists viewed the resolution with suspicion, as its wording, which centered on intergovernmental cooperation and dialogue, suggested another attempt to put states at the center of human rights work and to marginalize accountability and international scrutiny.¹⁷¹

Simply put, the 2018 MBC Resolution reflected China’s traditional state-centered position, as opposed to the rights-based, individual-centered approach. Furthermore, the Chinese government has long treated cooperation and dialogue as an alternative approach to what it views as “confrontational” and “politicized” criticisms that expose its human rights violations.¹⁷² In other words, “mutually beneficial cooperation” can be seen as Beijing’s coded converse of what are in Beijing’s perspective “politicized criticisms.”

The resolution was similarly cosponsored by many other authoritarian and developing states and passed by a recorded vote of twenty-eight to one, with seventeen abstentions.¹⁷³ Countries

168. *Id.* ¶ 1.

169. *Id.* ¶ 5.

170. “Build a Community of Shared Future for Human Beings” Written into United Nations Human Rights Council Resolutions for the First Time, Chinese Mission to the U.N. Office at Geneva (Mar. 24, 2017), https://www.fmprc.gov.cn/mfa_eng/wjwb_663304/zwjg_665342/zwbd_665378/t1448594.shtml [<https://perma.cc/9QAG-NEBE>] (archived Aug. 30, 2021).

171. See Andrea Worden, *With Its Latest Human Rights Council Resolution, China Continues Its Assault on the UN Human Rights Framework*, CHINA CHANGE (Apr. 9, 2018), https://chinachange.org/2018/04/09/with-its-latest-human-rights-council-resolution-china-continues-its-assault-on-the-un-human-rights-framework_ [<https://perma.cc/898A-P6BN>] (archived Aug. 30, 2021) (arguing that the resolution demands respect for governments while downplaying the human person as the subject of human rights); John Fisher, *China’s Win-Win’ Resolution Is Anything But*, HUM. RTS. WATCH (Mar. 5, 2018), <https://www.hrw.org/news/2018/03/05/chinas-win-win-resolution-anything> [<https://perma.cc/UJ8W-LPMH>] (archived Aug. 30, 2021) (observing that the resolution focuses only on intergovernmental dialogue and cooperation, rather than actual human rights violations or accountability).

172. KINZELBACH, *supra* note 146, at 37.

173. Countries that voted in favor of the resolution included Angola, Brazil, Burundi, Chile, China, Côte d’Ivoire, Cuba, Democratic Republic of the Congo, Ecuador, Egypt, Ethiopia, Iraq, Kenya, Kyrgyzstan, Mexico, Mongolia, Nepal, Nigeria, Pakistan, Panama, Philippines, Qatar, Saudi Arabia, Senegal, South Africa, Togo, United Arab Emirates, and Venezuela. Those that abstained included Afghanistan, Australia, Belgium, Croatia, Georgia, Germany, Hungary, Japan, Peru, Republic of Korea, Rwanda, Slovakia, Slovenia, Spain, Switzerland, Ukraine, and United Kingdom of Great Britain and Northern Ireland. H.R.C. Res. 37/23, *supra* note 166, at 3.

abstaining from the vote were largely EU members and their allies while the US government was the only member casting a "no" vote.¹⁷⁴

Again, in 2020, China continued to propose a solo-sponsored resolution under the same title "Promoting Mutually Beneficial Cooperation in the Field of Human Rights" (2020 MBC Resolution).¹⁷⁵ The resolution was built on the 2018 MBC Resolution as well but expanded its content quite significantly. Among the added language, probably the most important and controversial is the following: "[r]ecognizing the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of *double standards* and *politicization*."¹⁷⁶ The accusation of "double standards," especially of the United States, while true in some instances, is used by Beijing and other autocracies as a rhetorical device to delegitimize criticisms about their human rights violations launched by liberal democracies, as well as to derail discussion of the violations in question.

Equally controversial in the 2020 MBC Resolution is new language "[r]eaffirming that each State has the inalienable right to choose freely and develop, in accordance with the sovereign will of its people, its own political, social, economic and cultural systems, *without interference from any other State or non-State actor*, in strict conformity with the Charter, the Universal Declaration of Human Rights and other relevant international instruments."¹⁷⁷ As noted above, the Chinese government's notions of sovereignty and non-interference are wide-ranging. They are also often used as a rhetorical device by Beijing to evade human rights criticisms.

The 2020 MBC Resolution, while successful, notably garnered fewer favorable votes than its 2018 MBC Resolution, which was passed by a recorded vote of twenty-eight to only one (again cast by the United States), with seventeen abstentions, as mentioned earlier.¹⁷⁸ In contrast, the 2020 MBC Resolution had twenty-three favorable votes, but it attracted many more opposition votes, with sixteen against and eight abstentions.¹⁷⁹ As the United States was not a HRC member in

174. *Id.*

175. Human Rights Council Res. 43/21, U.N. Doc. A/HRC/RES/43/21 (July 2, 2020).

176. *Id.* at 2 (emphasis added).

177. *Id.* (emphasis added).

178. *Id.* at 3; H.R.C. Res. 37/23, *supra* note 166, at 3.

179. Countries that voted in favor of the resolution included Angola, Argentina, Bahrain, Bangladesh, Brazil, Burkina Faso, Cameroon, Eritrea, Indonesia, Mauritania, Mexico, Namibia, Nepal, Nigeria, Pakistan, Philippines, Qatar, Senegal, Somalia, Sudan, Togo, Uruguay and Venezuela (Bolivarian Republic of). Those that voted against the resolution included Australia, Austria, Bulgaria, Czechia, Denmark, Germany, India, Italy, Japan, Marshall Islands, Netherlands, Poland, Republic of Korea, Slovakia, Spain, and Ukraine, with abstentions from Afghanistan, Armenia, Bahamas, Chile, Democratic Republic of the Congo, Fiji, Libya, and Peru. H.R.C. Res. 43/21, *supra* note 174, at 3–4.

2020, the opposition came mainly from a united front of EU member states and other democratic countries, including Japan, South Korea, and Australia.¹⁸⁰

There may be several reasons behind this voting result. One is the resolution's language, which was more controversial than any of the previous China-sponsored resolutions. Second, the years 2019–2021 appeared to mark a noticeable shift of the international sentiment about China's international policies and human rights abuses at home, in particular with regard to the mass detention in Xinjiang and the passage of the National Security Law in Hong Kong,¹⁸¹ which criminalizes many types of protest behavior and speech that would be protected under the International Covenant on Civil and Political Rights.¹⁸²

These developments, which frequently hit global headlines,¹⁸³ have triggered international alarm: Special Procedures of the HRC have issued various statements expressing concerns about Hong

180. *Id.* at 4.

181. See sources cited *supra* note 14.

182. The Covenant is guaranteed to continue to be in force by the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and has been incorporated into Hong Kong's domestic law.

183. See, e.g., Hill, Campanale, & Gunter, *supra* note 13; *China Cuts Uighur Births With IUDs, Abortion, Sterilization*, ASSOCIATED PRESS (June 29, 2020), <https://apnews.com/article/ap-top-news-international-news-weekend-reads-china-health-269b3de1af34e17c1941a514f78d764c> [<https://perma.cc/XW67-JLVZ>] (archived Aug. 30, 2021); Raffi Khatchadourian, *Surviving the Crackdown in Xinjiang*, NEW YORKER (Apr. 5, 2021), <https://www.newyorker.com/magazine/2021/04/12/surviving-the-crackdown-in-xinjiang> [<https://perma.cc/3QWY-LPMR>] (archived Aug. 30, 2021); Yang & Petersmann, *supra* note 13; *China Cables*, INT'L CONSORTIUM INVESTIGATIVE JOURNALISTS (Nov. 24 2019), <https://www.icij.org/investigations/china-cables/read-the-china-cables-documents/> [<https://perma.cc/A4RB-57JR>] (archived Aug. 30, 2021); Austin Ramzy & Chris Buckley, "Absolutely No Mercy": Leaked Files Expose How China Organized Mass Detentions of Muslim, N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html> (subscription required) [<https://perma.cc/S95N-HTVE>] (archived Aug. 30, 2021); *Germany's Heiko Maas: Hong Kong Security Law 'Extremely Worrying'*, DEUTSCHE WELLE (July 1, 2020), <https://www.dw.com/en/germanys-heiko-maas-hong-kong-security-law-extremely-worrying/a-54006992> [<https://perma.cc/5S4L-YXKY>] (archived Aug. 30, 2021); *Pro-Democracy Activist Flees Hong Kong After China Passes New National Security Law*, NPR (July 2, 2020), <https://www.npr.org/2020/07/02/886845490/pro-democracy-activist-flees-hong-kong-after-china-passes-new-national-security-law> [<https://perma.cc/P8TK-CUYT>] (archived Aug. 30, 2021); Thomas Kellogg & Kaylee Morrison, *Hong Kong Has Gotten Seriously Risky for International Business*, FOREIGN POLICY (July 26, 2021), <https://foreignpolicy.com/2021/07/26/hong-kong-risky-international-business-national-security-law> [<https://perma.cc/XME6-HJZ7>] (archived Aug. 30, 2021); Helen Davidson, *Guilty Verdict in First Hong Kong Trial Held Under National Security Law*, GUARDIAN (July 27, 2021), <https://www.theguardian.com/world/2021/jul/27/hong-kong-security-law-verdict-expected-in-first-ever-trial> [<https://perma.cc/7KCC-AUC5>] (archived Aug. 30, 2021); Sarah A. Topol, *Is Taiwan Next?*, N.Y. TIMES (Aug. 4, 2021), <https://www.nytimes.com/2021/08/04/magazine/taiwan-china.html> (subscription required) [<https://perma.cc/9X2C-VR9F>] (archived Aug. 30, 2021).

Kong's deteriorating human rights situation before and after China imposed a National Security Law on the city on June 30, 2020.¹⁸⁴ Many liberal democracies are also alert to the advance of China's authoritarian agenda. A number of liberal democracies have, for example, condemned the human rights abuses in Xinjiang as acts of genocide and/or crimes against humanity, including the State Department of the United States,¹⁸⁵ the Parliament of the United Kingdom,¹⁸⁶ the Parliament of Canada,¹⁸⁷ and the Parliament of the

184. Mandates of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the Right to Education; the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health; the Special Rapporteur on the Situation of Human Rights Defenders; the Special Rapporteur on Minority Issues; the Special Rapporteur on the Right to Privacy; the Special Rapporteur on Freedom of Religion or Belief; and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. OL CHN 18/2019 (Nov. 1, 2019); Mandates of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism; the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; the Special Rapporteur on the Situation of Human Rights Defenders; and the Special Rapporteur on Minority Issues, U.N. Doc. OL CHN 7/2020 (Apr. 23, 2020); Mandates of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; the Special Rapporteur on the Situation of Human Rights Defenders; and the Special Rapporteur on Minority Issues, U.N. Doc. OL CHN 13/2020, (June 19, 2020); Mandates of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; the Special Rapporteur on the Situation of Human Rights Defenders; and the Special Rapporteur on Minority Issues, U.N. Doc. OL CHN 17/2020 (Sept. 1, 2020).

185. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUM. RTS., & LAB., 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2021) (includes Hong Kong, Macau, and Tibet).

186. Jasmine Cameron-Chileshe & Christian Shepherd, *MPs Unanimous in Declaring China's Treatment of Uyghurs Genocide*, FIN. TIMES (Apr. 23, 2021), <https://www.ft.com/content/ba7d3a76-8222-4f12-bb69-db4f22c1570d> (subscription required) [<https://perma.cc/CD8F-HRQ3>] (archived Aug. 30, 2021).

187. Robert Fife & Steven Chase, *Parliament Declares China Is Conducting Genocide Against Its Muslim Minorities*, GLOBE & MAIL (Feb. 22, 2021), <https://www.theglobeandmail.com/politics/article-parliament-declares-china-is-conducting-genocide-against-its-muslim/> (subscription required) [<https://perma.cc/B3HN-SGKB>] (archived Aug. 30, 2021).

Netherlands.¹⁸⁸ China, on the other hand, has rejected all these allegations of genocide as “fake news.”¹⁸⁹ The United States, among other countries, has also passed legislation to impose sanctions on Chinese officials and entities that are deemed to be involved in human rights violations in Xinjiang and Hong Kong.¹⁹⁰ In return, China has passed an Anti-Foreign Sanctions Law¹⁹¹ to authorize counter-sanctions on foreign nations that “violate international law and basic norms of international relations to contain or suppress our nation under any kind of pretext or based on the laws of those nations to employ discriminatory restrictive measures against our nation’s citizens or interfere with our nation’s internal affairs.”¹⁹²

Despite the opposition, the above new expressions about “double standards” and “non-interference” were successfully introduced into the 2020 MBC Resolution.¹⁹³ The Chinese government seems to be slowly inserting its preferred terms into Human Rights Council resolutions with what this Article calls a “piling on” technique—

188. *Dutch Parliament: China’s Treatment of Uighurs Is Genocide*, REUTERS (Feb. 25, 2021), <https://www.reuters.com/article/us-netherlands-china-uyghurs-idUSKBN2AP2CI> [<https://perma.cc/MMA9-NUVN>] (archived Aug. 30, 2021). A notable exception is New Zealand’s Parliament which declined to call China’s human rights violations in Xinjiang genocide. See Tess McClure, *New Zealand Draws Back from Calling Chinese Abuses of Uyghurs Genocide*, GUARDIAN (May 4, 2021), <http://www.theguardian.com/world/2021/may/04/new-zealand-draws-back-from-calling-chinese-abuses-of-uyghurs-genocide> [<https://perma.cc/Y5EQ-A7NL>] (archived Aug. 30, 2021).

189. Mimi Lau, *Xinjiang “Genocide” Claims Are “Fake News”, Chinese Foreign Minister Says*, SOUTH CHINA MORNING POST (Mar. 8, 2021), <https://www.scmp.com/news/china/diplomacy/article/3124537/xinjiang-genocide-claims-are-fake-news-chinese-foreign> [<https://perma.cc/68E8-C3Z4>] (archived Aug. 30, 2021).

190. The legislation included the 2019 Hong Kong Human Rights and Democracy Act, the 2019 Placing Restrictions on Tear Gas Exports and Crowd Control Technology to Hong Kong Act (PROTECT Hong Kong Act), and the 2020 Hong Kong Autonomy Act. Hong Kong Human Rights and Democracy Act of 2019, Pub. L. No. 116-76, 113 STAT. 1161; Placing Restrictions on Teargas Exports and Crowd Control Technology to Hong Kong Act, H.R. 4270, 116th Cong. (2019); Hong Kong Autonomy Act, Pub. L. No. 116-149, 134 STAT. 663; The President’s Executive Order on Hong Kong Normalization, Exec. Order No. 13936, 85 Fed. Reg. 43413 (July 14, 2020). With regard to human rights violations in Xinjiang, the US has passed the 2020 Uyghur Human Rights Policy Act, which requires US government agencies to report China’s human rights violations in Xinjiang and sanctioning Chinese officials responsible for flagrant human rights violations there. Uyghur Human Rights Policy Act of 2020, Pub. L. No. 116-145, 134 STAT. 648.

191. *Zhonghua Renmin Gongheguo Fanwaiguo Zhicai Fa* (中华人民共和国反外国制裁法) [Anti-Foreign Sanctions Law of the People’s Republic of China (promulgated by the Standing Comm. Nat’l People’s Cong., June 10, 2021, effective June 10, 2021) (China)], <http://www.npc.gov.cn/npc/c30834/202106/d4a714d5813c4ad2ac54a5f0f78a5270.shtml> [<https://perma.cc/3XDX-E599>] (archived Aug. 30, 2021).

192. *Id.* at art. 3(2), translated in *Law of the PRC on Countering Foreign Sanctions*, CHINA L. TRANSLATE, (June 10, 2021), <https://www.chinalawtranslate.com/en/counter-ingforeignsanctions> [<https://perma.cc/5CVP-N7F7>] (archived Aug. 30, 2021).

193. Cameron-Chileshe & Shepherd, *supra* note 179.

gradually incorporating Beijing's controversial ideas about human rights year after year into HRC resolutions, using what previously seemed to be innocuous resolutions China itself introduced.

B. Weakening Institutions¹⁹⁴

Despite or, arguably, because of, its growing power in world politics, Beijing is ultra sensitive to public condemnation and goes to great lengths to stifle voices critical of its actions. A number of the many methods it uses include weakening and/or disempowering international human rights actors and institutions, preventing genuine civil society participation in the monitoring processes (especially that of Chinese activists), harassing treaty body experts and UN officials, and distorting Council procedures.¹⁹⁵

In addition to attempts to eliminate country-specific resolutions and to restrain Special Procedures by introducing a code of conduct, as discussed earlier, China and other authoritarian states have distorted the UPR, a significant innovation when the HRC was created. The UPR, as a political process, is a ripe candidate for diplomatic manipulation. China, similar to other states such as Cuba, has used various tactics to diminish the scrutiny of its human rights record during the UPR, turning the process into a self-congratulatory exercise and propaganda platform.¹⁹⁶

In the three UPRs China has undergone (in 2009, 2013, and 2018), the Chinese government has mobilized a great number of authoritarian and developing countries, such as Cuba, Russia, Saudi Arabia, Venezuela, Uzbekistan, and Yemen, to lavish high praise on China's achievements in human rights.¹⁹⁷ China has apparently used this tactic to legitimize its practice and to dilute condemnations of countries critical of China's human rights violations, such as the United States, the United Kingdom, Canada, and Germany. This

194. A portion of Part IV.B is based on Chen, *supra* note 4, at 1197–1200 and Chen, *supra* note 22.

195. See generally HUM. RTS. WATCH, *supra* note 4.

196. Maximilian Spohr, *United Nations Human Rights Council: Between Institution-Building Phase and Review of Status*, 14 MAX PLANCK Y.B. UNITED NATIONS L. 169, 203 (2010), www.mpil.de/files/pdf3/mpunyb_05_spohr_14.pdf [https://perma.cc/55H2-9PHG] (archived Aug. 30, 2021).

197. China's 2009, 2013 and 2018 UPR reports. U.N. HUM. RTS. COUNCIL, *Universal Periodic Review: China*, U.N. Doc. A/HRC/11/25 (Oct. 5, 2009), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/162/99/PDF/G0916299.pdf?OpenElement>; U.N. HUM. RTS. COUNCIL, *Universal Periodic Review: China*, U.N. Doc. A/HRC/25/5 (Dec. 4, 2013), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/188/55/PDF/G1318855.pdf?OpenElement>; U.N. HUM. RTS. COUNCIL, *Universal Periodic Review: China*, U.N. Doc. A/HRC/40/6 (Dec. 26, 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/59/PDF/G1844659.pdf?OpenElement>.

method, which has now become China's *modus operandi*, impairs the purpose and the effectiveness of the UPRs.¹⁹⁸

Moreover, China has sought to muffle the voices of domestic and international independent NGOs and activists. In the HRC, it has arranged for domestic government-organized nongovernmental organizations (GONGOs)—favored by the Chinese Communist Party—to speak glowingly of China's record in order to crowd out the participation of independent NGOs.¹⁹⁹ China has also frequently prevented domestic activists from taking part in international processes by barring them from leaving the country or placing them in detention.²⁰⁰ In the most shocking example, Shunli Cao, a Chinese activist, was stopped by police when attempting to attend China's UPR in 2013.²⁰¹ She was subsequently arrested on the charge of "picking quarrels and provoking troubles" and died in custody in 2014.²⁰²

These efforts by Beijing, often in collaboration with other countries, frustrate the operation of the international human rights system, and, even if unsuccessful, serve to create an inhibiting and intimidating atmosphere that restrains actors striving in good faith to work within the system, especially civil society groups and activists.

C. Further Polarizing Politics

The combination of Beijing's HRC tactics and its ever-more-serious human rights violations further polarizes politics in international human rights institutions. Particularly, China's abuses in Xinjiang and Hong Kong have turned out to be flash points for polarized politics.²⁰³ These issues have engendered heated exchanges between liberal democracies that condemned China's actions and a group of authoritarian governments and developing states that China brandishes to defend its human rights record.

In 2019, for example, after a group of twenty-two states issued a joint letter to the HRC condemning China's mass detention of Uyghurs and other minorities in Xinjiang, fifty states issued a competing letter

198. This and the following paragraph are based on Chen, *supra* note 4, 1198–1201.

199. Other examples of Beijing's attempts to impede the operation of the international human rights system include its refusal to extend invitations for Special Procedures to conduct field visits to China and to control and surveil the activities of the human rights expert visitors and impede their investigation when such visits were conducted.

200. HUM. RTS. WATCH, *supra* note 4, at 25–27.

201. See reports on Cao Shunli, HUMAN RIGHTS IN CHINA, <https://www.hrichina.org/en/defenders/cao-shunli> [<https://perma.cc/P4QU-42LY>] (archived Nov. 8, 2021).

202. Sophie Richardson, *Dispatches: The Death of a Defender in China*, HUM. RTS. WATCH (Mar. 14, 2014), <https://www.hrw.org/news/2014/03/14/dispatches-death-defender-china> [<https://perma.cc/2GDZ-RP4T>] (archived Aug. 30, 2021).

203. See *supra* text corresponding to notes 183–98.

to back China's Xinjiang policy.²⁰⁴ While the twenty-two critics consisted of Japan and many Western democracies, the states defending China were mostly LMG members, including states from the Middle East, Africa, and Asia, with many authoritarian or developing governments dependent on economic relations with Beijing.²⁰⁵

Again, in 2020, when the UK delivered a cross-regional joint statement on behalf of twenty-seven democratic countries about their concerns on China's imposition of its national security legislation in Hong Kong,²⁰⁶ China's supporters, totaling fifty-three states led by Cuba, backed China's dealings with Hong Kong.²⁰⁷ The fifty-three signatories include many in the LMG, and, reportedly, at least forty-three have signed onto China's BRI, including only three small countries that have been rated as "free" by Freedom House; all other signatories fall into the "not free" or "partly free" categories.²⁰⁸ This defense of China's actions in Hong Kong continued into March 2021, when Belarus delivered a joint speech at the HRC on behalf of seventy

204. U.N. HUM. RTS. COUNCIL, *Letter dated 8 July 2019 from the Permanent Representatives of Australia, Austria, Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Japan, Latvia, Lithuania, Luxembourg, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva addressed to the President of the Human Rights Council*, U.N. Doc. A/HRC/41/G/11 (July 23, 2019), <https://undocs.org/A/HRC/41/G/11> [<https://perma.cc/AQ2P-5QAT>] (archived Nov. 8, 2021); U.N. HUM. RTS. COUNCIL, *Letter dated 12 July 2019 from the representatives of Algeria, Angola, Bahrain, Bangladesh, Belarus, the Plurinational State of Bolivia, Burkina Faso, Burundi, Cambodia, Cameroon, Comoros, the Congo, Cuba, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Gabon, the Islamic Republic of Iran, Iraq, Kuwait, the Lao People's Democratic Republic, Mozambique, Myanmar, Nepal, Nigeria, Oman, Pakistan, the Philippines, the Russian Federation, Saudi Arabia, Serbia, Somalia, South Sudan, Sri Lanka, the Sudan, the Syrian Arab Republic, Tajikistan, Togo, Turkmenistan, Uganda, the United Arab Emirates, Uzbekistan, the Bolivarian Republic of Venezuela, Yemen, Zambia, Zimbabwe and the State of Palestine to the United Nations Office at Geneva addressed to the President of the Human Rights Council*, U.N. Doc. A/HRC/41/G/17 (Aug. 9, 2019), <https://undocs.org/A/HRC/41/G/17> [<https://perma.cc/XS7Z-ZSHC>] (archived Nov. 8, 2021).

205. Roie Yellinek & Elizabeth Chen, *The "22 vs. 50" Diplomatic Split Between the West and China Over Xinjiang and Human Rights*, 19 CHINA BRIEF 20, 21 (2019).

206. Julian Braithwaite, Director General for the EU, UN Human Rights Council 44: Cross-regional statement on Hong Kong and Xinjiang (June 30, 2020), available at <https://www.gov.uk/government/speeches/un-human-rights-council-44-cross-regional-statement-on-hong-kong-and-xinjiang> [<https://perma.cc/>] (archived Sept. 8, 2021).

207. Permanent Mission of China To The United Nations Office At Geneva And Other Int'l Orgs. in Switz, Joint Statement delivered by Permanent Mission of Cuba at the 44th session of Human Rights Council, June 30, 2020, available at <http://www.china-un.ch/eng/dbdt/t1793804.htm> [<https://perma.cc/4NHF-PH2J>] (archived Sept. 8, 2021).

208. Dave Lawler, *The 53 countries supporting China's crackdown on Hong Kong*, AXIOS (July 3, 2020), <https://www.axios.com/countries-supporting-china-hong-kong-law-0ec9bc6c-3aeb-4af0-8031-aa0f01a46a7c.html> [<https://perma.cc/9PBM-X7CH>] (archived Sept. 8, 2021).

countries to back Beijing, stating that Hong Kong affairs are China's internal affairs and should not be interfered with by external forces.²⁰⁹

Such back-and-forth about Hong Kong and Xinjiang can also be seen in other human-rights-related forums in the United Nations. In the Third Committee of the U.N. General Assembly, for example, liberal democracies have also launched joint statements that condemn Beijing's violations of human rights in Xinjiang, Tibet, and Hong Kong. But Beijing has been able to find allies in greater numbers—again mostly authoritarian and developing countries—to defend the position that human rights in China are China's internal affairs that cannot be interfered with.²¹⁰

With the Xinjiang and Hong Kong human rights crises on the international community's front burner, China's method of response appears to be a new form of tribal international politics that not only gathers states that are like-minded to form a coalition against liberal democracies but also compels states—even some small democracies—

209. *Belarus Represents 70 Countries to Call For Non-Interference in China's Internal Affairs*, XINHUANET (Mar. 5, 2021), www.xinhuanet.com/english/2021-03/05/c_139788101.htm [<https://perma.cc/ZW6C-FYNU>] (archived Nov. 8, 2021).

210. *E.g.*, Pandemic Pushing Those Least Able to Adapt into Positions of Greater Risk, General Assembly President Tells Third Committee, amid Calls for Greater Protections, UNITED NATIONS (OCT. 6, 2020), un.org/press/en/2020/gashc4287.doc.htm [<https://perma.cc/9RAF-ABMM>] (archived Nov. 8, 2021) (“Germany’s representative, speaking for a cross-regional group of 39 countries, pressed China to respect the human rights of people belonging to religious and ethnic minorities in Xinjiang and Tibet....Taking an opposite stance, the representative of Pakistan, speaking for 54 countries, underscored the importance of non-interference in the internal affairs of sovereign States, a principle enshrined in the Charter of the United Nations, and a basic international norm. The Hong Kong Special Administrative Region is an inalienable part of China. ‘Hong Kong’s affairs are China’s internal affairs, that brook no interference by foreign forces,’ he assured, expressing support for China’s ‘one country two systems,’ policy and stressing that legislative power on national security in any country rests with the State. Pointing to yet another way forward, Cuba’s representative, speaking for 45 countries, urged all sides to promote human rights through dialogue ... She welcomed that China has taken measures to respond to terrorism threats, in accordance with the law, in order to safeguard human rights in Xinjiang, stressing that there has not been a single terrorist attack there in the last three years and that all ethnic groups enjoy a happy life. China has invited 1,000 officials, journalists and religious people to Xinjiang to witness its ‘remarkable’ achievements.”); *Cross-Regional Joint Statement on Xinjiang*, PERMANENT MISSION FR. UNITED NATIONS N.Y. (Oct. 21, 2021), <https://onu.delegfrance.org/we-call-on-china-to-allow-immediate-meaningful-and-unfettered-access-to> [<https://perma.cc/SPM7-UF38>] (archived Nov. 8, 2021); *62 Countries Made Joint Statement in Support of China's Promotion and Protection of Human Rights*, PERMANENT MISSION CHINA UNITED NATIONS (Oct. 21, 2021), <http://chnun.chinamission.org.cn/eng/hyyfy/t1916014.htm> [<https://perma.cc/SFR5-UM33>] (archived Nov. 8, 2021) (“The joint statement stresses that respect for sovereignty, independence and territorial integrity of states and non-interference in internal affairs of sovereign states represent basic norms governing international relations. Hong Kong, Xinjiang and Tibet related issues are China’s internal affairs that brook no interference by any external forces. The joint statement reiterates support for China’s implementation of ‘one country, two systems’ in the Hong Kong Special Administrative Region.”).

to choose sides based on their association with China rather than considering the merits of the issue in question. It entrenches and exacerbates the existing political divide between global North and global South. Operating in the background of all of this is China's cultural relativism that seeks to widen the chasm between China and Western-style governments.

According to China's current rhetoric, the liberal values embedded in the international human rights system as well as the global, collective efforts of international and domestic civil society bulwarking those values are crudely reduced to Western values that are simply unsuited for the Chinese way of life.²¹¹ Human rights are dismissed as nothing but a political ploy of foreign "hostile forces" designed to interfere with China's domestic affairs.²¹² This approach invites antagonism against the other side, hardens the polarization of views, and fuels divisive international politics.²¹³

In the broader context, China has actively projected itself as the leader representing the interests of the global South, an important part of China's efforts to build a voting bloc coalition with developing and authoritarian countries. In this polarized global environment, compromises are likely hard to make and unifying consensus hard to reach.

V. "AUTHORITARIAN INTERNATIONAL LAW" IN ACTION? ITS IMPLICATIONS

A. *How Will Authoritarian International Norms Be Developed?*

In his article *Authoritarian International Law?*, Ginsburg sheds much insight into authoritarian efforts to reshape the current world order.²¹⁴ Ginsburg pinpoints the phenomenon that authoritarian countries have tried to influence international law by developing international norms and institutions that feature "looser cooperation,

211. This sentence is adapted from Chen, *supra* note 4, at 1212.

212. *E.g., Government of China's Xinjiang says leak on Uighur camps 'fake news'*, REUTERS (Nov. 19, 2019), www.reuters.com/article/us-china-xinjiang/government-of-chinas-xinjiang-says-leak-on-uighur-camps-fake-news-idUSKBN1XT0AF_ [<https://perma.cc/JV8Z-LRGR>] (archived Sept. 8, 2021); Verna Yu, *'They don't understand Hong Kong': Clash of Ideologies Looms on China's 70th Anniversary*, GUARDIAN (Sept. 30, 2019), www.theguardian.com/world/2019/sep/30/they-dont-understand-hong-kong-clash-of-ideologies-looms-on-chinas-70th-anniversary [<https://perma.cc/L44S-XBWC>] (archived Sept. 8, 2021); Peter Ford, *China Targets 'Hostile Foreign Forces' in Crescendo of Accusations*, CHRISTIAN SCI. MONITOR (Nov. 9, 2014), www.csmonitor.com/World/Asia-Pacific/2014/1109/China-targets-hostile-foreign-forces-in-crescendo-of-accusations [<https://perma.cc/XH8M-RM32>] (archived Sept. 8, 2021).

213. This and the following paragraph are adapted from Chen, *supra* note 22.

214. Ginsburg, *supra* note 5.

negotiated settlements, and rules that reinforce regime survival.”²¹⁵ His article has prompted much reflective discussion²¹⁶ and warrants further academic investigation. How is “authoritarian international law” being developed? How should the international society respond? Is Thomas Franck’s proposal—presented almost three decades ago at the height of democratic optimism—about the “emerging right to democratic governance”²¹⁷ outdated? Should this question be examined area by area? Is human rights inherently different than other areas such as international trade and investment?

This Article contributes to the efforts of theorists by offering a case study of China’s strategies and competition with democratic countries in the HRC. It discusses an international human rights system envisioned by China and other authoritarian states—a ultra-statist, culturally relativist, development-first framework that represses critics to secure domestic power.

Furthermore, the Article focuses on *how* authoritarian countries enable or facilitate the creation of illiberal norms and institutions in the human rights system despite the existence of democracies and the efforts of non-state stakeholders. It observes that in the HRC, China, a singular authoritarian country, is effectively implementing its agenda—mostly through allying with other authoritarian countries that share its illiberal agenda as well as with developing countries that expect, or are dependent on, economic benefits from Beijing.

Contrary to what is commonly believed, monetary contribution to an international organization may not be as crucial to one’s political influence; rather, it’s the company one keeps (either in identity-based relationships and/or transaction-based relationships)²¹⁸ that amplifies one’s political influence in the international regime. Going forward, this suggests the importance of studying political coalitions and group dynamics in any given intergovernmental institution to look into how the creation of authoritarian international norms may be facilitated.

215. *Id.* at 221.

216. See the American Journal of International Law’s 2020 Symposium on “Authoritarian International Law: Is Authoritarian International Law Inevitable?”: Allen S. Weiner, *Authoritarian International Law, the Use of Force, and Intervention*, 114 AJIL UNBOUND 220 (2020); Trang (Mae) Nguyen, *International Law as Hedging: Perspectives from Secondary Authoritarian States*, 114 AJIL UNBOUND 237 (2020); Cassandra V. Emmons, *International Organizations: Enablers or Impediments for Authoritarian International Law?*, 114 AJIL UNBOUND 226 (2020); Shirley V. Scott, *The Imperial Over-Stretch of International Law*, 114 AJIL UNBOUND 242 (2020); Ian Hurd, *Legal Games – Political Goals*, 114 AJIL UNBOUND 232 (2020); Chibli Mallat, *The Limits of Authoritarian International Law*, 114 AJIL UNBOUND 247 (2020).

217. See generally Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46 (1992).

218. See *supra* Part IV, para. 4.

B. Democratic Integrity and Coalition

In addition, the findings of this Article have implications for the question of how to respond to the ongoing authoritarian challenge to the international human rights regime. As strong political coalitions are what authoritarian regimes rely on to push their agenda, any counteraction that would fend off such an agenda also requires strong coalitions. Disengagement is not an option.

Just as the United States' disengagement under the Bush administration frustrated efforts to mobilize liberal democracies,²¹⁹ the 2018 US departure from the HRC has also weakened democratic credibility and political alliances in an international environment that was already witnessing democratic backsliding.²²⁰ The EU saw the withdrawal of the Trump administration as "undermining the role of the United States as a champion and supporter of democracy on the world stage."²²¹ President Biden's plans to return to the HRC and to host a Democracy Summit²²² appear to be a re-recognition of the importance of strong international coalitions of democracies.

Yet, there have been some immediate consequences of the US departure from the HRC. While the United States could still take part in HRC processes that did not require membership, such as the UPRs, the US government nevertheless lost its voice and vote in important decisions made by the HRC members. Other actors in the HRC that usually partner with the United States, including the EU, lost an important ally critical to rallying forceful support. More profoundly, Washington's withdrawal painted the United States as an unreliable ally for global democracies, weakened its voice, and provided a morale boost to China, Russia, and other authoritarian countries in the LMG. The US accusation that the HRC is politicized,²²³ while true, is unconstructive when it quits the organization and does nothing but further sully the HRC's reputation. Washington may soon return to the HRC, but much damage to the HRC's credibility has already been done.²²⁴

219. Wouters & Meuwissen, *supra* note 94, at 5 ("The re-engagement of the U.S. as a member of the HRC from June 2009 on, however, tipped the balance in the Council more often in favor of Western concerns. Importantly, the U.S. substantially invested in outreach activities to engender crossregional alliances on its priority issues in the Council, including on sensitive topics.").

220. See *supra* text corresponding to footnotes 62–69.

221. Delegation of the European Union to the U.S., Statement by the Spokesperson on the United States' Decision to Withdraw from the United Nations Human Rights Council, June 19, 2018, available at eeas.europa.eu/delegations/united-states-america/46844/statement-spokesperson-united-states-decision-withdraw-united-nations-human-rights-council_en [https://perma.cc/QM99-JCSN] (archived Sept. 8, 2021).

222. See *supra* text corresponding to footnotes 70–73.

223. See *Remarks on the U.N. Human Rights Council, supra* note 2.

224. This paragraph is adapted from Chen, *supra* note 4, at 1216.

In addition, in the eyes of many, the United States' democratic credentials have long been tarnished. The Trump administration's disdain for multilateralism²²⁵ and repeated praise for authoritarian leaders²²⁶ combined with the Trump-inspired disruption of the peaceful transition of power²²⁷ has dramatically reduced the United States' own credibility. The United States is now widely seen as representing dysfunctional democracy, hardly in any position to exercise world leadership.²²⁸ A spokeswoman for China's foreign ministry told reporters that Americans might "pride themselves on their democracy and freedom," but "deep down they may hope they could lead a life as the Chinese do."²²⁹ It is imperative for Washington to lead by example, starting with confronting human rights problems at home including in particular rampant racial discrimination and rebuilding its standing as an effective liberal democracy living up to ideals of democracy and human rights.

The EU, on the other hand, has long viewed itself as a normative power and has tried to engage China with a cooperative approach, until recently.²³⁰ Of late, it has increasingly experienced a normative divergence with China on human rights.²³¹ Yet, the EU and its members, while sometimes vocal about China's human rights violations, have been criticized for succumbing to China's "divide and rule" tactics.²³² Many EU members that have developed close ties with China in trade and investment are disincentivized from addressing China's human rights violations. Furthermore, despite international protests about human rights violations in Xinjiang and Hong Kong, the

225. See e.g., Alex Pascal, *Against Washington's 'Great Power' Obsession*, ATLANTIC (Sept. 24, 2019), <https://www.theatlantic.com/politics/archive/2019/09/multilateralism-nearly-dead-s-terrible-news/598615/> [https://perma.cc/THN9-D5T6] (archived Sept. 8, 2021).

226. See e.g., *How Trump's Embrace Of Authoritarian Rulers Has Impacted The World*, NPR (May 14, 2019), <https://www.npr.org/2019/05/14/723325835/how-trumps-embrace-of-authoritarian-rulers-has-impacted-the-world> [https://perma.cc/K3JL-368L] (archived Sept. 8, 2021).

227. *US Capitol Riot: Police Officer Dies Amid Pressure on Trump Over Inciting Violence*, BBC (Jan. 8, 2020), <https://www.bbc.com/news/world-us-canada-55583264> [https://perma.cc/73QN-DDXJ] (archived Sept. 8, 2021).

228. See e.g., Zack Beauchamp, *A Major Democracy Watchdog Just Published a Scathing Report on Trump*, VOX (Feb. 5, 2019), <https://www.vox.com/policy-and-politics/2019/2/5/18211968/freedom-house-report-trump> [https://perma.cc/9VVFQ-THEG] (archived Sept. 8, 2021).

229. E.g., Michael Crowley, *As Biden Plans Global Democracy Summit, Skeptics Say: Heal Thyself First*, N.Y. TIMES (Feb. 3, 2021), www.nytimes.com/2021/01/31/us/politics/biden-democracy-summit.html [https://perma.cc/PC6D-DL4Z] (archived Sept. 8, 2021).

230. KINZELBACH, *supra* note 146, at 26–28.

231. ZSUZSA ANNA FERENCZY, *EUROPE, CHINA, AND THE LIMITS OF NORMATIVE POWER* 5, 133 (2019).

232. E.g., Charlie Duxbury, *Sweden's lonely boxing match with Beijing*, POLITICO (Feb. 12, 2020), politico.eu/article/sweden-china-diplomatic-spat/ [https://perma.cc/F7Z4-YYXJ] (archived Sept. 8, 2021).

EU still concluded the negotiations for a Comprehensive Agreement on Investment with China, which was symbolic of the EU's long-standing agenda of prioritizing economic benefits over human rights in its dealing with China.²³³ However, in a deteriorating China-EU relationship where the EU sanctioned several Chinese officials for human rights violations²³⁴ and China sanctioned several EU politicians and scholars in retribution,²³⁵ the European Parliament has changed course, voting to suspend ratification of the EU-China Comprehensive Agreement on Investment.²³⁶

But there are still other internal challenges that confront the EU, which may also make it hard for it to vigorously resist China's authoritarian push in the global human rights regime. The 2008 global financial crisis has left EU members less confident²³⁷ and, in part, led to the European debt crisis.²³⁸ Recent years have seen an EU torn by Brexit²³⁹ and weakened by a moral crisis in terms of how to deal with massive, unwanted immigration flows.²⁴⁰ Economic uncertainties

233. E.g., Theresa Fallon, *The Strategic Implications of the China-EU Investment Deal*, DIPLOMAT (Jan. 4, 2021), <https://thediplomat.com/2021/01/the-strategic-implications-of-the-china-eu-investment-deal/> [<https://perma.cc/PVJ7-3ZK6>] (archived Sept. 8, 2021); Rosa Balfour & Lizza Bomassi, *EU and China Seal a Deal Behind Biden's Back*, CHATHAM HOUSE (Feb. 5, 2021), <https://www.chathamhouse.org/publications/the-world-today/2021-02/eu-and-china-seal-deal-behind-bidens-back> [<https://perma.cc/9E8C-D46L>] (archived Sept. 8, 2021).

234. Press Release, Council of the EU, EU Imposes Further Sanctions over Serious Violations of Human Rights around the World (Mar. 22, 2021), <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world/> [<https://perma.cc/75MY-4SBT>] (archived Sept. 8, 2021).

235. Ministry of Foreign Affairs of China, Foreign Ministry Spokesperson Announces Sanctions on Relevant EU Entities and Personnel, Mar. 22, 2021, https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/t1863106.shtml [<https://perma.cc/XYJ5-UMBG>] (archived Sept. 8, 2021).

236. Press Release, European Parliament, MEPs Refuse Any Agreement with China Whilst Sanctions are in Place (May 20, 2021), <https://www.europarl.europa.eu/news/en/press-room/20210517IPR04123/meps-refuse-any-agreement-with-china-while-sanctions-are-in-place> [<https://perma.cc/LMT7-EBRB>] (archived Sept. 8, 2021).

237. Susi Dennison & Jana Puglierin, *Crisis of confidence: How Europeans See their Place in the World*, EUR. COUNCIL ON FOREIGN REL. (June 9, 2021), <https://ecfr.eu/publication/crisis-of-confidence-how-europeans-see-their-place-in-the-world/> [<https://perma.cc/C2WC-3EA5>] (archived Sept. 8, 2021) ("The covid-19 crisis has been a difficult storm for many countries and regions to weather. But, for the EU, the crisis was existential, coming soon after other challenges to the bloc, including the 2008 financial crisis, the refugee crisis, and Brexit.").

238. EUROPEAN PARLIAMENTARY RESEARCH SERVICE, A DECADE ON FROM THE CRISIS: MAIN RESPONSES AND REMAINING CHALLENGES 3–5 (2019).

239. Guy Faulconbridge & Kate Holton, *'Explosive shock' as Britain votes to leave EU, Cameron quits*, REUTERS (June 23, 2016), <https://www.reuters.com/article/in-britain-eu-idINKCN0Z902O> [<https://perma.cc/VQ6S-SBLM>] (archived Nov. 8, 2021).

240. Laura Zanfrini, *Europe and the Refugee Crisis: A Challenge to Our Civilization*, UNITED NATIONS ACADEMIC IMPACT (Sept. 28, 2016), <https://www.un.org/en/academic-impact/europe-and-refugee-crisis-challenge-our-civilization> [<https://perma.cc/YM9W-UMYX>] (archived Sept. 8, 2021).

have also heightened the importance of trade links to China. Moreover, the EU's concern with terrorism²⁴¹ may cloud the prospect of a strong critique of China's abuses that are ostensibly committed to safeguarding national security. The weakening rule of law in Hungary and Poland represents a challenge for the EU²⁴² and could potentially undercut EU attempts to be a normative leader on human rights internationally.²⁴³

The US withdrawal from the HRC, however, seems to have raised awareness in the EU of the importance of undertaking a more active, leading role in preserving the current international regime, as recently demonstrated in the European Council's 2019 conclusions on "EU action to strengthen rules-based multilateralism."²⁴⁴ With this political declaration, the EU reaffirmed its pledge to support multilateralism and to promote international human rights protection.

In regard to China particularly, the EU policy appears to be undergoing what observers describe as a transformation.²⁴⁵ In 2019, the European Commission adopted a new "Strategic Outlook on China,"²⁴⁶ describing China as "a negotiating partner with whom the EU needs to find a balance of interests, *an economic competitor* in the pursuit of technological leadership and *a systemic rival* promoting alternative models of governance."²⁴⁷ The unprecedented depiction of China as a "systemic rival" signals a conceptual change in EU-China relations.²⁴⁸ While this change may have been driven by the EU's realization that it is being taken advantage of by China

241. See, e.g., EUROPOL, EUROPEAN UNION TERRORISM SITUATION AND TREND REPORT 2021 (2021), <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-2021-tesat> [<https://perma.cc/KZR35GCL>] (archived Sept. 8, 2021).

242. See generally Adam Holesch & Anna Kyriazi, *Democratic Backsliding in the European Union: the Role of the Hungarian-Polish Coalition*, EAST EUR. POL. 1, 3 (2021).

243. This and the following two paragraphs are adapted from Chen, *supra* note 22.

244. *Council Conclusions – EU Action to Strengthen Rules-based Multilateralism*, COUNCIL EUR. UNION (June 17, 2019), <https://data.consilium.europa.eu/doc/document/ST-10341-2019-INIT/en/pdf> [<https://perma.cc/Z8MY-E8DZ>] (archived Sept. 8, 2021).

245. Tim Rühlig, *Exposing the Fragility of EU-China Relations*, EAST ASIA FORUM (May 23, 2020), www.eastasiaforum.org/2020/05/23/exposing-the-fragility-of-eu-china-relations/#:~:text=In%202019%20the%20European%20Union,as%20a%20'geopolitical'%20one [<https://perma.cc/4QMR-ST5A>] (archived Sept. 8, 2021).

246. *EU-China – A strategic outlook*, EUR. COMMISSION (Mar. 12, 2019), https://ec.europa.eu/commission/presscorner/detail/en/fs_19_6498 [<https://perma.cc/NL53-RMJH>] (archived Sept. 8, 2021).

247. *Id.* at 1 (emphasis added).

248. E.g., Erik Brattberg & Philippe Le Corre, *The EU and China in 2020: More Competition Ahead*, CARNEGIE ENDOWMENT INT'L PEACE (Feb. 19, 2020), carnegieendowment.org/2020/02/19/eu-and-china-in-2020-more-competition-ahead-pub-81096 [<https://perma.cc/529S-NUPB>] (archived Sept. 8, 2021).

economically,²⁴⁹ it also reflected a growing number of EU voices critical of China's increasingly repressive human rights practices.

C. Engagement and Cooperation? It's Politics

Just as disengagement is not an option, engagement and cooperation do not appear efficacious with present-day China. The original presumption of the China-engagement approach was that, through engagement, the Chinese party-state would be "socialized"²⁵⁰ into adopting liberal ideas and human rights practices. While the Chinese Communist Party government has indeed come a long way in participating in the international regime since it entered the UN in 1971, its "socialization process," if any, has been a shallow one when viewed in terms of its human rights record. The party-state has adopted the posture of international participation, but it has refused to be engaged in terms of its domestic repression and state violence.²⁵¹

China's practice in the HRC, including in the UPRs, continually demonstrates that the party-state is not acting in good faith, making it impossible to engage with on legitimate points of disagreement. For example, the interstate and "track one and a half"²⁵² dialogues between Beijing and other countries appear to favor Beijing's goal of cabining human rights issues into quiet, closed-door meetings more than serious exchanges that might stimulate Chinese reforms.²⁵³ As long as Beijing avoids any genuine discussion of its human rights practices, the exercises that purport to examine its human rights record are nothing more than window-dressing, often suffocated with formalistic, stiff recitations of Chinese laws, regulations, and other unenforced measures.²⁵⁴

249. *Europe Needs to Be a Player, Not a Playing Field, EU Tells China*, EU BUS. (Sept. 16, 2020), <https://www.eubusiness.com/news-eu/china-summit.14js> [<https://perma.cc/BP3N-M96C>] (archived Sept. 8, 2021).

250. For the theory of socialization, see generally RYAN GOODMAN, *SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW* (2013).

251. This and the following two paragraphs are adapted from Chen, *supra* note 4, at 1217–19.

252. For an explanation of "track one and a half," see Barrington Roy Schiller, *What is a track 1.5 Diplomat?*, DIPLOMAT MAG. (Aug. 3, 2019), <https://diplomatomagazine.eu/2019/08/03/what-is-a-track-1-5-diplomat/> [<https://perma.cc/K6D3-7Y3V>] (archived Sept. 8, 2021).

253. See, e.g., KINZELBACH, *supra* note 146, at 195 (noting that the attitudes of Chinese participants in the EU-China Human Rights Dialogue from 1995 to 2010 turned from "purposely hypocritical" to "openly uninterested" while European participants turned from "fairly optimistic" to "entirely ceremonial."). But see Margaret K. Lewis, *Human Rights and the U.S.-China Relationship*, 49 GEO. WASH. INT'L L. REV. 471, 487–89 (2017) (arguing that, while bilateral human rights dialogues are not going to produce human rights progress in China under the current leadership, they are still valuable in laying the groundwork for more substantive long-term cooperation).

254. KINZELBACH, *supra* note 146, at 195; This and the following four paragraphs are based on Chen, *supra* note 4, at 1217–19 and Chen, *supra* note 22.

Genuine human rights cooperation between China and other major democracies also seems unlikely at present. China often accuses the West of being “anti-China” and of using human rights as a pretext for intervening in China’s internal affairs.²⁵⁵ This rhetoric stigmatizes the basic concept of human rights. Universal values are deemed harmful and not suitable for China.²⁵⁶

This view ignores the fact that many international human rights norms represent the deeply held convictions of countries across the globe and their respective civil societies, rather than those of merely a few countries or regions.

It also conveniently ignores the successful development of Asian countries that largely protect civil and political rights as well as economic, social, and cultural rights, including neighboring Japan, South Korea, and Taiwan—countries that share a lot of cultural norms in common and do not find human rights norms inconsistent with their traditional values. Beijing’s claims of cultural relativism are weak, as many other East Asian countries have transformed themselves through bottom-up, civil society efforts and incorporated the values of democracy, human rights, and the rule of law into their societies.

Before genuine cooperation with China can take place, democratic states must mount a strong defense of the integrity of the international human rights system. There is no doubt that this begins with a heightened awareness of Beijing’s human rights practices and its threat to established human rights norms and institutions and international politics. At present, China’s human rights practice is indeed under increasing scrutiny, and its aggressive push into the international human rights system will likely shine more light on China’s most troubling rights practices. For example, over the past two years the United States has passed various pieces of legislation sanctioning China’s violations of human rights in Hong Kong, Xinjiang, and Tibet.²⁵⁷ In addition, the UK has now granted Hong Kong holders of the British National Overseas Passport (estimated at 2.6 million people) the right to move to the UK and to obtain UK

255. See, e.g., *China Firmly Opposes Any External Forces Interfering in Internal Affairs Using the Pretext of Xinjiang-related Issues: FM*, GLOBAL TIMES (July 2, 2021), <https://www.globaltimes.cn/page/202107/1227666.shtml> [<https://perma.cc/3AEN-B3YJ>] (archived Sept. 8, 2021).

256. See Wong, *supra* note 144; see also *China Denounces G7 Statement, Urges Group to Stop Slandering Country*, REUTERS (June 14, 2021), <https://www.reuters.com/world/china/china-denounces-g7-statement-urges-group-stop-slandering-country-2021-06-14/> [<https://perma.cc/GVZ9-FF7L>] (archived Sept. 8, 2021).

257. *Supra* note 190. In addition to the legislation mentioned in *supra* note 190, the United States has also passed the 2020 Tibetan Policy and Support Act, which establishes as U.S. policy that the succession or reincarnation of Tibetan Buddhist leaders is a religious matter reserved exclusively for the Tibetan Buddhist community as well as authorizes the use of existing sanctions for Chinese officials who interfere in the process of recognizing reincarnations or the succession of Tibetan Buddhist leaders. See Tibetan Policy and Support Act of 2019, H.R. 4331, 116th Cong. (2020).

citizenship under certain circumstances.²⁵⁸ The United States, Canada, Australia, and Taiwan, among other countries, have also relaxed immigration rules for Hong Kongers seeking to leave the territory after China's passage of the Hong Kong National Security Law.²⁵⁹ These actions provide valuable backing to Chinese civil society in need of the outside world's support.

In addition to domestic legislation, defending the integrity of the international human rights system also requires mobilization of international alliances. Just as the United States returns to the HRC, the EU and other liberal democracies must muster the political support required for the human rights system to defend itself from disintegration. While democracies may not vote down resolutions that are harmful to human rights protection due to their numerical disadvantage, their consistent objection places a check on China and other authoritarian countries that take into account opposition before any action.

Democracies must also reach out beyond their ingroup in order to build broad-based, cross-regional support for the international system and begin to break down the counterproductive political and ideological divide between the global South and global North on human rights issues.²⁶⁰

This is not to say that there is no need for cooperation with China on human rights issues. Achieving the formidable goal of promoting universal respect for human rights still requires meaningful cooperation from Beijing. It will require the Chinese government's realization that China is no longer a victimized nation subject to imperialist invasion and colonization. It is necessary for Beijing to demonstrate a new attitude that truly lives up to its own rhetoric about China now being a great power. This comes with the great responsibility to foster constructive developments in an inclusive international order, rather than playing tribal politics, portraying today's China as a victim of foreign interference, and manipulating "Chinese characteristics" while silencing domestic dissent.²⁶¹

258. *Hong Kong: UK Makes Citizenship Offer to Residents*, BBC (July 1, 2020), <https://www.bbc.com/news/uk-politics-53246899> [https://perma.cc/4A73-ZWPC] (archived Sept. 8, 2021).

259. Michael Martina, Ted Hesson, & David Brunnstrom, *Biden Offers 'Safe Haven' to Hong Kong Residents in U.S. After China Crackdown*, REUTERS (Aug. 6, 2021), <https://www.reuters.com/world/asia-pacific/biden-offer-temporary-safe-haven-hong-kong-residents-us-2021-08-05/> [https://perma.cc/ZC5X-EHQG] (archived Sept. 8, 2021); Lawrence Chung, Victor Ting, & Phila Siu, *Hong Kong Protests: Taiwan Announces Humanitarian Aid Plan for People Fleeing City*, SOUTH CHINA MORNING POST (June 18, 2020), <https://www.scmp.com/news/china/politics/article/3089612/taiwan-announces-humanitarian-aid-plan-people-fleeing-hong-kong> [https://perma.cc/Z7DL-C7BY] (archived Sept. 8, 2021).

260. Wouters & Meuwissen, *supra* note 97, at 20.

261. This paragraph is adapted from Chen, *supra* note 22.

On the other hand, it is also imperative that democracies and actors within the international regime understand that domestic politicking around international human rights institutions has real consequences for the overall human rights project, especially now that there is an ascendant China looking to exploit any fractures that exist in the international consensus about human rights norms. The United States' previous self-imposed isolation from the international human rights system has weakened its standing in the world, as does its vacillating support for human rights institutions depending on which party is in power. Hypocrisy in human rights diplomacy is self-undermining.

IV. CONCLUSION

This Article is a case study of the changing democratic-autocratic dynamics in the HRC. In the HRC, China, one of the most influential, if not the most influential, authoritarian countries, is pursuing its agenda of regime survival. It does so by legitimizing its preferred cultural-relativist, ultra-statist, development-first norms (embodied in China's flagship discourse, Human Rights with Chinese Characteristics), weakening existing human rights institutions, and furthering political divide between the global North and the global South. China, however, would not be able to achieve this agenda alone. It has allied with other autocracies that share an authoritarian ideology as well as with developing countries that rely heavily on economic ties with Beijing. China and its allies—the members in the LMG—have together cast the HRC under authoritarian shadows, diminishing notions of rights itself and government accountability that undergird the very foundations of international human rights protection.

In the meantime, democratic coalitions appear to be deteriorating. The leading democracy, the United States, subject to dramatic human rights policy swings between Democratic and Republican administrations, has often been an unreliable partner for other democracies in the HRC. The EU is trying to maintain its status as a "normative power" but is beset with increasing challenges in the HRC power dynamics that currently favor China.

Beijing, with the support of the LMG in the HRC, seeks not only to diminish the scrutiny of the international human rights system but also stigmatize the liberal ideas of human rights. The conventional approach of engagement or cooperation, which should still be continued with Chinese domestic civil society that is under attack and in need of global support, has proven largely ineffective with the Chinese party-state, especially its present leadership. The United States, the EU, and other democracies and non-state stakeholders in Asia and beyond must now focus on a politics that generates robust alliances to counteract

the increasing authoritarian advance and to defend the integrity of the international human rights system. This all needs to occur before genuine engagement and cooperation with China can take place.

This Article contributes to the timely discussion of Ginsburg's *Authoritarian International Law?* by zooming in on *how* authoritarian countries influence the liberal international legal order. It illustrates the importance of studying group dynamics in any given international institution in terms of how norms, institutions and politics are contested in this era of democratic backsliding. International politics, after all, are part and parcel of how international law is created, challenged, and changed.
