1 Introduction

Prior to China’s entry into the United Nations (UN) in 1971, there was fierce debate about its anticipated behavior and impact. Proponents of Chinese membership argued that integration into the UN would ultimately change or “civilize” the People’s Republic of China (PRC) while skeptics countered that the “the UN is not going to serve as a reform school for Peking,” and that China was likely to attempt to alter the international system.1 When Chinese Communist Party (CCP) leaders failed to challenge the existing global order and eventually adjusted their own priorities and goals to fit into it and even benefit from the prevailing international order, the PRC’s behavior alleviated concerns of destructive behavior. Yet, the larger question of China’s longer-term impact on and role in international regimes remains an open question. Even if the PRC has not acted as a spoiler of the international system, are there subtle yet significant ways that it has pursued change toward international regimes?

This question becomes more pressing and salient with China’s ascendance and rising weight in global politics, especially given indications that it is shedding its earlier status quo posture and shifting to a more assertive one. As scholar Elizabeth Economy noted in a June 2018 speech, PRC President Xi Jinping “put the world on notice: China has its own ideas about how the world should be run and is prepared, as he put it, to ‘lead in the reform of global governance.’”2 Scholars have begun

grappling with China’s economic, military, and strategic global impact, yet little scholarly work has investigated its role in the area of human rights. Beijing’s shift under Xi Jinping to a more proactive stance in the UN Human Rights Council (UNHRC), where it has championed resolutions that challenge the universality of human rights, privileges the power of the state over individual rights, and stresses development and economic rights over civil and political rights, provides some evidence that the PRC is shifting from a reactive stance to a more insistent one.3 These developments underscore the import of this book.

As the title suggests, this book seeks to answer the question of China’s role in and impact on the international human rights regime and the drivers of its behavior. In order to do so, it specifically asks whether the PRC acted as a maker, promoter, taker, constrainer, or breaker toward this international regime during the period from 1982, when it first began participating in the UN human rights regime, through 2017. While my inquiry is focused on China’s behavior in the international human rights regime, my findings also provide insight into the broad questions of rising China’s willingness to accept global order, its behavior in international regimes, and the human rights regime’s future. Policy makers and scholars have wrestled with questions such as, Will a rising China threaten or accept the liberal international order? Is Beijing inclined to accept, adjust, or revamp existing international regimes? If either of the latter two, what are its strategies and motivations? This book also sheds light on the human rights regime, particularly questions such as, To what extent is the human rights regime contested? What is the likelihood the regime will endure? My findings provide relevant insight into these questions, and, therefore, have scholarly as well as policy relevance. If Xi Jinping moves China to a more muscular international posture, as he seems intent on doing, this book will help decipher China’s possible intentions and vision for the human rights regime.

The question of China’s role in the international human rights regime is worthy of study for a number of reasons. First, China’s growing political and economic weight makes it a key actor whose behavior has the potential to influence positively or negatively the functioning of international regimes through its formal positions as well as its general behavior and interaction with other states. Moreover, any Chinese

success in enacting changes to this regime has impact beyond its borders since other states are held to the same human rights norms, standards, and procedures. Second, after a number of decades where it maintained a low profile in the human rights regime, the PRC appears to have jettisoned its earlier modest posture in favor of a more active and assertive role. Signs of this shift include the PRC initiating action in the UNHRC, including a Presidential Statement on the right to health, resolutions on promoting human rights through “mutually-beneficial cooperation” and “the contribution of development to the enjoyment of human rights,” and President Xi’s January 2017 speech entitled “Work Together to Build a Community of Shared Future for Mankind.” Further, China along with other countries has attempted to thwart the passage of rights-friendly Human Rights Council (HRC) resolutions it disagrees with, such as protecting human rights defenders and civil society. These kinds of actions fuel concern that China’s growing influence is contributing to “the end times of human rights.” Moreover, the US decision to withdraw from the UNHRC in 2018 created greater opportunity for the PRC to pursue its priorities and vision. This book’s investigation into the PRC’s priorities, preferences, and stances in the regime provides insight into the way a more muscular China is likely to behave and the kinds of changes it is likely to pursue. Third, the PRC’s acceptance of international human rights norms appears to lag behind other regimes, such as those governing finance and arms control. Thus, human rights may represent an issue area where there is wide divergence between China, a one-party authoritarian state, and the international regime. Because the PRC is an unlikely supporter of the human rights regime, studying its behavior in this issue area has the potential to provide insight on the ability of international regimes to shape, and even alter, state behavior. Fourth, previous scholarship focused primarily on domestic compliance and the application of the international human rights regime to China, particularly after the

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4 China and the International Human Rights Regime

1989 Tiananmen Square crackdown.7 While these works provided insight into whether and how the regime might be changing China, they neglected the question of the PRC’s possible impact on the human rights regime. The approach taken in this book has the benefit of treating Beijing as more than a passive actor in an inevitable process of being drawn closer into and in greater compliance with the international human rights regime and captures the two-way process of interactions between the state and the international regime.

This book’s line of inquiry is also worthwhile because it helps answer a puzzle. China’s entry into the human rights regime and voluntary participation in many of the regime’s activities are surprising for a variety of reasons.8 First, according to a number of sources, including foreign governments, UN experts, and human rights organizations, the Chinese government commits serious and systematic human rights abuses.9 Beijing has also shielded rights-abusing allies, including North Korea and Syria, from international scrutiny. Thus, Beijing’s voluntary participation in the human rights regime exists alongside actions that appear to contradict the substance of the regime.10 Second, unlike other international regimes, such as the World Trade Organization where China stands to gain reciprocal benefits, participation in the human rights regime does not result in tangible material benefits. Thus, it is not immediately obvious why China participates in the human rights regime or how it benefits from participation. Third, there is an inherent tension between China’s political system and the principles undergirding

the human rights regime. As scholar Rosemary Foot put it, unlike other international regimes, “participation in the rights regime poses particular threats to an authoritarian government because of the domestic political transformation that full adherence to international standards entails.”

Yet, rather than shunning the human rights regime, Beijing has ratified five of the seven major human rights instruments; contributed to the drafting of a number of human rights treaties; joined the United Nations Commission on Human Rights (UNCHR), now the UNHRC or HRC; and submitted to international human rights monitoring by participating in the Universal Periodic Review and providing reports to a number of human rights treaty bodies.

This book also contributes to existing scholarship. It updates the literature on international regimes by applying a fresh approach and considering China’s behavior using a spectrum of possible state roles, including maker, promoter, taker, constrainer, and breaker. It also adds to our study of China’s multilateral behavior and the human rights regime. I examine the PRC’s role in the context of three distinct case studies that include the drafting of the Convention against Torture (CAT) and the Optional Protocol to the Convention against Torture (OPCAT), negotiations to replace the UN Commission on Human Rights with a new body, and participation in the International Labour Organization’s (ILO) Conference Committee on the Application of Standards (CCAS), a committee that holds states accountable to ratified conventions.

I argue that China played varied roles in the regime including acting as a taker and a constrainer during CAT and OPCAT, respectively, a constrainer during the establishment of the HRC, and a taker in the ILO’s CCAS. My findings also unveil PRC strategies and its relative success in instances when it acted as a constrainer. In order to explain these varied roles, I argue that China’s posture was influenced by four explanatory factors that included the PRC leadership’s animosity toward external human rights scrutiny, Chinese officials’ concern with its international image, the Chinese government’s ideas that prioritize state sovereignty and the import of local conditions over the regime’s authority and scope, and the Chinese government’s degree of familiarity with the human rights regime. By doing so, this book not only documents the PRC’s actions and positions, it also provides insight into the how and why of China’s behavior. The year 2017, where my research concludes, is a natural inflection point, especially since, as noted earlier, there are...

11 Foot, Rights Beyond Borders, 2.
indications that the PRC is shifting toward a more assertive and confident posture and departing from Premiere Deng Xiaoping’s dictum to “keep a low profile.” Consequently, observers warn that “Beijing is making significant headway in upending international norms on political and human rights.”

These trends make it an opportune time to assess the PRC’s role in and impact on the regime, the factors that incline the PRC toward a more cooperative posture, and the issues and principles that the PRC has championed or resisted within the regime.

This chapter is organized as follows. The next section defines the possible roles a state can play within a regime and discusses these roles in the context of China’s interactions with the human rights regime. I then discuss the explanatory factors that best account for the PRC’s posture toward the regime. The final section introduces the chapters and summarizes my findings.

**International Regimes and State Roles**

International regimes have been defined as arising from converging state expectations about particular issues. As scholar Stephen Krasner defined them, regimes comprise “principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area.” There are some key differences between the human rights regime and other international regimes that are worth noting. First, the human rights regime does not govern an issue where reciprocity is a critical feature and lack of compliance can tangibly damage other states’ economic or security interests. Consequently, arguments about the regime processes that potentially shape state beliefs, expectations, and understanding of acceptable behavior that are largely based on mutual

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gains or benefit may be less applicable. For example, whether the PRC complies with human rights norms does not affect other states’ interests directly – although noncompliance may ease normative human rights pressure on other countries. Thus, arguments about the power of international regimes that stress state cooperation, reciprocal gains, and interstate trust may be less salient to the field of human rights and the human rights regime might be less powerful in altering state behavior and beliefs. At the same time, it should be noted that because the human rights regime does not rely on reciprocity as other regimes do such as trade and arms control, non-compliance alone is unlikely to destroy the regime. Second, the human rights regime lacks strong enforcement tools and its power is based more on symbolism, reputation, and moral suasion. Finally, a number of scholars argue that the human rights regime remains highly contested and may even be undergoing challenges, which might provide states with greater latitude in their role and behavior within the regime, including making it easier to pursue changes toward the human rights regime.

Before discussing state roles vis-à-vis the regime, it is critical to establish what constitutes the core of the human rights regime. While international human rights protection can be defined broadly to encompass other aspects of humanitarian and human rights protection, including action by the UN Security Council related to intervention, peacekeeping, and the responsibility to protect, and other international bodies that govern migration and refugees, such as the International Organization for Migration, I focus primarily on the UN’s human rights bodies that are aimed at safeguarding the rights outlined in the Universal Declaration of Human Rights. Thus, I argue that there are four core pillars of the human rights regime: an interstate forum where states can debate human rights, take collective action, such as adopting treaties and declarations, and address country-specific human rights abuses; universally accepted norms and standards articulated in the Universal Declaration of Human Rights and international human rights treaties that elaborate and specify those rights; treaty bodies that monitor state compliance with ratified human rights treaties and issue findings; and the system of special procedures, which features independent experts focused on particular human rights issues, such as human rights defenders, torture, and religious freedom. The totality of the human rights regime includes other

14 These arguments are most often associated with Robert Keohane and Joseph Nye and the neoliberal institutionalist school.

complementary bodies and mechanisms, such as the Office of the High Commissioner for Human Rights, who serves as the UN’s chief official for human rights, and the HRC’s Universal Periodic Review process. Yet, I define the above four pillars as the core of the regime because of the unique role they play in holding states accountable, making human rights specific and actionable and preventing or halting human rights violations. My intention is not to demote other elements of the regime but to provide a definition of the core of the regime that helps differentiate among the five regime roles states play and helps situate state action vis-à-vis the regime. For example, a state intent on acting as a breaker would take aim at these core components of the regime.

While there is ongoing scholarly debate about the power of international regimes to alter state behavior, states can be understood as playing a primary role in establishing regimes as well as altering them. In this vein, Krasner conceived that states can play a number of roles toward the regime, including “maker,” “breaker,” or “taker.” I borrow from Krasner’s typologies and expand on them by developing other possible state roles, including “constrainer,” in which a state seeks to weaken the regime or prevent it from developing further and “promoter,” whereby a state introduces reforms to strengthen and expand the regime. In determining which of these roles to play states are likely driven by a variety of factors, including their beliefs and ideas or self-interest. The advantage of applying these typologies to this inquiry is that it helps us view PRC behavior along a spectrum that is attentive to state agency and captures not just the regime’s ability to alter state behavior but also the ways a state might seek to influence a regime. Because most international regimes comprise a variety of bodies and mechanisms, it is possible that a state might simultaneously play different roles in various parts of a regime. The roles as presented in this section are ideal categories with actual state behavior likely running along a continuum. In some cases, drawing a distinction is difficult as differences among these roles might be subtle. The spectrum of these roles is represented in Figure 1.1 and explicated in the following section.

Figure 1.1 Possible state roles

<table>
<thead>
<tr>
<th>Maker</th>
<th>Promoter</th>
<th>Taker</th>
<th>Constrainer</th>
<th>Breaker</th>
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Introduction

Makers

At one end of the spectrum are regime makers. These states are strong supporters of the regime and are therefore willing to expend the effort to create the regime. A maker state may need to establish an entirely new regime or because the process of building a regime is lengthy maker states might be involved in later stages after some initial regime components have already been instituted. For example, even though the UN had adopted a Declaration against Torture in the mid-1970s, Sweden acted as a maker of the regime by proposing CAT several years later and advancing a draft primarily because of its conviction that combating torture required the force of an internationally legally binding instrument. While promoter states, which are defined in the next section, pursue more incremental changes and improvements to the regime, maker states propose substantively novel and robust additions to the international regime.

This is a demanding role that requires leadership, negotiating and lobbying skills, diplomatic experience, and familiarity with the international system. Maker states likely also need a degree of credibility among other nations. Costa Rica’s activities as a maker with regard to OPCAT are illustrative of the challenges of this role. In order to secure the passage of OPCAT, Costa Rica prodded the UN to take action on a proposed draft, engaged in shrewd negotiating with states, and lobbied others to win support for adoption. As human rights scholars have documented, the states that spearheaded the creation of the human rights regime had to build international consensus over a number of years as they exhorted and persuaded others of the necessity of constructing the regime and worked with other similarly minded countries.17 A maker state might continue its efforts to strengthen the regime by acting as a promoter once the work of erecting the core of the regime has been completed. Given the effort and initiative required, makers would likely be motivated by a strong commitment to the principles underlying the regime that could be based on beliefs and values or material self-interest, or a combination of the two.18 Unlike other regimes, makers of the human rights regime do not necessarily have to be geopolitically important or possess particular material resources, such as advanced weaponry or a large domestic market, and small states have shown a remarkable degree of activism in creating the human rights regime.

17 See, for example, Glendon, A World Made New, 2001.
Some scholars, particularly those who subscribe to realist-inspired views, have predicted that rising powers like China will seek to alter international regimes in accord with their interests and agenda. In contrast to these arguments, in the case studies that form this book, China did not act as a maker and tended toward lower-profile roles. However, as noted previously, there are indications that the PRC may be emerging as a more prominent actor and for much of the period covered by this book China was still only a rising power.

**Promoter**

An additional category not included in Krasner’s typologies is “promoter.” Like makers, states that act as promoters are supportive of the regime and they work to strengthen and further develop it, including expanding the regime’s breadth and authority. For example, in 2009, the thirty-seven countries that sponsored HRC resolution 12/2, which called for greater state cooperation with UN human rights mechanisms, acted as promoters of the regime. However, in contrast to makers, the commitment, activism, and effort of promoter states is more measured. While they might not be sufficiently motivated to do the heavy lifting of constructing the regime, such as creating new bodies or norms, they might speak in favor of it and urge other states to back the regime. During the establishment phase of a regime, they could support maker states in their quest to construct the regime but would not play as active a role. The line between makers and promoters can be somewhat blurry as the intent of their activities is similar. One key distinction is that makers are focused on more momentous additions to the regime rather than merely strengthening the existing architecture. For example, the activities of the EU and Organization of Islamic Conference states that worked to secure passage of a 2018 HRC resolution on Myanmar can be classed as makers of the regime because the resolution stipulated the creation of an international, impartial, and independent mechanism.

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