

CHINA'S NORMFARE AND THE THREAT TO HUMAN RIGHTS

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International human rights law is often associated with the progressive expansion of justice and freedom. But that link cannot be taken for granted. The People's Republic of China (PRC) is attempting to transform human rights into an instrument of twenty-first century global authoritarianism. This Note seeks to fill a significant lacuna in the literature by focusing on China's efforts at the regional, national, and subnational levels to socialize other actors into its preferred norms through visits and exchanges, academic conferences, multilateral fora, and other means.

To describe the PRC's international human rights strategy, this Note coins the neologism "normfare," which refers to the strategic promotion of favored interpretations of international norms. Applying Harold Hongju Koh's transnational legal process model of interaction, interpretation, and internalization, this Note illustrates how China is promoting a distinctive, authoritarian vision of human rights. As a case study, this Note examines China's attempts to socialize actors on the African continent. The PRC organizes interactions, such as academic conferences, which articulate interpretations of human rights norms consistent with its own. As a result, PRC-backed norms are being internalized by at least some African academics, politicians, and legal systems. Chinese normfare may contribute to the construction of an alternative, authoritarian international law and the furtherance of an illiberal, China-dominated global order. To avoid these outcomes, this Note argues that actors—above all, the United States—should push back to blunt the effects of the PRC's normfare and build a more resilient liberal human rights regime, including by implementing counter-normfare.

INTRODUCTION	2286
I. THE HUMAN RIGHTS LANDSCAPE AND THE RISE OF CHINA	2288
A. Norms and International Human Rights Law	2288
1. The Role and Nature of Norms	2288
2. Transnational Legal Process.....	2290
B. China's Rise	2291

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1. Geopolitics and Chinese Grand Strategy.....	2291
2. Internal Politics and Chinese Regime Survival	2295
II. CHINA'S HUMAN RIGHTS NORMFARE.....	2295
A. Human Rights With Chinese Communist Party Characteristics.....	2296
B. Normfare	2299
1. Why China Is Pursuing Human Rights Normfare.....	2299
2. How China Is Pursuing Human Rights Normfare	2300
C. Case Study: Africa.....	2305
1. Sino-African Relations and Human Rights.....	2305
2. Interaction	2306
3. Interpretation	2308
4. Internalization	2310
III. WHAT IS TO BE DONE?	2315
A. What Is at Stake	2315
B. Counter-Normfare	2317
CONCLUSION.....	2320

INTRODUCTION

International human rights law is often associated with the progressive expansion of justice and freedom. But that link cannot be taken for granted. As illustrated by the United States' role in establishing a new international legal order after the Second World War,¹ with geopolitical preeminence comes influence over the norms, values, and institutions of the global order, including the international human rights regime. Today, as the People's Republic of China (PRC) seeks to claim a central role on the world stage, it is repurposing human rights into a foundation for twenty-first-century global authoritarianism.

Although existing scholarship has ably explored certain aspects of China's influence on human rights, this Note seeks to supplement that research by filling two significant lacunae in the literature. First, several scholars have examined China's aggressive promotion of norms in the context of the Belt and Road Initiative² and the United Nations (UN).³ But

1. See Robert Kagan, *The World America Made 16–17* (2012) (observing that after World War II, the United States laid the foundation for the liberal “political, economic, and strategic order”).

2. Mikkaela Salamatin, Note, *China's Belt and Road Initiative Is Reshaping Human Rights Norms*, 53 *Vand. J. Transnat'l L.* 1427, 1432–33 (2020) (discussing how the Belt and Road Initiative may reshape human rights norms).

3. E.g., Ted Piccone, Brookings Inst., *China's Long Game on Human Rights at the United Nations I* (2018), https://www.brookings.edu/wp-content/uploads/2018/09/FP_20181009_china_human_rights.pdf [<https://perma.cc/SS44-H8V7>] (describing

this Note focuses on China's efforts at the regional, national, and subnational levels. Doing so enables one to look beyond the narrow confines of specific programs and the marbled halls of the UN to see a fuller view of China's multifaceted strategy of norm diffusion. Second, existing scholarship has focused on China's articulation of its norms without analyzing its methods for getting foreign actors to actually adopt those norms.⁴ Considering China's discourse alone is useful for understanding how the PRC views human rights but leaves open the question of whether those norms will achieve wider acceptance. Accordingly, this Note considers not just China's rhetoric but also its concrete attempts to socialize other actors to its norms. This helps illuminate the scope of China's efforts and the prospect of it realizing an alternative global vision of human rights.

Part I discusses the background issues, including the role of norms in the international human rights regime and China's external and internal political aims. Part I also introduces Harold Hongju Koh's transnational legal process model, which can frame China's human rights strategy. Part II explains China's distinctive, authoritarian vision of human rights and then maps its methods for exporting certain norms and thus reshaping international human rights law. While the PRC's vision of human rights is not new, what *is* new is its revisionist posture in promoting its doctrine as an alternative human rights framework for the world. To describe China's international human rights strategy, this Note coins the neologism "normfare," which refers to the strategic promotion of favored interpretations of international norms. As a case study, this Note examines China's human rights-related engagement with Africa. Finally, Part III discusses the consequences of China's normfare, which threatens to splinter the international human rights regime and contribute to a China-dominated, illiberal world order. Part III also argues that other actors, particularly the United States, should push back, including by implementing their own normfare to reaffirm liberal human rights norms.

China's actions at the UN); Björn Ahl, *The Rise of China and International Human Rights Law*, 37 *Hum. Rts. Q.* 637, 640 (2015) (analyzing the Universal Periodic Review of the UN HRC); Yu-Jie Chen, *China's Challenge to the International Human Rights Regime*, 51 *N.Y.U. J. Int'l L. & Pol.* 1179, 1182 (2019) [hereinafter Chen, *China's Challenge*] (studying "the evolving practice of China in the HRC"); Katrin Kinzelbach, *Will China's Rise Lead to a New Normative Order? An Analysis of China's Statements on Human Rights at the United Nations (2000–2010)*, 30 *Neth. Q. Hum. Rts.* 299, 301 (2012) (analyzing China's statements in UN human rights debates from 2000 to 2010); Yongjin Zhang & Barry Buzan, *China and the Global Reach of Human Rights*, 241 *China Q.* 169, 180–84 (2020) (analyzing China's activism in reinterpreting human rights at the HRC and elsewhere in the UN system); Larry Catá Backer, 'By Dred Things I Am Compelled': China and the Challenge to International Human Rights Law and Policy 7–13 (Penn State L., Legal Stud. Research Paper No. 06-2020, 2020), <https://ssrn.com/abstract=3519645> [<https://perma.cc/EAZ9-FPUF>] (discussing China's actions in the UN HRC).

4. E.g., Chen, *China's Challenge*, supra note 3, at 1182.

I. THE HUMAN RIGHTS LANDSCAPE AND THE RISE OF CHINA

A. *Norms and International Human Rights Law*

Norms are a fundamental component of the international human rights regime. Yet human rights norms are dynamic, subject to creation and diffusion by norm entrepreneurs, as Koh's transnational legal process theory suggests. This theory helps explain how norm entrepreneurs can successfully change global norms.

1. *The Role and Nature of Norms.* — The global human rights regime emerged out of the ashes of World War II and the Holocaust.⁵ Before 1945, states were the sole subjects of international law and, being sovereign, held an exclusive prerogative to treat their nationals as they wished.⁶ After the war, the UN and the Universal Declaration of Human Rights marked a new era in which international law embraced the rights of individuals—in other words, human rights.⁷ Today, the web of law and institutions relating to human rights makes up the international human rights regime. Stephen D. Krasner defines regimes as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations.”⁸ International norms are thus among the building blocks of the human rights regime.

While definitions vary, this Note adopts Krasner's definition of norms as “standards of behavior defined in terms of rights and obligations,” as distinguished from rules, which are “specific prescriptions or proscriptions for action.”⁹ Norms can affect behavior directly¹⁰ or indirectly

5. Michelo Hansungule, *The Historical Development of International Human Rights, in An Introduction to International Human Rights Law* 1, 3 (Azizur Rahman Chowdhury & Jahid Hossain Bhuiyan eds., 2010) (observing that “[t]he outbreak of the Second World War and the atrocities that took place during the war was the main motive for the change of attitude” away from regarding egregious mistreatment of individuals as a state's own business).

6. Ilias Bantekas & Lutz Oette, *International Human Rights Law and Practice* 6–7 (3d ed. 2020).

7. Hansungule, *supra* note 5, at 3; see also Bantekas & Oette, *supra* note 6, at 6.

8. Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 *Int'l Org.* 185, 186 (1982).

9. Krasner, *supra* note 8, at 186; see also Martha Finnemore & Catherine Sikkink, *International Norm Dynamics and Political Change*, 52 *Int'l Org.* 887, 891 (1998) (defining a norm as “a standard of appropriate behavior for actors with a given identity”); Peter J. Katzenstein, *Introduction to The Culture of National Security: Norms and Identity in World Politics* (Peter J. Katzenstein ed., 1996) (ebook) (using “the concept of *norm* to describe collective expectations for the proper behavior of actors with a given identity”).

10. Carmen Wunderlich, *Rogue States as Norm Entrepreneurs: Black Sheep or Sheep in Wolves' Clothing?* 5 (2020) (“[Norms] determine which actions are considered to be socially appropriate and thus permitted and which ones are considered to be inadequate and thus prohibited. By defining standards of appropriate behavior for recurring situations, they produce expectable behavior.”).

through codification in international law via treaty¹¹ or custom.¹² Norms can also influence “soft law,” declared norms that are legally relevant but not binding.¹³ Although not a formal source of international law,¹⁴ and thus unenforceable in formal legal settings, soft law may shape and structure state behavior¹⁵ and can contribute to development of international law through treaties and custom.¹⁶

International norms are not static.¹⁷ Rather, they develop over time, often because of “norm entrepreneurs.” A norm entrepreneur is an actor who creates, diffuses, or institutionalizes norms.¹⁸ A blind spot in the scholarship on norm entrepreneurs is that many scholars assume norm entrepreneurs to be liberal, pro-Western, benevolent actors.¹⁹ This “nice norms bias”²⁰ leads to an underappreciation of the significance of actors who do not conform to this expectation²¹ and who are therefore regarded as merely challenging norms rather than propagating real alternatives.²² Some scholars, however, recognize that norm entrepreneurship can be for good or ill.²³ According to Carmen Wunderlich, norm entrepreneurship sometimes takes the form of active resistance to a normative order,²⁴ with

11. See Hansungule, *supra* note 5, at 27 (discussing human rights treaties).

12. See Bantekas & Oette, *supra* note 6, at 60 (discussing customary international law).

13. Jeffrey Dunoff, Monica Hakimi, Steven R. Ratner & David Wippman, *International Law: Norms, Actors, Process* 32 (5th ed. 2020).

14. Statute of the International Court of Justice art. 38.

15. Dunoff et al., *supra* note 13, at 32.

16. Bantekas & Oette, *supra* note 6, at 67.

17. Wunderlich, *supra* note 10, at 5.

18. *Id.* at 22.

19. *Id.* at 1–2.

20. Ryder McKeown, *Norm Regress: US Revisionism and the Slow Death of the Torture Norm*, 23 *Int'l Rels.* 5, 7 (2009). For an example of such selectivity, see Finnemore & Sikkink, *supra* note 9, at 898 (“[F]or many of the social norms of interest to political scientists, it is very difficult to explain the motivations of norm entrepreneurs without reference to empathy, altruism, and ideational commitment.”).

21. Wunderlich, *supra* note 10, at 2. For example, G. John Ikenberry has argued: “Countries such as China and Russia . . . may not soon or ever fully transform into liberal states, but the expansive and integrative logic of liberal international order creates incentives for them to do so—and it forecloses opportunities to create alternative global orders.” G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* 9 (2011).

22. Wunderlich, *supra* note 10, at 75.

23. E.g., Rosa Ehrenreich Brooks, *The New Imperialism: Violence, Norms, and the “Rule of Law”*, 101 *Mich. L. Rev.* 2275, 2326 (2003) (“[I]f Mandela is a norm entrepreneur, so is Osama bin Laden.”); Richard Posner, *The Problematics of Moral and Legal Theory*, 111 *Harv. L. Rev.* 1637, 1667 (1998) (“Moral entrepreneurs typically try to change the boundaries of altruism, whether by broadening them, as in the case of Jesus Christ and Jeremy Bentham, or by narrowing them, as in the case of Hitler.”).

24. Wunderlich, *supra* note 10, at 222, 266; see also Harold Hongju Koh, *Transnational Legal Process*, 75 *Neb. L. Rev.* 181, 205 (1996) (“In some cases, of course, instead of returning to compliance, the noncomplying state seeks actively to promote its departure from international norms as the new governing international rule.”).

“revolutionary” norm entrepreneurs seeking to replace the ruling normative order with a new one defined by alternative norms.²⁵ But to appreciate why revolutionary norm entrepreneurs matter, it is necessary to understand how they may spread their preferred norms.

2. *Transnational Legal Process*. — Harold Hongju Koh, Yale Law School professor and former Legal Adviser of the U.S. Department of State,²⁶ has proposed a theory to explain how norm entrepreneurs change international norms. Other models exist, such as Martha Finnemore and Kathryn Sikkink’s norm “life cycle,”²⁷ which, like Koh’s, focuses on norm entrepreneurs and norm internalization.²⁸ But Koh’s approach is especially useful for studying norm development because it provides an explanatory framework for why and how norms emerge, influence transnational actors, and eventually shape state behavior.

Koh models a process of interaction, interpretation, and internalization of international norms.²⁹ First, a norm entrepreneur “provokes an *interaction* (or series of interactions) with another” actor.³⁰ As the actors repeatedly interact, “they create patterns of behavior that ripen into institutions, regimes, and transnational networks.”³¹ Second, the interaction “forces an *interpretation* or enunciation of the global norm applicable to the situation.”³² Third, the transnational actor potentially succeeds in causing the other party to *internalize* the new interpretation of the norm into its own internal normative system.³³ Koh distinguishes among social internalization, when the norm acquires widespread public legitimacy; political internalization, when the norm gains acceptance by political elites; and legal internalization, when the norm is incorporated into the domestic legal system.³⁴ Repeated participation in the process eventually reshapes the

25. Wunderlich, *supra* note 10, at 269.

26. Harold Hongju Koh, Yale L. Sch., <https://lawyale.edu/harold-hongju-koh> [<https://perma.cc/KN5A-5ZJA>] (last visited Sept. 21, 2021).

27. Finnemore and Sikkink propose that “norms evolve in a patterned ‘life cycle’” precipitated by “agreement among a critical mass of actors on some emergent norm” that “create[s] a tipping point” leading to actors being socialized into accepting and finally internalizing the norm. See Finnemore & Sikkink, *supra* note 9, at 888, 892, 895–909.

28. Compare *id.* at 895, with Harold Hongju Koh, The 1998 Frankel Lecture: Bringing International Law Home, 35 *Hous. L. Rev.* 623, 642, 647 (1998) [hereinafter Koh, *Bringing International Law Home*].

29. Harold Hongju Koh, Why Do Nations Obey International Law?, 106 *Yale L.J.* 2599, 2603 (1997) [hereinafter Koh, *Why Do Nations Obey*]; see also Finnemore & Sikkink, *supra* note 9, at 895 (describing “[n]orm influence” as a “three-stage process” involving (1) “norm emergence,” (2) “broad norm acceptance” and a “norm cascade,” and (3) “internalization”).

30. Koh, *Why Do Nations Obey*, *supra* note 29, at 2646.

31. *Id.* at 2654.

32. *Id.* at 2646; see also Valentin Jeutner, *Irresolvable Norm Conflicts in International Law: The Concept of a Legal Dilemma* 23 (2017) (“Interpretation is particularly crucial in the international legal context, where uncertainty frequently surrounds the existence, content, and applicability of legal norms.”).

33. Koh, *Why Do Nations Obey*, *supra* note 29, at 2646.

34. *Id.* at 2656–57.

interests of the participants.³⁵ Ultimately, successfully internalized norms may influence state behavior.³⁶

How might one put Koh's theory into practice? Koh suggests a first step would be enabling the participation of more actors.³⁷ Next, the norm entrepreneur might consider the fora available for enunciating norms and, if necessary, would adapt existing institutions or create new ones.³⁸ By forming new fora, norm entrepreneurs can grow the "interpretative community" that decides the contours of the norm.³⁹ Relatedly, norm entrepreneurs might create "transnational issue networks" of experts to discuss issues at the global and regional levels.⁴⁰ If successful, the moving party will have caused others to internalize the new interpretation into their own normative systems.⁴¹

B. *China's Rise*

China's quest to reshape international human rights norms, discussed in Part II, is a consequence of its extraordinary rise, as well as two of its central aspirations. First, the PRC aims to transform the world order. Second, it seeks to ensure the survival of the Chinese Communist Party regime. These dual aims, external and internal, motivate China's revolutionary norm entrepreneurship.

1. *Geopolitics and Chinese Grand Strategy*. — Across almost every dimension that matters, China is a colossal country.⁴² Demographically, it hosts the largest population on Earth.⁴³ Economically, it has the world's greatest economy, measured in terms of purchasing power.⁴⁴ Militarily, it boasts the

35. *Id.* at 2646, 2654; see also Albert S. Yee, *The Causal Effects of Ideas on Policies*, 50 *Int'l Org.* 69, 95 (1996) ("[O]nce particular arguments and phraseology have been deployed, a 'rhetorical momentum' is generated which operates independently to affect policies.").

36. Koh, *Why Do Nations Obey*, *supra* note 29, at 2651.

37. *Id.* at 2656.

38. *Id.*; see also Finnemore & Sikkink, *supra* note 9, at 899 ("All norm promoters at the international level need some kind of organizational platform from and through which they promote their norms.").

39. Koh, *Bringing International Law Home*, *supra* note 28, at 678.

40. *Id.* at 649.

41. *Id.* at 644.

42. Elizabeth C. Economy, *The Third Revolution: Xi Jinping and the New Chinese State* 231 (2018) [hereinafter *Economy, Third Revolution*].

43. *The World Factbook: China*, CIA, <https://www.cia.gov/the-world-factbook/countries/china/#people-and-society> [<https://perma.cc/7JAB-RV4Z>] (last visited Dec. 27, 2021).

44. *Gross Domestic Product 2021, PPP*, World Bank, https://databank.worldbank.org/data/download/GDP_PPP.pdf [<https://perma.cc/E6J3-TUF2>] (last visited Nov. 1, 2021).

largest standing army.⁴⁵ The question of how a rising China would approach the liberal world order has produced two general camps:⁴⁶ those who believe China will be socialized into the norms, rules, and institutions of the international order⁴⁷ and those who think China will seek to implement alternatives more compatible with its own interests and values.⁴⁸ Since Xi Jinping ascended to power as General Secretary of the Chinese Communist Party in 2012 and President of the PRC in 2013, the PRC has grown increasingly assertive—indeed aggressive—on the world stage.⁴⁹ In response, the weight of opinion among scholars and policymakers has shifted to the latter theory.⁵⁰

45. Economy, *Third Revolution*, supra note 42, at 187.

46. Catherine Jones, *China's Challenge to Liberal Norms: The Durability of International Order 1* (2018).

47. See, e.g., Alastair Iain Johnston, *Social States: China in International Institutions, 1980–2000*, at xiv (2008) (concluding that Chinese diplomats, strategists, and analysts are being socialized into certain norms as a result of participation in international institutions); Thomas J. Wright, *All Measures Short of War: The Contest for the Twenty-First Century and the Future of American Power* 71 (2017) (“China has not articulated a harsh critique of American global power, and it has demonstrated little desire to overturn the U.S.-led global order.”); Sujian Guo, *Challenges and Opportunities for China's “Peaceful Rise”*, in *China's ‘Peaceful Rise’ in the 21st Century: Domestic and International Conditions* 1, 8 (Sujian Guo ed., 2006) (arguing that, like Japan and Germany after World War II, “China could also become a status quo power and play a similar role in the international system if it is allowed to be fully integrated into the established international system and economy”).

48. See, e.g., Rush Doshi, *The Long Game: China's Grand Strategy to Displace American Order* 298 (2021) (“Beijing's ultimate objective is to displace the US order globally in order to emerge as the world's dominant state by 2049.”); Economy, *Third Revolution*, supra note 42, at 187 (“Chinese President Xi Jinping has a stated and demonstrated desire to shape the international system, to use China's power to influence others, and to establish the global rules of the game.”); John J. Mearsheimer, *Bound to Fail: The Rise and Fall of the Liberal International Order*, 43 *Int'l Sec.* 7, 44 (2019) (arguing that in the foreseeable future China and the United States will lead competing international orders); Ryan Hass, *How China Is Responding to Escalating Strategic Competition With the US*, Brookings Inst. (Mar. 1, 2021), <https://www.brookings.edu/articles/how-china-is-responding-to-escalating-strategic-competition-with-the-us/> [<https://perma.cc/2AQT-ZGTE>] (“Beijing sees itself as progressing along a continuum leading to China's restoration as a central actor in Asia and a leading power on the world stage, a country with greater ability to shape rules, norms, and institutions toward its preferences.”).

49. Economy, *Third Revolution*, supra note 42, at 5 (arguing that since the ascension of Xi, “Chinese leaders have . . . shed the low-profile foreign policy advanced by Deng Xiaoping in favor of bold initiatives to reshape the global order”); see also Ryan McMorrow, *Xi Warns Against Economic Decoupling and Calls for a New World Order*, *Fin. Times* (Apr. 20, 2021), <https://www.ft.com/content/096dd554-499b-468c-b5fa-38b0352941a0> (on file with the *Columbia Law Review*) (“Xi Jinping has called for a new world order, launching a veiled attack against US global leadership . . .”).

50. See, e.g., Michael Schuman, *Washington Is Getting China Wrong*, *Atlantic* (Oct. 11, 2021), <https://www.theatlantic.com/international/archive/2021/10/evergrande-china-us/620360/> [<https://perma.cc/2PQ6-RPEN>] (“The growing consensus in Washington, spanning the Trump and Biden administrations, is that China must be contained because it will otherwise continue its inexorable rise, eventually eclipsing America as a superpower and imposing its will on the world order in the process.”).

While history is replete with power transitions,⁵¹ China's rise is unusual in several respects. China faces not only a hegemonic United States but also an entire system of alliances and institutions,⁵² which it cannot completely overturn because it depends on certain aspects of the order, such as free-flowing global trade.⁵³ Compounding China's challenge is the existence of nuclear weapons, which makes war a far less attractive means of overtaking the hegemon.⁵⁴

Nonetheless, China has a plan to reshape the international order to its liking. Drawing on careful analysis of Chinese institutions, actions, and texts,⁵⁵ Rush Doshi persuasively argues that China is executing a grand strategy "to displace the US order globally in order to emerge as the world's dominant state by 2049."⁵⁶ Doshi's account is compelling because he substantiates his argument with a deep study of both what the Chinese

51. G. John Ikenberry, *The Rise of China and the Future of the West: Can the Liberal System Survive?*, *Foreign Affs.*, Jan.–Feb. 2008, at 23, 26 [hereinafter Ikenberry, *Rise of China*]; see also Robert Gilpin, *War and Change in World Politics* 13 (1981) ("[T]he most destabilizing factor [in the international system] is the tendency . . . for the powers of member states to change at different rates because of political, economic, and technological developments[,] [which in time] . . . causes a fundamental redistribution of power in the system.").

52. Ikenberry, *Rise of China*, supra note 51, at 24.

53. See Jones, supra note 46, at 5 (noting China's dependence on certain liberal rules and institutions, such as the World Trade Organization).

54. Ikenberry, *Rise of China*, supra note 51, at 24.

55. Doshi, supra note 48, at 17.

56. *Id.* at 298. Other scholars have similarly concluded that China is executing a grand strategy for global preeminence. See, e.g., Elizabeth C. Economy, *The World According to China* 5 (2022) ("[Xi] and the rest of the Chinese leadership are not satisfied with their country's position within the international system, the values and policy preferences that the system embodies, how power is distributed, and how decisions are made. They want to reorder the world order."); Avery Goldstein, *China's Grand Strategy Under Xi Jinping: Reassurance, Reform, and Resistance*, 45 *Int'l Sec.* 164, 200 (2020) (arguing that Xi's grand strategy emphasizes "reforming the existing international order"); Charles Edel & David O. Shullman, *How China Exports Authoritarianism*, *Foreign Affs.* (Sept. 16, 2021), <https://www.foreignaffairs.com/articles/china/2021-09-16/how-china-exports-authoritarianism> (on file with the *Columbia Law Review*) ("[T]he Chinese Communist Party has embarked on a drive to promote its style of authoritarianism to illiberal actors around the world. Its goal is not to spread Marxism or to undermine individual democracies but rather to achieve political and economic preeminence . . .").

Even so, others deny that China has such a strategy. See, e.g., Sarah Zheng, *China–US Relations: Is Beijing Working a 'Long Game' to Replace America as Dominant World Power?*, *S. China Morning Post* (Aug. 5, 2021), <https://www.scmp.com/news/china/diplomacy/article/3143778/china-us-relations-beijing-working-long-game-replace-america> (on file with the *Columbia Law Review*) (reviewing Rush Doshi's *The Long Game: China's Grand Strategy to Displace American Order* and reporting that "Chinese analysts who have secured copies are sceptical of [Doshi's] interpretations of Chinese ambitions").

party-state is saying⁵⁷ and what it is doing in terms of military expenditure, diplomatic engagement, and economic development.⁵⁸

Doshi argues that China is currently pursuing a strategy of global expansion meant to build Chinese power, blunt American power, and displace the United States from its hegemonic status within the international order.⁵⁹ China's leadership aspires not only to dominate the Asia-Pacific region but also to imprint the party-state's priorities, standards, and norms onto the world order.⁶⁰ Citing Robert Gilpin, Doshi writes that competition over order plays out in efforts to modify the dominant state's "forms of control"—that is, the hegemon's coercive capability, consensual inducements, and legitimacy.⁶¹ China seeks to weaken the forms of control that support the liberal order while strengthening those that would advance its alternative.⁶² This includes furthering authoritarian norms at the expense of liberal ones.⁶³ Part of China's grand strategy, therefore, is to transform human rights from a geopolitical impediment⁶⁴ into an accelerant.⁶⁵

57. See Doshi, *supra* note 48, at 329 ("Party rhetoric on rejuvenation strongly indicates that the goal of displacing the United States is implicit in China's present thinking and that Beijing is unlikely to permanently accept junior status in a US-led order, particularly one with a liberal character threatening to China's Leninist governance."). For instance, in a 2017 address to the China National Security Work Forum, Xi declared: "It is necessary [for China] to *guide* the international community to jointly shape a more just and reasonable new international order." *Id.* at 280 (alteration in original) (quoting Xi Jinping's First Mention of the 'Two Guidances' Has Profound Meaning, *Study China* (Feb. 21, 2017), <https://web.archive.org/web/20171219140753/http://www.ccln.gov.cn/hotnews/230779.shtml> [<https://perma.cc/49U8-DLBW>]).

58. See *id.* at 10–14.

59. *Id.* at 3–4.

60. *Id.* at 3–5.

61. *Id.* at 19–23, 300–01; see also Gilpin, *supra* note 51, at 26–36.

62. Doshi, *supra* note 48, at 5.

63. *Id.* at 264, 282; see also Economy, *Third Revolution*, *supra* note 42, at 187 ("China is using its newfound status to shape regional and global institutions in ways that better suit its interests and meet its objectives, in some cases supporting traditional norms, while in others supplanting them."); Yan Xuetong, *Becoming Strong: The New Chinese Foreign Policy*, *Foreign Affs.*, July–Aug. 2021, at 40, 42 ("China will try to shape an ideological environment favorable to its rise, pushing back against the notion that Western political values have universal appeal and validity.").

64. See *infra* notes 100–101 and accompanying text.

65. See Edel & Shullman, *supra* note 56 ("[I]f Beijing isn't trying to remake the world in its image, it is trying to make the world friendlier to its interests—and more welcoming to the rise of authoritarianism in general."). Indeed, Xi does not try to hide his ambition for China to "become a global leader in terms of composite national strength and international influence" and to "foster a new type of international relations." Xi Jinping, Gen. Sec'y, Chinese Communist Party, Address at the 19th National Congress of the Communist Party of China: Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism With Chinese Characteristics for a New Era 17, 25 (Oct. 18, 2017), http://www.xinhuanet.com/english/download/Xi_Jinping's_report_at_19th_CPC_National_Congress.pdf [<https://perma.cc/32AZ-BJNQ>].

2. *Internal Politics and Chinese Regime Survival.* — The other driving force behind China's normfare discussed in Part II is the Chinese regime's fear of liberal values as a threat to its continuing rule. The Chinese leadership deeply fears being toppled by the Chinese people.⁶⁶ For many PRC leaders, survival requires resisting "Western" liberal values such as human rights and democracy.⁶⁷ Indeed, Xi has overseen an extensive domestic campaign against such values.⁶⁸ The regime views liberal values as an existential threat—one it intends to meet head-on.

II. CHINA'S HUMAN RIGHTS NORMFARE

The PRC is building a new global human rights paradigm. To capture China's human rights strategy, this Note coins a neologism: "normfare." Normfare refers to the diffusion of norms by state actors for strategic purposes. This Part examines China's normfare in furtherance of an authoritarian vision of human rights, applying Koh's transnational legal process theory and taking as a case study China's normfare directed at the African continent. In brief, China is acting as a revolutionary norm entrepreneur, provoking *interactions* with other actors and forcing the *interpretation* of norms in a manner favored by the PRC, with the result, supported by qualitative evidence, of some African actors *internalizing* a set of norms constituting an authoritarian view of human rights.

66. E.g., Gideon Rachman, *China's Strange Fear of a Colour Revolution*, *Fin. Times* (Feb. 9, 2015), <https://www.ft.com/content/9b5a2ed2-af96-11e4-b42e-00144feab7de> (on file with the *Columbia Law Review*) (discussing "a surprising sense of insecurity in China's ruling circles" in the wake of unrest in the Arab world, Hong Kong, and Ukraine); see also Chinese Police Must Guard Against 'Color Revolutions,' Says Top Official, *Reuters* (Jan. 18, 2019), <https://www.reuters.com/article/us-china-politics-police/chinese-police-must-guard-against-color-revolutions-says-top-official-idUSKCN1PC0BS> [<https://perma.cc/NQ5M-7S9F>] (reporting that Public Security Minister Zao Kezhi stated China's police must "stress the prevention and resistance of 'color revolutions'" and "defend our national security, with regime and system security at its core" (internal quotation marks omitted)).

67. Doshi, *supra* note 48, at 53, 56; see also Ahl, *supra* note 3, at 639 ("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."); Charles Edel & Hal Brands, *The Real Origins of the U.S.–China Cold War*, *Foreign Pol'y* (June 2, 2019), <https://foreignpolicy.com/2019/06/02/the-real-origins-of-the-u-s-china-cold-war-big-think-communism/> [<https://perma.cc/Q74U-SDWX>] ("It is simply impossible for Beijing's rulers to feel fully secure in a system dominated by liberal values and a liberal superpower, because they fear that this system will undermine their own authority at home.").

68. Economy, *Third Revolution*, *supra* note 42, at 37–40. According to the April 2013 Chinese Communist Party (CCP) *Communiqué on the Current State of the Ideological Sphere* (known as "Document 9"), the CCP is in the midst of an "intense struggle" against such threats as the promotion of "Western Constitutional Democracy" and "universal values." Document 9: A ChinaFile Translation, *ChinaFile* (Nov. 8, 2013), <https://www.chinafile.com/document-9-chinafile-translation> [<https://perma.cc/PK3Q-57HG>].

A. *Human Rights With Chinese Communist Party Characteristics*

The Chinese party-state preaches a coherent, consistent doctrine of human rights.⁶⁹ Underlying its approach is a tenacious focus on sovereignty and noninterference.⁷⁰ This emphasis reflects both China's traumatic history of interference by foreign powers⁷¹ as well as the party-state's sensitivity to criticism over its human rights abuses, including, among others, political repression in Hong Kong⁷² and genocide in Xinjiang.⁷³ While many states accept that sovereignty may be limited in order to uphold human rights,⁷⁴ the PRC characterizes sovereignty in absolutist terms.⁷⁵ From this view, it follows that each state should be free to implement its own understanding of human rights.⁷⁶ Thus, even when the PRC pays lip service to the universality of human rights,⁷⁷ it adds the oxymoronic qualifier that states are entitled to choose their human rights practices on the basis of their own political, economic, and cultural conditions.⁷⁸ This relativism means that a country's human rights conditions

69. For an encapsulation of the PRC's views, see U.N. ESCOR, 61st Sess., 52nd mtg. ¶¶ 44–45, U.N. Doc. E/CN.4/2005/SR.52 (Apr. 22, 2005) (quoting the Chinese representative to the Commission on Human Rights); see also Sonya Sceats & Shaun Breslin, Chatham House, *China and the International Human Rights System* 6–9 (2012).

70. See James D. Seymour, *Human Rights, Repression, and "Stability"*, 98 *Current Hist.* 281, 284 (1999) ("The views of China's rulers on sovereignty and 'subsistence rights' underpin their skeptical attitude toward other human rights.").

71. Rana Siu Inboden, *China and the International Human Rights Regime: 1982–2017*, at 23 (2021) [hereinafter Inboden, *Human Rights*].

72. E.g., *World Report 2021: China*, Hm. Rts. Watch, https://www.hrw.org/world-report/2021/country-chapters/china-and-tibet?gclid=Cj0KCQjw_fiLBhDOARIsAF4khR0BDF0EFW1AKNtQ8Wvkr8MDC0_rcrKPT0-KewEW390rdcOGudOQfsaAvsYEAALw_wcB# [https://perma.cc/8YB3-X72M] (last visited July 23, 2022).

73. E.g., *Newlines Inst. for Strategy & Pol'y, The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention* 3–6 (2021), <https://newlinesinstitute.org/wp-content/uploads/Chinas-Breaches-of-the-GC3-2.pdf> [https://perma.cc/55BD-2CEB].

74. William W. Burke-White, *Power Shifts in International Law: Structural Realignment and Substantive Pluralism*, 56 *Harv. Int'l L.J.* 1, 48 (2015); see also *infra* note 145.

75. Burke-White, *supra* note 74, at 52.

76. Ian Taylor, *The Forum on China–Africa Cooperation (FOCAC)* 30 (2011) [hereinafter Taylor, *FOCAC*] ("Beijing deploys a particular stance on state sovereignty i.e. that sovereignty is the ultimate guarantor of human rights and that it is therefore the choice of each sovereign state to institute its own understandings of the rights of its people.").

77. See Congyan Cai, *New Great Powers and International Law in the 21st Century*, 24 *Eur. J. Int'l L.* 755, 794 (2013) ("China has recognized the universality of human rights on the international plane since 2005.").

78. E.g., *China, National Report Submitted in Accordance With Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1*, ¶ 6, U.N. Doc. A/HRC/WG.6/4/CHN/1, (Nov. 10, 2008) ("China respects the principle of the universality of human rights Given differences in political systems, levels of development and historical and cultural backgrounds, it is natural for countries to have different views on the question of human rights.").

should be above criticism by foreigners⁷⁹ and that states should wield greater control over the international human rights regime.⁸⁰

A central tenet of the PRC's human rights catechism is that a state's level of development determines its human rights obligations.⁸¹ Developing states such as China, the argument goes, should prioritize the right to development above all else.⁸² The prioritization of development thus promotes a hierarchy of rights while undermining their universal character.⁸³ Moreover, the PRC's version of the right to development is state-centric.⁸⁴ While most rights recognized in international human rights treaties adhere to individuals,⁸⁵ China focuses on collective rights vested in groups or the state.⁸⁶ In addition, the PRC stresses individual *obligations to society*,⁸⁷ fulfillment of which may be preconditions to receiving rights.⁸⁸ Human

79. See Phil C.W. Chan, *Human Rights and Democracy With Chinese Characteristics?*, 13 *Hum. Rts. L. Rev.* 645, 671 (2013) ("China stresses that human rights are matters within the internal affairs and jurisdiction of a State and that a State is bound by the United Nations Charter and customary international law not to interfere in other States' internal affairs . . .").

80. Inboden, *supra* note 71, at 25.

81. Sceats & Breslin, *supra* note 69, at 8; see also China, National Report Submitted in Accordance With Paragraph 5 of the Annex to Human Rights Council Resolution 16/21, ¶ 4, U.N. Doc. A/HRC/WG.6/31/CHN/1 (Aug. 20, 2018) ("There is no universal road for the development of human rights . . . [T]he cause of human rights must be promoted on the basis of the national conditions and the needs of the people of that country . . .").

82. Chen, *China's Challenge*, *supra* note 3, at 1210 ("China emphasizes economic, social, and cultural rights and the rights to subsistence and development. China promotes development as 'the priority' when describing the nation's human rights approach."); White Paper—Fifty Years of Progress in China's Human Rights, Embassy of China in the U.S., <https://www.mfa.gov.cn/ce/ceus/eng/zt/ppflg/t36624.htm> [<https://perma.cc/WW4N-J9SU>] (last visited Aug. 12, 2022) ("China is a developing country in the East with a long history and a huge population, but with a relative shortage of resources and wealth . . . China cannot copy the mode of human rights development of the developed Western countries . . . China can only . . . put[] the rights to subsistence and development in the first place . . .").

83. Andrew Lui, *China Rising, Human Rights and "Hard Times:" The Foreign Policy Implications of an Asian Century* 29 (Jan. 30, 2015) (unpublished manuscript), <https://ssrn.com/abstract=1644365> [<https://perma.cc/Y2K8-35Q3>].

84. See Chen, *China's Challenge*, *supra* note 3, at 1205–06 (noting that some observers argue China reframes "the right to development in the service of states, not of people"). Contrast this to the UN Declaration on the Right to Development, which states "[t]he human person is the central subject of development and should be the active participant and beneficiary of the right to development." G.A. Res. 41/128, art. 2 (Dec. 4, 1986).

85. Bantekas & Oette, *supra* note 6, at 75.

86. Sceats & Breslin, *supra* note 69, at 8.

87. See, e.g., U.N. ESCOR, *supra* note 69, ¶¶ 44–45 (quoting the Chinese representative as stating that "while emphasizing the promotion and protection of human rights, the Commission must not neglect the fundamental concept of man's responsibilities towards society"); see also Inboden, *Human Rights*, *supra* note 71, at 47–48 ("[T]he PRC views a strong state as central to the realization of human rights . . . Related to this elevated view of the government is the Chinese focus on the duty and obligations of the individual to the state and on the state as grantor of rights.").

88. Chen, *China's Challenge*, *supra* note 3, at 1211.

rights are reduced to little more than a “gift from the state,”⁸⁹ expanding government power at the expense of individual liberties.⁹⁰ For the PRC, human rights are not about protecting citizens from their governments but rather about protecting governments, especially dictatorships, from their citizens. It is no surprise then that the PRC’s conception of state-determined rights is conducive to authoritarian rule.⁹¹

China’s general views on human rights are not new.⁹² What *is* new, especially since Xi’s ascent, is China’s revisionist posture in promoting its vision across the globe.⁹³ China no longer treats its conception of human rights as just a defense against foreign criticism or the preference of developing states but instead vaunts it as an alternative human rights

89. Rana Siu Inboden & Titus Chen, *China’s Response to International Normative Pressure: The Case of Human Rights*, 47 *Int’l Spectator* 45, 48–49 (2012).

90. See Chen, *China’s Challenge*, *supra* note 3, at 1213 (arguing that Chinese “rhetoric, aided by constant references to sovereignty, non-interference, and national conditions, seeks to justify a fundamentally distinctive human rights philosophy, conveniently featuring a state-centered project pursuing growth and development, while at the same time weakening the role of people and political and civil liberties”); Titus C. Chen, *A Flamboyant Mandarin in a Declining Liberal Order: China’s Revisionist Agenda in Global Human Rights Institutions* 6 (June 21, 2019) (unpublished manuscript), <https://ssrn.com/abstract=3403037> [<https://perma.cc/3NMVY2Y8>] [hereinafter Chen, *Flamboyant Mandarin*] (“In contrast to the liberal notion of human rights that emphasizes individual dignity and freedom, the Chinese human rights discourse . . . justifies and calls for the augmentation—rather than restriction—of state power vis-à-vis individual citizens.”).

91. See *Seeking Happiness for People: 70 Years of Progress on Human Rights in China*, The State Council Info. Off. of the People’s Republic of China (Sept. 22, 2019), <http://www.scio.gov.cn/zfbps/32832/Document/1665085/1665085.htm> [<https://perma.cc/ZN5Y-3UGC>] (“The Party’s leadership is the fundamental guarantee for the people of China to have access to human rights, and to fully enjoy more human rights.”).

92. See, e.g., James D. Seymour, *Human Rights in Chinese Foreign Relations*, in *China and the World: Chinese Foreign Policy Faces the New Millennium* 217, 219 (Samuel S. Kim ed., 4th ed. 1998) (observing that “[o]ne approach has been to emphasize *group* rights, especially collective economic rights,” whereas “[s]urvival rights’ are seen as more important than political rights and civil liberties”); see also Bandung Conference, *Encyc. Britannica*, <https://www.britannica.com/event/Bandung-Conference> [<https://perma.cc/77ZT-FM5F>] (last visited Dec. 20, 2021) (discussing the 1955 Bandung Conference, at which developing states articulated principles including “‘mutual respect’ for other nations’ ‘territorial integrity and sovereignty,’ nonaggression, noninterference in ‘internal affairs,’ equality and mutual benefit, and ‘peaceful coexistence’” (referencing the five principles of Indian Prime Minister Jawaharlal Nehru)).

93. See Titus C. Chen & Chiahao Hsu, *China’s Human Rights Foreign Policy in the Xi Jinping Era: Normative Revisionism Shrouded in Discursive Moderation*, 23 *Brit. J. Pol. & Int’l Rels.* 228, 229 (2021) (analyzing official Chinese statements and “finding that China under Xi Jinping has moved beyond the passive-reactive mode of engagement with multilateral human rights institutions; instead, Beijing has increasingly shifted to a proactive approach, seeking to rewrite the liberal human rights norms and claiming ownership of global governance”); Rana Siu Inboden, *China and Authoritarian Collaboration*, 31 *J. Contemp. China* 505, 505 (2022) (analyzing China’s activities at the UN and noting “China’s shift from a defensive posture where Chinese diplomats focused on deflecting human rights scrutiny to an offensive one”).

framework, superior to the liberal status quo.⁹⁴ The party-state has shifted from defense to offense.

B. *Normfare*

1. *Why China Is Pursuing Human Rights Normfare.* — China has dual motivations for acting as a revolutionary norm entrepreneur. The first is external—to augment China's geopolitical power by enhancing its soft power and perceived legitimacy. The fact that China situates its human rights posture within its framework for a new world order,⁹⁵ labeled a “Community of Shared Future for Mankind,”⁹⁶ demonstrates that its normfare is part of its efforts to construct an alternative global order.⁹⁷ Specifically, China's human rights normfare serves to enhance the state's soft power, an aspect of power “which occurs when one country gets other countries to want what it wants” through its social, cultural, or political attractiveness.⁹⁸ China has invested heavily in its soft power,⁹⁹ yet with little success¹⁰⁰ largely due to its noxious human rights record.¹⁰¹ Normfare offers a path for China to solve this problem not by making itself more

94. See Chen, *Flamboyant Mandarin*, supra note 90, at 4 (“Rather than simply formulating and defending an alternative, illiberal conception of international human rights and its corresponding policy preferences, China under Xi Jinping's rule has leapt forward to mainstreaming her illiberal model as the new universal solution for rights protection.”).

95. See The State Council Info. Off. of the People's Republic of China, *Human Rights Action Plan of China (2021–2025)*, (2021), http://english.scio.gov.cn/scionews/2021-09/09/content_77742681.htm [<https://perma.cc/6JDP-AQH3>] [hereinafter *State Council Info. Off. of the People's Republic of China, Human Rights Action Plan*] (“China will fulfill its commitments to the international community with sincerity. It will engage in international human rights affairs, and lobby for and work toward a better global human rights governance system, so as to build a global community of shared future.”).

96. Liza Tobin, *Xi's Vision for Transforming Global Governance: A Strategic Challenge for Washington and Its Allies*, 2 *Tex. Nat'l Sec. Rev.* 155, 155 (2018) (“The phrase expresses in a nutshell Beijing's long-term vision for transforming the international environment to make it compatible with China's governance model and emergence as a global leader. Chinese officials make clear that the concept has become central in Beijing's foreign policy framework and overall national strategy.”).

97. Chen, *China's Challenge*, supra note 3, at 1193 (noting that Xi has proposed creating a “Community with a Shared Future for Mankind” . . . as an arc for China's active engagement with the world” in relation to international human rights); Chen, *Flamboyant Mandarin*, supra note 90, at 34 (“International human rights is but one frontier of China's audacious campaign for global influence.”).

98. Joseph S. Nye, Jr., *Soft Power*, 80 *Foreign Pol'y* 153, 166 (1990).

99. See, e.g., David Shambaugh, *China's Soft-Power Push: The Search for Respect*, *Foreign Affs.*, July–Aug. 2015, at 99, 99 (observing that in the face of “a severe shortage of soft power” and “in an attempt to improve perceptions, Beijing has mounted a major public relations offensive in recent years, investing billions of dollars around the world in a variety of efforts”).

100. *Id.* at 100.

101. See, e.g., Andrew J. Nathan & Andrew Scobell, *China's Search for Security* 349 (2012) (“China has not yet surmounted one long-standing vulnerability in the battle of values and ideas: the self-inflicted wound of its pervasive violation of internationally recognized human rights.”).

palatable to the world, but by making the world more amenable to *it*.¹⁰² Moreover, spreading a version of human rights consistent with China's behavior may further China's geopolitical power by burnishing its legitimacy.¹⁰³ The second reason is internal—to reinforce the stability of the regime by neutralizing the perceived threat of liberal human rights norms.¹⁰⁴

2. *How China Is Pursuing Human Rights Normfare.* — Some scholars view China's human rights strategy as simply defensive or destructive.¹⁰⁵ But it is in fact offensive and constructive.¹⁰⁶ While the PRC has not expressly, publicly articulated an intentional strategy of norm entrepreneurship, it is candid about aiming to reshape the global human rights regime.¹⁰⁷ Moreover, China's actions, as described in this section and section II.C, demonstrate at least a *de facto* strategy to diffuse favored norms in a manner that maps onto Koh's three-part transnational legal process model.

In the interaction phase, the PRC creates opportunities for transnational actors to engage with Chinese counterparts and learn about China's human rights approach. Often, these interactions are catalyzed by the creation of new fora, an express part of Beijing's official human rights

102. Frédéric Krumbein, Two Chinese Tales of Human Rights—Mainland China's and Taiwan's External Human Rights Strategies, 26 *Int'l J. Hum. Rts.* 856, 861 (2022) (“If the PRC succeeds to move the international human rights system in the direction of its own human rights conception, its own human rights record would be seen in a more positive light.”).

103. See Congyan Cai, *The Rise of China and International Law* 140 (2019) (arguing “that engagement with international human rights regime is highly relevant to the legitimacy and efficiency for the rise of China . . . [because] respect for human rights is a major source of legitimacy for a state”); Doshi, *supra* note 48, at 282 (characterizing legitimacy as a foundational element of a hegemonic order); Krumbein, *supra* note 102, at 867 (“[A]s long as the PRC's human rights record does not improve, it will probably never be viewed as a respected global power by consolidated democracies and the global civil society.”).

104. Inboden, *Human Rights*, *supra* note 71, at 15, 17 (“For the Chinese leadership in particular, this distaste for scrutiny reflects not only reputational concerns but also their ongoing perception that negative international human rights attention could damage the PRC's material interests, domestic stability, and the CCP's continued rule.”). As discussed in section I.B.2, the Chinese leadership is gravely concerned about the potential of liberal norms to undermine its rule. See *supra* notes 66–68 and accompanying text.

105. See, e.g., Krumbein, *supra* note 102, at 867 (“In sum, mainland China's human rights strategy is . . . mainly destructive, i.e. with the objective to weaken the global human rights institutions, policies, and the universal ideal of human rights.”).

106. See Doshi, *supra* note 48, at 284 (“[D]ue to the trifecta of Brexit, Trump, and COVID-19, China has more enthusiastically promoted its model and values—both defensively to push back on Western liberalism and offensively to build the normative foundations of hegemony.”).

107. See, e.g., State Council Info. Off. of the People's Republic of China, Human Rights Action Plan, *supra* note 95 (“China will fulfill its commitments to the international community with sincerity. It will engage in international human rights affairs, and lobby for and work toward a better global human rights governance system, so as to build a global community of shared future.”).

policy.¹⁰⁸ New institutions allow China to legitimize and build consensus for its norms.¹⁰⁹ Notably, China has created a series of China-centered hub-and-spokes institutions for most regions of the world.¹¹⁰ Lacking multilateral secretariats or voting mechanisms, these bodies are designed to ensure China's effective control of the agenda and outcomes.¹¹¹ Such fora thus provide a social infrastructure for the promotion of PRC-backed interpretations of norms.¹¹² Another way China fosters interactions is through recurring, officially sanctioned conferences. These convene human rights scholars and officials from around the world in Beijing, until 2017 for the Beijing Forum on Human Rights and since 2017 for the South-South Human Rights Forum (SSHHRF).¹¹³ In addition to creating new interpretative communities, China has sought to co-opt existing ones, particularly the UN Human Rights Council (HRC). There, the PRC has shifted from a defensive to an offensive role, using debates and resolutions

108. See *id.*

109. Nicola P. Contessi, *Experiments in Soft Balancing: China-Led Multilateralism in Africa and the Arab World*, 3 *Caucasian Rev. Int'l Affs.* 404, 409 (2009); see also Jones, *supra* note 46, at 250 ("China, despite not wanting to explicitly promote its approach, has created new institutions and country groupings that allow these ideas to gain legitimacy and open up the possibility that these groups, having already formed a consensus over development issues, will caucus together in broader international institutions . . .").

110. Doshi, *supra* note 48, at 283.

111. Jakub Jakóbowski, *Chinese-Led Regional Multilateralism in Central and Eastern Europe, Africa and Latin America: 16 + 1, FOCAC, and CCF*, 27 *J. Contemp. China* 659, 665 (2018); see also Niall Duggan, *China—The Champion of the Developing World: A Study of China's New Development Model and Its Role in Changing Global Economic Governance*, 48 *Pol. & Pol'y* 836, 846 (2020) ("The underlying aim of each of these forums is to strengthen cooperation in international affairs, particularly in international organizations, to promote common development, increasingly designed on the China model of development.").

112. Contessi, *supra* note 109, at 406 ("[T]he role of FOCAC and the Sino-Arab Cooperation Forum (SACF) has to be seen as that of providing a social infrastructure giving permanence to embedded principles and values that stand in contrast to those associated with the present hegemonic configuration of the international system . . .").

113. The China Society for Human Rights Studies is a government-organized NGO. Inboden, *Human Rights*, *supra* note 71, at 70. It has organized international human rights conferences in Beijing since 2008. See *Beijing Forum on Human Rights*, China Soc'y for Hum. Rts. Stud., http://www.chinahumanrights.org/html/special/20180228/?pc_hash=cy4oQG [<https://perma.cc/G9E4-J8F7>] (last visited Aug. 12, 2021). Since 2017, the government itself has sponsored three SSHRFs, the first two of which, prepandemic, brought more than three hundred representatives from many countries and international organizations to Beijing. See Lina Benabdallah, *China–Africa and the South–South Human Rights Forum (SSHHRF)*, *Shaping the Future of Power* (Feb. 22, 2020), <https://shapingthefutureofpower.com/2020/02/22/china-africa-and-the-south-south-human-rights-forum-sshhrf/> [<https://perma.cc/B9CJ-ZK6S>] [hereinafter Benabdallah, SSHRF] (discussing the 2019 SSHRF); 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/A97P-ZPW9>] (same).

to promote preferred norms.¹¹⁴ Further, China invests in human capital¹¹⁵ by encouraging human rights-focused exchanges with foreign political parties,¹¹⁶ experts,¹¹⁷ lawyers,¹¹⁸ and other actors,¹¹⁹ thus forging transnational issue networks favoring the PRC's human rights doctrine.

These forms of interaction lead to the interpretation of norms in a manner favored by China. A primary purpose of China-led regional platforms is to formulate a common stance on international issues, including human rights. For instance, Forum on China–Africa Cooperation summits

114. See, e.g., Chen, *Flamboyant Mandarin*, *supra* note 90, at 16 (“Rather than passively socialized by the liberal human rights norms, China has instead employed the overhauled monitoring procedure [of the HRC Universal Periodic Review] to socialize other state and non-state actors into the illiberal, developmentalist criteria of rights protection.”); Piccone, *supra* note 3, at 1 (“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.”).

115. Lina Benabdallah, *Shaping the Future of Power: Knowledge Production and Network-Building in China–Africa Relations 5–8* (2020) [hereinafter Benabdallah, *Shaping the Future*]; see also Yanhua Luo, *The Main Characteristics of China’s International Human Rights Cooperation and Exchanges From 2010 to 2020*, 19 *J. Hum. Rts. (China)* 795, 812–16 (2020).

116. See, e.g., State Council Info. Off. of the People’s Republic of China, *Human Rights Action Plan*, *supra* note 95 (“Based on the principles of seeking common ground while reserving differences, mutual respect, and mutual learning, China will engage in exchanges with political parties from other countries on human rights issues.”).

117. See, e.g., Huawen Liu, *New Understanding of the Socialist Human Rights Concept With Chinese Characteristics and Its Practice: An Overview of the International Conference on the International Cooperation in Human Rights and the Chinese Perspective*, 15 *J. Hum. Rts. (China)* 643, 643 (2016) (discussing the International Conference on the International Cooperation in Human Rights and the Chinese Perspective, which drew fifty experts and scholars from China and abroad); Luo, *supra* note 115, at 817–18 (“In addition to human rights organizations[,] . . . many academic institutions on human rights in China . . . and human rights research centers in universities and research institutes across the country[] are also engaged in various forms of international exchanges on human rights.”).

118. See, e.g., Asian–African Legal Consultative Organization Secretariat, *Verbatim Record of Discussions Fifty-Eighth Annual Session 27* (2019), <https://www.aalco.int/Final%20Verbatim%202019.pdf> [<https://perma.cc/BM74-7ETH>] (quoting the Chinese representative as observing that the China–AALCO Exchange and Research Programme on International Law had “trained more than 200 legal and diplomatic officers from our Member States”); Zhang Peng, Chinese Delegate, *Statement by Mr. Zhang Peng at the 72nd Session of the UN General Assembly on Agenda Item 84: The Rule of Law at the National and International Levels* (Oct. 5, 2017), https://www.un.org/en/ga/sixth/72/pdfs/statements/rule_of_law/china_e.pdf [<https://perma.cc/R75S-ZN53>] (“The Chinese Government has consistently promoted exchanges and dissemination in the field of international law and contributed Chinese expertise and Chinese wisdom to the capacity building efforts of developing countries in international law.”); Worden, *supra* note 113 (describing a government-sanctioned seminar organized by the Cross Cultural Human Rights Centre “to further promote China’s participation and guidance in global human rights governance, propel building a global community with shared future and advance the development of human rights cause around the world”).

119. See, e.g., Luo, *supra* note 115, at 817–18 (observing that the China Society for Human Rights Studies, the China Foundation for Human Rights Development, and human rights research centers in universities and research institutes conduct exchanges with delegations from all over the world).

culminate in joint “declarations”¹²⁰ of the sort that are classic soft law.¹²¹ These institutions thus provide a framework for China to blunt liberal norms and build alternatives by guiding state and non-state actors to endorse and thus legitimize them.¹²² At the UN, China has had some success in shaping outcomes¹²³ and embedding its jargon and norms into resolutions, such as ones echoing China’s “Community of Shared Future for Mankind”¹²⁴ and promoting “people-centered development.”¹²⁵ Additional normative interpretation is carried out by the officially sanctioned¹²⁶ China Society for Human Rights Studies. As the publisher of the English-

120. Jakóbski, *supra* note 111, at 667–68; see also Doshi, *supra* note 48, at 283–84 (“[W]ith respect to questions of legitimacy, these [Chinese-led] organizations have been used to challenge liberal norms and build support for Chinese preferences . . .”).

121. See Dunoff et al., *supra* note 13, at 81 (describing pronouncements of international organizations as an example of soft law).

122. See Contessi, *supra* note 109, at 409 (“[A]n important means to the legitimisation of rules is to have them endorsed by international assemblies.” (quoting Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* 69 (2002))). For instance, the 2019 South–South Human Rights Forum focused on placing development at the center of human rights, above political human rights. Benabdallah, SSHRF, *supra* note 113.

123. See Chen, *China’s Challenge*, *supra* note 3, at 1214 (“[A]lthough Beijing cannot change the international human rights system on its own and requires cooperation from and alliance with other nations, for years it has been able to mobilize allies in the HRC that share similar views . . .”).

124. Economic and Social Council Res. 2017/11, ¶ 41 (June 8, 2017), https://www.un.org/ga/search/view_doc.asp?symbol=E/RES/2017/11 [<https://perma.cc/L75J-HWDY>] (calling upon “the international community to enhance support and fulfil its commitments to take further action in areas critical to Africa’s economic and social development, in the spirit of win-win cooperation and to create a shared future, based upon our common humanity”); Human Rights Council Res. 37/23, U.N. Doc. A/HRC/RES/37/23, at 2 (Mar. 23, 2018), https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/res/37/23 [<https://perma.cc/C7X4-N62S>] (“Recognizing the importance of fostering international relations based on mutual respect, fairness, justice and mutually beneficial cooperation, and of building a community of shared future for human beings in which human rights are enjoyed by all . . .”). For a broader discussion of the “Community of Shared Future for Mankind,” see *supra* section II.B.1.

125. Human Rights Council Res. 35/21, U.N. Doc. A/HRC/RES/35/21, at 2 (June 22, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/184/81/PDF/G1718481.pdf?OpenElement> [<https://perma.cc/V3AQ-9R2T>]; see also Piccone, *supra* note 3, at 9–10 (describing how the resolution “suggests that respect for human rights depends on ‘people-centered development,’ as opposed to being inherent to human dignity regardless of a country’s level of development”); Chen, *China’s Challenge*, *supra* note 3, at 1205 (observing that “Chinese media praised the resolution as the contribution of a ‘China Solution’ to global human rights governance”).

126. Inboden, *Human Rights*, *supra* note 71, at 70.

language *Journal of Human Rights*,¹²⁷ this organization disseminates scholarly articles articulating a party-approved human rights vision written by Chinese¹²⁸ and occasional non-Chinese scholars.¹²⁹

The result of interaction and interpretation—if successful—is internalization. Given China’s targeting of human rights scholars, the approval of its favored human rights norms by certain foreign scholars indicates social internalization, at least among elites.¹³⁰ There is also qualitative evidence of political internalization. China-led multilateral fora promote norms both explicitly by formulating normative stances in joint declarations and implicitly through actions based on these norms.¹³¹ Joint declarations might exert a compliance pull as soft law.¹³² Moreover, joint declarations are often accompanied by “Action Plans,” according to which states expressly commit to implement the principles endorsed in the forum.¹³³ Political internalization is further suggested by states voting for Beijing-backed UN resolutions loaded with language reminiscent of its distinct human rights discourse,¹³⁴ although this might reflect Chinese pressure rather than genuine conviction.¹³⁵ Finally, legal internalization is demonstrated by states introducing laws consistent with the PRC’s norms.¹³⁶

127. Table of Contents, 1 *J. Hum. Rts. (China)* 2, 2 (2002).

128. E.g., He Zhipeng, *Seeing Human Rights From the Perspective of Development*, 16 *J. Hum. Rts. (China)* 44, 45 (2017) (arguing that human rights should be viewed from the perspective of development, rather than freedom); Huang Mengfu, *Speech at the Opening Ceremony of the 2015 Beijing Forum on Human Rights*, 14 *J. Hum. Rts. (China)* 420, 422 (2015) (“The rights to subsistence and development are the basic human rights of top priorities and also the prerequisites to realize other human rights.”).

129. E.g., Thio Li-ann, *Cross-Cultural Exchange of Human Rights: Crossing Divides or Crossing Swords?*, 14 *J. Hum. Rts. (China)* 60, 63 (2017) (arguing that human rights are culture specific); Tom Zwart, *China’s Contribution to International Human Rights During the Past Seventy Years*, 19 *J. Hum. Rts. (China)* 116, 120–22 (2020) (defending the PRC’s prioritization of the rights to subsistence and development above other rights, its linkage of human rights and individual duties, the state’s role as the protector of domestic human rights, and its notion that human rights depend on national conditions).

130. See *infra* notes 189–195 and accompanying text.

131. Contessi, *supra* note 109, at 426–27 (“There are two ways that the SACF and FOCAC serve to promote international norms. The first is through the explicit formulation of principled stances and positions on international issues The second one is, so to speak, implicit, and is the effect of actual cooperation based on those very principles”).

132. See *supra* notes 13–16 and accompanying text.

133. Contessi, *supra* note 109, at 412.

134. See *supra* notes 123–125 and accompanying text.

135. See Piccone, *supra* note 3, at 1 (“[S]ome signs suggest that states with important economic and political ties to Beijing are more likely to mute any criticism of China’s human rights record and/or support its efforts to weaken the international human rights system.”).

136. See *infra* section II.C.4.

C. *Case Study: Africa*

1. *Sino-African Relations and Human Rights*. — China's normfare on the African continent is playing out against the backdrop of the recent deepening of Sino-African political, economic, and security ties.¹³⁷ Africa is an appealing target for Chinese engagement for a number of reasons, including its large population, bountiful natural resources, and considerable collective voting power at the UN and other international institutions.¹³⁸ Africa is thus a key arena in which China challenges liberal international norms.¹³⁹ For their part, many African states are receptive to PRC engagement as a way to boost their status on the world stage, provide a model for development, express anti-Western sentiment,¹⁴⁰ and, especially, obtain development assistance without unwelcome conditions for democracy, good governance, or human rights.¹⁴¹

The direct human rights consequences of China's turn toward Africa are well-documented.¹⁴² But indirect consequences are emerging, too, as China rallies support in Africa for an illiberal doctrine of human rights. While the norms advanced by China are not wholly alien to the continent,

137. E.g., Dominik Kopiński, Andrzej Polus & Ian Taylor, Contextualising Chinese Engagement in Africa, 29 J. Contemp. Afr. Stud. 129, 129 (2011).

138. Adaora Osondu-Oti, China and Africa: Human Rights Perspective, 41 Afr. Dev. 49, 72–73 (2016); Ian Taylor, A Challenge to the Global Liberal Order? The Growing Chinese Relationship With Africa, in *A Handbook of China's International Relations* 187, 194 (Scott Breslin ed., 2012) (“China has been successful in gaining African support at institutions such as the UN, where the vote of the African bloc has allowed China to block resolutions on domestic human rights abuses.”).

139. Obert Hodzi, Delegitimization and ‘Re-socialization’: China and the Diffusion of Alternative Norms in Africa, 55 Int'l Stud. 297, 298 (2018) (“Underlying [China's] pragmatic strategies of global influence expansion is an agenda to delegitimize the liberal international order and attempt to reverse Western socialization in some parts of the Global South, with Africa being a case in point.”).

140. Kopiński et al., *supra* note 137, at 129, 133.

141. See Obert Hodzi, China and Africa: Economic Growth and a Non-Transformative Political Elite, 36 J. Contemp. Afr. Stud. 191, 196 (2018) (“Generally, across Africa, China's initial emphasis on ‘non-political’ conditionality to development financing and assistance captured the attention of political elites in both authoritarian and democratic regimes.”); Kopiński et al., *supra* note 137, at 130 (“Unlike the aid given to Africa from Western-oriented organisations and countries, Chinese aid rarely comes to Africa with conditional stipulations stressing the importance of tenets such as good governance or a heightened respect for human rights.”). China does, however, often impose tacit conditions that recipient states must support the PRC in international institutions and must refrain from criticizing its human rights practices. Africa's Ties to China and the West Are Starting to Look More Alike, *Economist* (Dec. 4, 2021), <https://www.economist.com/middle-east-and-africa/2021/12/02/africas-ties-to-china-and-the-west-are-starting-to-look-more-alike> (on file with the *Columbia Law Review*).

142. See Osondu-Oti, *supra* note 138, at 65–68 (discussing ways in which China has committed or aided human rights abuses in Africa, such as by fostering poor labor conditions, selling arms to repressive regimes, and undermining good governance).

China's versions are distinct. The right to development, for instance, is explicitly recognized in the African human rights system,¹⁴³ yet African institutions have historically tied the right to development to civil and political rights.¹⁴⁴ And neither sovereignty nor noninterference are necessarily as absolute for African actors as they are for China.¹⁴⁵ Yet China is attempting to reshape this landscape, displacing relatively liberal African norms with PRC-backed ones.

2. *Interaction.* — True to the transnational legal process model, China is fostering interactions between Chinese and African government officials, party functionaries, and scholars. One key setting for such interaction is FOCAC.¹⁴⁶ Launched in 2000, FOCAC is a hub-and-spokes multilateral body that brings together China and nearly every African country.¹⁴⁷ Its importance to African states is demonstrated by the fact that in 2018, FOCAC attracted fifty-one African leaders, while UN General

143. Serges Alain Djoyou Kamga & Charles Manga Fombad, A Critical Review of the Jurisprudence of the African Commission on the Right to Development, 57 J. Afr. L. 196, 196 (2013); see also Organization of African Unity, African Charter on Human and Peoples' Rights (Banjul Charter) art. 22(2), June 27, 1981, 1520 U.N.T.S. 217 ("States shall have the duty, individually or collectively, to ensure the exercise of the right to development.").

144. E.g., Organization of African Unity, *supra* note 143, pmb1. ("Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality . . ."); Afr. Union, The New Partnership for Africa's Development (NEPAD) para. 79 (2001), https://repository.uneca.org/bitstream/handle/10855/3364/Bib.%2027522_I.pdf?sequence=1&isAllowed=y [<https://perma.cc/466X-LMYU>] (last visited May 10, 2022) ("[D]evelopment is impossible in the absence of true democracy, respect for human rights, peace and good governance.").

145. See, e.g., Hackl v. Fin. Intel. Unit, [2012] SCCA 17 (Sey.) ("[W]e state that the rule of law and international human rights law may well override a state's claim to sovereignty."); S.M.Z. v. Machano Khamis Ali, [2000] TZCA 1 (Tanz.) (noting that it is no longer true that a state's treatment of its own citizens is simply its own affair because "[t]he development of international human rights law has curtailed . . . the sovereignty of states"); Hansungule, *supra* note 5, at 4 ("In Africa . . . States have come full-circle from extreme obsession with sovereignty in which human rights were strictly matters of domestic domain to the liberal systems and institutions that is now characteristic of the African Union . . ."); The Realities of 40 Years of Implementing the African Charter on Human and Peoples' Rights, Afr. Union (June 16, 2021), <https://au.int/en/articles/realities-40-years-implementing-african-charter-human-and-peoples-rights> [<https://perma.cc/5YJJ-ECJP>] (observing that the Constitutive Act of the African Union "led to a shift from the absolute non-intervention in the internal affairs of states to the right by the [African Union] to intervene in a member state when gross, widespread and systematic human rights violations are committed" (citing Organization of African Unity, Constitutive Act of the African Union arts. 4(h), 4(p), July 11, 2000, 2158 U.N.T.S. 3)). But see Richard Schiere, Léonce Ndikumana & Peter Walkenhorst, Afr. Dev. Bank Grp., China and Africa: An Emerging Partnership for Development? 122 (2011), <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Anglaischina.pdf> [<https://perma.cc/3JLA-46ST>] ("The Chinese position is far from consistent with the norms that have evolved in Europe and North America . . . Yet the Chinese respect for sovereignty . . . appears to be closer to the African norm.").

146. For a discussion of PRC-created multilateral fora such as FOCAC, see *supra* notes 110–112 and accompanying text.

147. Contessi, *supra* note 109, at 412.

Assembly drew only twenty-seven.¹⁴⁸ At FOCAC, Beijing runs the show, setting the agenda and controlling outcomes.¹⁴⁹ FOCAC's purpose is normative, as it showcases China as a model for the continent,¹⁵⁰ endorses the PRC's view of human rights,¹⁵¹ and is expressly associated with "the establishment of an equitable and just new international political and economic order."¹⁵² Also important are officially sanctioned human rights conferences held in Beijing.¹⁵³ Additional institutionalized catalysts for interaction on human rights norms include "human rights dialogues" between Chinese officials and their counterparts from South Africa and the African Union¹⁵⁴ as well as programs targeted at legal,¹⁵⁵ governmental,¹⁵⁶

148. Paul Nantulya, *The Forum on China–Africa Cooperation at 21: Where to Next?*, Afr. Ctr. for Strategic Stud. (Sept. 3, 2021), <https://africacenter.org/spotlight/focac-forum-china-africa-cooperation-21-where-to-next/> [<https://perma.cc/VP99-NQC2>].

149. Taylor, FOCAC, *supra* note 76, at 100.

150. Jones, *supra* note 46, at 204.

151. See *infra* section II.C.3.

152. E.g., Jiang Zemin, President, China, Jiang's Speech at China–Africa Forum (Oct. 10, 2000), <http://www.china.org.cn/english/2000/Oct/2625.htm> [<https://perma.cc/65TV-SU6P>]; Ministry of Foreign Affairs of the People's Republic of China, Beijing Declaration of the Forum on China–Africa Cooperation, <https://www.fmprc.gov.cn/zflt/eng/zyzl/hywj/t157833.htm> [<https://perma.cc/F3HQ-LDK6>] (last visited Sept. 15, 2021).

153. See *supra* note 113 and accompanying text.

154. See, e.g., Luo, *supra* note 115, at 807.

155. Several Chinese law schools offer degrees in international law taught in English. Study Law in China in English for International Students, China Admissions, <https://www.china-admissions.com/study-law-in-china/> [<https://perma.cc/34GX-VDYT>] (last visited Dec. 20, 2021). In addition, between 2015 and 2019, the China–AALCO Exchange and Research Programme on International Law had trained over two hundred legal and diplomatic officers from developing states. Asian–African Legal Consultative Organization Secretariat, *supra* note 118, at 27. One such training was on "Building the Community of a Shared Future for Mankind and International Law." Dep't of Treaty & L., Ministry of Foreign Affairs, People's Republic of China, Participants Manual of the Third Training Session of China–AALCO Exchange and Research Program on International Law (June 6, 2016), <http://china-aalco.mfa.gov.cn/hd/Training/201706/P020210828244088545130.pdf> [<https://perma.cc/S56T-8VAM>]; see also Xia Xinhua & Xiao Haiying, On Sino-Africa Relationship and Legal Cooperation, 12 *U. Bots. L.J.* 173, 176–77 (2011) (discussing the First FOCAC Legal Summit, held in 2007, and observing that "[w]ith the establishment of [FOCAC], Sino–African legal exchange and cooperation of various forms has become an important part of Sino-Africa cooperation").

156. See Obert Hodzi, African Political Elites and the Making(s) of the China Model in Africa, 48 *Pol. & Pol'y* 887, 897 (2020) [hereinafter Hodzi, African Political Elites] ("Through tailor-made training programs for government officials from Africa, . . . the Chinese government has direct interaction with African political elites. Beijing's objective is that these African elites will internalize China's norms and realign their countries' domestic and foreign policies with Beijing's core interests.").

party,¹⁵⁷ academic,¹⁵⁸ and other elites. The PRC thus enables numerous transnational actors to rub shoulders and participate in the transnational legal process,¹⁵⁹ expanding the interpretative community for PRC-style human rights norms.

3. *Interpretation.* — The PRC takes many of the interactions discussed above as opportunities to articulate its preferred human rights norms.¹⁶⁰ In the case of FOCAC, this is evident from the “Declarations” and “Action Plans” through which China and African states formulate common positions on international issues including human rights.¹⁶¹ These documents stress the critical importance of sovereignty and noninterference,¹⁶² place the right to development above other rights, and affirm the notion that human rights are country-specific rather than truly universal.¹⁶³ FOCAC statements also implicitly recognize China’s role as a norm entrepreneur, describing China’s “Five Principles of Peaceful Coexistence” as not only

157. Lina Benabdallah, *Power or Influence? Making Sense of China’s Evolving Party-to-Party Diplomacy in Africa*, 19 *Afr. Stud. Q.* 94, 99, 103 [hereinafter Benabdallah, *Power or Influence*] (observing that “China[] collaborat[es] with as many [African] parties as possible so as to have good working relations with whichever part[ies] come to rule” and that PRC-sponsored trainings for African leaders “serve a norm diffusion component which looks to market and advertise Chinese expertise to African counterparts”).

158. Consider, for example, the 2004 China–Africa Seminar on Human Rights, implemented as a follow up on FOCAC’s Addis Ababa Action Plan, where “participants exchanged ideas on . . . the relationship between human rights and sovereignty.” Xia & Xiao, *supra* note 155, at 177. Other conferences, such as the 2009 First Seminar on African Legal and Social Development have brought together African scholars and Chinese officials under the aegis of an academic research center. See *id.* at 180.

159. See Koh, *Why Do Nations Obey*, *supra* note 29, at 2656 (asserting that a first step in promoting new norms would be to enable the participation of more actors).

160. See *supra* note 32 and accompanying text.

161. See Contessi, *supra* note 109, at 413 (describing “[t]he rhetorical and discursive practices around which China is building a sense of solidarity” through FOCAC); see also Hodzi, *African Political Elites*, *supra* note 156, at 896 (“These platforms, in particular the FOCAC summits, have increasingly become institutionalized, enabling China to socialize African states into its preferred norms which is critical for its *discussion* and *cooperation* strategy to be effective.”).

162. E.g., Jones, *supra* note 46, at 206; Beijing Declaration—Toward an Even Stronger China—Africa Community with a Shared Future, *F. on China–Afr. Coop.* (Sept. 12, 2018), http://focacsummit.mfa.gov.cn/eng/hyqk_1/201809/t20180912_5858593.htm [<https://perma.cc/YQS7-JVYU>] [hereinafter Beijing Declaration] (“We oppose interference in others’ internal affairs . . .”).

163. Contessi, *supra* note 109, at 429 (“FOCAC is promoting a fundamental reinterpretation . . . of human rights, by giving prominence to the right to development. This is based on the belief that human rights must be historically, culturally, and religiously sensitive, and on the joint commitment to affirming this model in the relevant international bodies.”); see also, e.g., Forum on China–Africa Cooperation Sharm El Sheikh Action Plan (2010–2012), *F. on China–Afr. Coop.* (Nov. 12, 2009), http://www.focac.org/eng/zywx_1/zywj/200911/t20091112_7933571.htm [<https://perma.cc/5M74-G99F>] (“The two sides reaffirmed their respect for the principle of universality of human rights, with no prejudice to the cultural and social particularities with regard to perceiving and applying the concept, and with priority on the right to development.”).

“universally recognized” but on an equal footing with the UN and African Union Charters¹⁶⁴ and “fully endorsing the vision of ‘a community with a shared future for mankind.’”¹⁶⁵

Interpretation of norms occurs not only among national leaders at FOCAC summits but also with academics and government officials at lower-profile conferences. Take, for example, the 2017 SSHRF, which brought together scholars and officials from over seventy states.¹⁶⁶ In addition to including a congratulatory letter from Xi,¹⁶⁷ the conference adopted the Beijing Declaration, which stated that “[t]he right to subsistence and the right to development are the primary basic human rights” and “[e]ach State should adhere to the principle of combining the universality and specificity of human rights and choose a human rights development path . . . that suits its specific conditions.”¹⁶⁸ Such language implies that governments may marginalize undesirable civil and political rights as obstacles to development or inconsistent with national culture.

The 2019 SSHRF focused on assembling a coalition to center human rights on development at the expense of civil and political rights.¹⁶⁹ Twenty-seven government officials from twenty-three African states, large and small, attended.¹⁷⁰ According to a summary prepared by the Chinese scholar Shang Haiming, the sentiment of the 2019 SSHRF was that “a great number of international human rights norms didn’t fully reflect the appeals of developing countries due to their inadequate participation” and

164. Forum on China–Africa Cooperation—Addis Ababa Action Plan (2004–2006), F. on China–Afr. Coop. (Sept. 25, 2009), http://www.focac.org/eng/zywx_1/zywj/200909/t20090925_7933568.htm [<https://perma.cc/DQB7-HVV6>].

165. Beijing Declaration, *supra* note 162 (quoting Chinese and African leaders).

166. CGTV, First South–South Human Rights Forum Opens in Beijing, China Internet Info. Ctr. (Dec. 8, 2017), http://p.china.org.cn/2017-12/08/content_50092852.htm [<https://perma.cc/S48K-U8NJJ>].

167. *Id.*

168. Full Text of Beijing Declaration Adopted by the First South–South Human Rights Forum arts. 1, 3, S.-S. Hum. Rts. F. Portal (Dec. 10, 2017), http://p.china.org.cn/2017-12/10/content_50095729.htm [<https://perma.cc/39VZ-US7D>].

169. Benabdallah, SSHRF, *supra* note 113; see also Worden, *supra* note 113 (“With the second SSHRF, China took another step toward consolidating support for its alternative human rights framework, which has development as its ‘core concept of human rights’ while at the same time dismissing the ‘Euro-American centric notion of human rights.’” (quoting CGTN, Human Rights and Global Governance: What Dilemmas Do We Face in These Issues?, YouTube, at 01:59, 07:19 (Dec. 11, 2019), <https://www.youtube.com/watch?v=wKz9AWrgQgM> (on file with the *Columbia Law Review*))).

170. African government officials included: the Director General for the Department of Human Rights within the Ministry of Justice and Human Rights (Chad); a Member of the National Human Rights Commission (Comoros); the President of the National Commission of Human Rights (Niger); the Chairperson of the Human Rights Commission (Sierra Leone); the President of the Human Rights Committee (Togo); and others. Benabdallah, SSHRF, *supra* note 113.

that the Universal Declaration of Human Rights is an unrepresentative, Western document.¹⁷¹

The summary paraphrased numerous African officials who were reportedly of this view. For instance, Dheerujlall Seetulsingh, President of the National Human Rights Commission of Mauritius, purportedly praised China as “the model of human rights development, civilization and progress,” and Kadara Harith Swaleh, an official in Kenya’s ruling Jubilee Party, reportedly said it was “time to break the monopoly of Western human rights values” that emphasize civil and political rights over economic and social rights.¹⁷² According to the (likely exaggerated) summary, at the SSHRF the consensus solution to alleged Western hegemony over human rights was, essentially, Chinese hegemony: “The participants . . . universally expected that China could propose the idea of human rights suitable for developing countries and lead human rights development in the new era.”¹⁷³ In 2021, the SSHRF reconvened virtually, with heavy criticism directed at the U.S. political model, thus linking the PRC’s critiques of “Western” human rights and of electoral democracy.¹⁷⁴

FOCAC and the SSHRF are significant because they operate as “interpretive communities,”¹⁷⁵ articulating a common vision and associating that vision with a discrete grouping.¹⁷⁶ the states of Africa, in the case of FOCAC, and the states of the Global South, in the case of SSHRF. China’s public diplomacy thus allows it to act as a revolutionary norm entrepreneur, using transnational issue networks to transform particular PRC concepts into an exportable, illiberal model of human rights.

4. *Internalization.* — Qualitative evidence indicates that PRC-backed norms have gained sway over a significant swathe of African political and academic elites, while also influencing government policy and legislation. Koh’s model predicts that transnational actors may internalize new interpretations of international norms into their own normative systems and that such new norms will eventually shape state behavior.¹⁷⁷ Granted, it is inherently difficult to establish a causal link between norms and action—

171. Shang Haiming, Diversity of Civilization and Development of the World Human Rights Cause—Summary of “2019 South–South Human Rights Forum”, 19 J. Hum. Rts. (China) 126, 127–28 (2020).

172. *Id.* at 128–29.

173. *Id.* at 129.

174. See Xu Yelu & Leng Shumei, South–South Forum Tackles Human Rights Issues, *Glob. Times* (Dec. 8, 2021), <https://www.globaltimes.cn/page/202112/1241032.shtml> [<https://perma.cc/ZMQ7-HJ4T>] (“The American political system has been hijacked by the military-industrial interests of the US, bringing disaster not only to the American people, but also to the whole world. How can such a country be qualified to talk to us about human rights?” (internal quotation marks omitted) (quoting a scholar’s address to the SSHRF)).

175. Koh, *Bringing International Law Home*, *supra* note 28, at 644, 650.

176. See Jones, *supra* note 46, at 204 (noting that FOCAC “highlights the creation of a new ‘population’ of states around a particular and distinctive identification with a particular interpretation of sovereignty and non-intervention”).

177. Koh, *Why Do Nations Obey*, *supra* note 29, at 2646, 2651.

policies have multiple causes,¹⁷⁸ decisionmakers have inscrutable motives,¹⁷⁹ and confounding variables are always lurking.¹⁸⁰ However, there are some indications of PRC-promoted norms shaping African state actions.¹⁸¹ Discourse echoing China-backed human rights norms further suggests internalization, as do PRC-style cyber laws.¹⁸² While some of this rhetoric may simply be telling China what it wants to hear, that alone cannot account for anecdotal evidence that many African elites feel genuinely warm toward China's approach to human rights¹⁸³ and for scholars subscribing to PRC-style norms in their academic writing.¹⁸⁴ The normative seeds sown by China have germinated and are taking root in Africa.

First, the embrace of PRC-style human rights norms by some prominent African academics indicates *social* internalization.¹⁸⁵ China's vision has probably not saturated African societies as a whole.¹⁸⁶ But that is no surprise because China's normfare targets elites rather than the public.¹⁸⁷ Accordingly, a significant contingent of African academics has endorsed China's version of human rights, often after participating in PRC-sponsored interactions. For example, Michael Njunga Mulikita, Dean of the School of Social Sciences of Zambia's Mulungushi University, participated in the 2019 SSHRF.¹⁸⁸ There, he linked China's Belt and Road Initiative to African development goals and in the process argued that "[d]eveloping countries should resist pressures from advanced countries to force them into prioritizing certain rights at the expense of [the right

178. Yee, *supra* note 35, at 70 ("[S]ince causes are usually multiple and indeterminate (i.e., nonnomic, contingent, and likely) in the social world, ideation is generally only one of many probable and partial causes of policies.").

179. *Id.* at 77.

180. *Id.* at 79–80.

181. See *infra* note 198.

182. See *infra* notes 208–212 and accompanying text.

183. See *infra* note 193 and accompanying text.

184. See *infra* notes 189–193 and accompanying text.

185. See *supra* note 34 and accompanying text.

186. See Josephine Appiah-Nyamekye Sanny & Edem Selormey, *Afrobarometer, Africans Regard China's Influence as Significant and Positive, but Slipping 2* (2020), https://afrobarometer.org/sites/default/files/publications/Dispatches/ad407-chinas_perceived_influence_in_africa_decreases-afrobarometer_dispatch-14nov20.pdf [<https://perma.cc/Y52M-CFHW>] (finding that "China trails the United States as Africans' preferred development model (32% vs. 23%), followed by former colonial powers and South Africa (11% each)").

187. See Benabdallah, *Power of Influence*, *supra* note 157, at 95 (arguing that "China's influence (and by extension power) in Africa comes not so much from Chinese investments in physical buildings . . . as much as it is produced and manufactured through the creation of expertise and elite capture").

188. Michael Njunga Mulikita, *The Right to Development (RTD): Building Synergies Between One Belt and One Road (OBOR) Initiative and Agenda 2063*, *China Hum. Rts.* (Dec. 13, 2019), <http://www.chinahumanrights.org/html/Features/08/5/3/2019/1213/14283.html> [<https://perma.cc/4V9N-A5C6>].

to development].”¹⁸⁹ Another scholar who participated in the 2019 SSHRF is Carol Chi Ngang.¹⁹⁰ He has argued for prioritizing “the collective rather than the individualistic conception of human rights” based on the model of China,¹⁹¹ asserted that “political development” does nothing to advance the right to development,¹⁹² and rejected Western-style paradigms of human rights that stress civil and political rights.¹⁹³ While it is difficult to assess how much traction such views have, anecdotal evidence suggests they may be widespread and sincere among elites.¹⁹⁴ Moreover, academics can be force multipliers for the PRC’s views on human rights—Mulikita, for instance, teaches courses in human rights to the next generation of African leaders.¹⁹⁵ Thus, the social internalization of academics has the potential to fuel internalization in society at large.

Second, African state behavior suggests *political* internalization.¹⁹⁶ PRC-backed norms have gained currency among some African political elites and may be influencing government policies and UN votes. FOCAC summits, for instance, generate “Action Plans” according to which African states are to implement cooperation based on the principles enunciated

189. Id. Mulikita has also taken a stand against the Western focus on human rights in Africa. Cao Desheng & Zhou Jin, *Nation’s Wisdom Promotes Human Rights Cause*, *China Daily* (Dec. 11, 2019), <https://www.chinadaily.com.cn/a/201912/11/WS5deffb8ea310cf3e3557d42d.html> [<https://perma.cc/GDJ8-V2QP>] (stating Mulikita’s view that “the human rights narrative has been used by dominant developed countries to impose their own agenda on developing countries for political reasons”).

190. Carol Chi Ngang, *S.-S. Hum. Rts. F. Portal* (Dec. 8, 2019), http://p.china.org.cn/2019-12/08/content_75490604.htm [<https://perma.cc/4ZLM-WE5V>].

191. Carol Chi Ngang, *Radical Transformation and a Reading of the Right to Development in the South African Constitutional Order*, 35 *S. Afr. J. on Hum. Rts.* 25, 37, 48 (2019).

192. Carol Chi Ngang, *Systems Problem and a Pragmatic Insight Into the Right to Development Governance for Africa*, 19 *Afr. Hum. Rts. L.J.* 365, 380 (2019).

193. Carol Chi Ngang, *Towards a Right-to-Development Governance in Africa*, 17 *J. Hum. Rts. (China)* 107, 108, 110 (2017).

194. According to Ian Taylor, a distinguished scholar on Sino-Africa relations: “[I]t is quite noticeable these days how touchy many African intellectuals are to any criticism of China and/or the suggestion that China is possibly *not* the savior of Africa, often defending Beijing’s record on human rights within the African context.” Taylor, FOCAC, *supra* note 76, at 100. Indeed, admiration for China’s approach to development has currency among many African intellectuals. See Ndubisi Obiorah, Darren Kew & Yusuf Tanko, “Peaceful Rise” and Human Rights: China’s Expanding Relations With Nigeria, *in* *China Into Africa: Trade, Aid, and Influence* 272, 288 (Robert I. Rotberg ed., 2008) (“Many in African intellectual and political circles are impressed by China’s seeming geometric economic progress This success, often attributed to China’s state-led development model, has . . . encouraged many Africans to look to East Asia for political and economic models.”).

195. See Michael Njunga Mulikita, *Curriculum Vitae, Dokumen*, <https://dokumen.tips/documents/name-dr-njunga-michael-mulikita-date-of-iag-agiorgiag-agiorgimgpdfcurriculum.html> [<https://perma.cc/H6GV-G73G>] (last visited Oct. 13, 2021).

196. See *supra* note 34 and accompanying text.

at the summits.¹⁹⁷ Indeed, some scholars conclude that FOCAC norms are changing African states' behavior.¹⁹⁸ Moreover, certain African leaders echo China on the right to development¹⁹⁹ and African votes have supported Chinese resolutions at the HRC.²⁰⁰ In addition, many African states—including Muslim-majority ones—have refrained from criticizing China's genocide in Xinjiang, which may suggest the internalization of a very robust norm of noninterference.²⁰¹ Even if states are motivated by the practical desire to not offend the PRC, over time officials may internalize their own articulations of this absolutist view of sovereignty and noninterference. Nor is internalization limited to national leaders. Junior and mid-level party and government officials, including those with a human rights remit, have spoken fondly of China's human rights approach.²⁰² China's

197. See Contessi, *supra* note 109, at 426–27 (observing that one of the ways FOCAC promotes international norms is through “the effect of actual cooperation based on those very principles [enunciated in Declarations and Action Plans]”).

198. E.g., Jones, *supra* note 46, at 257 (“[W]ithin some African states, the experiences of FOCAC are then shaping how those states approach relations with other development agencies and actors. Furthermore, the FOCAC is shaping how African states respond and deal with each other, as well as how they respond to other actors.”); Contessi, *supra* note 109, at 430 (“In terms of implicit concepts that can be drawn from the patterns of cooperation, and the policy practices towards one another of the FOCAC members, there is . . . a strong, expanded, notion of sovereignty, as signalled by the mutual endorsement over the respective positions and attitudes on Taiwan or Darfur.”).

199. See, e.g., Hodzi, *African Political Elites*, *supra* note 156, at 899 (“[I]n Rwanda, President Kagame has justified his authoritarian leadership as necessary to achieve economic development—just as the CPC does in China.”); Mwangagwa's Chinese Dream Invites Scorn, Sparks ‘Dictatorship’ Fears, *Standard* (Apr. 8, 2018), <https://thestandard.newsday.co.zw/2018/04/08/mwangagwas-chinese-dream-invites-scorn-sparks-dictatorship-fears/> [<https://perma.cc/3RND-8MQX>] (citing Zimbabwean President Emmerson Mnangagwa's announcement that he wanted to implement socialism with Zimbabwean characteristics, inspired by the Chinese development model).

200. See Piccone, *supra* note 3, at 8–14.

201. See Dickens Olewe, *Why African Countries Back China on Human Rights*, *BBC* (May 2, 2021), <https://www.bbc.com/news/world-africa-56717986> [<https://perma.cc/L86U-SY7W>] (observing that many African states have publicly refused to criticize China for human rights abuses in Xinjiang and elsewhere); see also *Western Hype About Xinjiang an Unprovoked Attack on China: African Ambassadors*, *Xinhua* (Mar. 16, 2021), http://www.xinhuanet.com/english/2021-03/16/c_139814305.htm [<https://perma.cc/59F8-K2CU>] (claiming African ambassadors have accused Western states of “using Xinjiang-related issues as an excuse to attack China and interfere in China's internal affairs in an attempt to undermine China's development”).

202. E.g., Benabdallah, *SSHRF*, *supra* note 113 (reporting that the Director of Political Affairs of Kenya's Jubilee Party attended the 2019 SSHRF and “stated that there are many lessons for Kenya to learn from China's development-centered Human Rights model”); see also Boniface Lezona: *Path of Human Rights Development in the Background of the Diversity of Civilization*, *China Soc'y for Hum. Rts. Stud.* (Feb. 20, 2020), http://www.chinahumanrights.org/html/2020/PAPERS_0220/14742.html [<https://perma.cc/28TL-P9CG>] (citing a Congolese human rights official as saying that “[t]he Republic of the Congo would like to profit from China's experience to promote the right to life, being aware that if there is no peace, there is no development”); *Trip to Hangzhou Inspires Ideas of South-South Human Rights Development*, *Hangzhoufeel* (Dec. 10, 2019), <https://>

normfare appears, therefore, to have succeeded in causing at least some African political leaders to internalize aspects of China's illiberal model of human rights.

Third, the fact that several African states have adopted PRC-inspired cyber statutes suggests *legal* internalization.²⁰³ Granted, review of English-language African case law does not indicate that courts are drawing on PRC-promoted norms. To the contrary, in *Ngugi v. Attorney-General*, for instance, the petitioners argued for Kenya to “defend its sovereignty” by withdrawing from the proceedings before the International Court of Justice in the Somalia–Kenya maritime boundary case.²⁰⁴ In support, they pointed to China's defiance of the Permanent Court of Arbitration in its dispute with the Philippines.²⁰⁵ Yet the High Court of Kenya rejected this argument.²⁰⁶

Nor does it appear that any African states have introduced legislation explicitly codifying PRC-promoted norms. However, norms are general standards of behavior rather than specific prescriptions for action.²⁰⁷ As a result, PRC-backed norms relating to sovereignty, noninterference, anti-universality, and the prioritization of development do not necessarily lend themselves to explicit codification in domestic law. Yet they may nonetheless inform legislation. For instance, several African states have introduced repressive cyber statutes and regulations²⁰⁸ modeled on China's approach to government control of the internet²⁰⁹ and possibly instigated by China's

h5.newaircloud.com/detailArticle/9825137_32658_hzxw.html [https://perma.cc/5UJD-DD39] (quoting Germain Mbega Ebang, Research Fellow at the Human Rights Directorate of Gabon's Ministry of Justice) (“In the field of human rights, China is a good example for Gabon . . .”); supra notes 172–173 and accompanying text.

203. See supra note 34 and accompanying text.

204. *Ngugi v. Attorney-General*, [2020] eK.L.R. paras. 1–4, 20 (Kenya), <http://kenyalaw.org/caselaw/cases/view/189050> [https://perma.cc/X47G-GMTY].

205. *Id.* para. 26.

206. *Id.* paras. 91–93.

207. Krasner, supra note 8, at 186.

208. See Cybercrimes Act, 2015 (Act. No. 14/2015) (Tanz.) (providing for various cyber-related offenses); Uganda Communications (Amendment) Act, 2016 (Act. No. 2/2016) (Uganda) (removing the requirement of parliamentary approval for regulations proposed by the information and communications technology ministry); Cyber-Crime and Cyber-Security Act, 2017, cl. 17 (Zim.) (criminalizing online communication of falsehoods); Electronic and Postal Communications (Online Content) Regulations 2018, GN. No. 133, art. 12 (Tanz.) (prohibiting online content services providers from publishing a range of content that “causes annoyance . . . or leads to public disorder,” “that may threaten national security or public health and safety,” or that is “false”); see also Protection From Internet Falsehoods and Manipulation and Other Related Matters Bill 2019, Sen. Bill [132] cl. 3 (Nigeria) (proposing to prohibit statements deemed to be false and “prejudicial to the security of Nigeria” or to “diminish public confidence” in the government).

209. William Gravett, Digital Neo-Colonialism: The Chinese Model of Internet Sovereignty in Africa, 20 Afr. Hum. Rts. L.J. 125, 138–40 (2020) (discussing how China's model for managing the internet greatly influenced the Nigerian, Tanzanian, and Zimbabwean laws).

influence activities.²¹⁰ China's model of "internet sovereignty"²¹¹ reflects its authoritarian conception of human rights as entailing a strong state furthering what it deems the collective good, at the expense of individual freedoms.²¹² Therefore, the fact that several African states are moving toward the PRC's repressive internet policies suggests that China's human rights normfare is already beginning to bear fruit.

III. WHAT IS TO BE DONE?

China's human rights normfare threatens to fuel the development of an authoritarian form of international law while furthering the construction of an illiberal world order dominated by the PRC. To reduce these risks, China's normfare must not be allowed to succeed. In particular, the United States should leverage its global leadership role to frustrate China's strategy while implementing its own normfare to advance liberal human rights norms.

A. *What Is at Stake*

The PRC's human rights normfare may propel two radical trends: the construction of an alternative, authoritarian international law and the furtherance of an illiberal, Sinocentric global order. First, as PRC-backed norms are codified in treaties or custom, or embodied in soft law instruments, they may splinter the international human rights regime²¹³ and contribute to the rise of "authoritarian international law." Tom Ginsburg defines this concept as "legal rhetoric, practices, and rules specifically designed to extend the survival and reach of authoritarian rule across space and/or time."²¹⁴ Authoritarian international law is driven by pro-authoritarian norms,²¹⁵ such as the PRC's human rights norms.²¹⁶ In Africa

210. Adrian Shahbaz, *Freedom on the Net 2018: The Rise of Digital Authoritarianism*, Freedom House (2018), <https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism> [<https://perma.cc/LF5M-4JJU>] ("Increased activity by Chinese companies and officials in Africa similarly preceded the passage of restrictive cybercrime and media laws in Uganda and Tanzania over the past year."); Sam Sacks, *Beijing Wants to Rewrite the Rules of the Internet*, Atlantic (June 18, 2018), <https://www.theatlantic.com/international/archive/2018/06/zte-huawei-china-trump-trade-cyber/563033/> [<https://perma.cc/7N26-9DLL>] (observing that Tanzania's restrictive cyber law and regulations "have been informed by technical assistance from the Chinese government").

211. Gravett, *supra* note 209, at 128–31.

212. See *supra* notes 84–91 and accompanying text.

213. See Burke-White, *supra* note 74, at 6 (arguing that global power shifts, including the rise of China are contributing to international law taking on a more pluralistic, "multi-hub" structure).

214. Tom Ginsburg, *Authoritarian International Law?*, 114 *Am. J. Int'l L.* 221, 228 (2020) (emphasis omitted).

215. *Id.* at 231.

216. See *supra* notes 87–91 and accompanying text.

and elsewhere, authoritarian international law may facilitate the divergence of international law across regime types while stabilizing existing authoritarian regimes, encouraging the development of new ones,²¹⁷ and even inducing the retreat of liberal states from liberal norms.²¹⁸

Second, China's human rights normfare may further its efforts to bring about a new world order. Human rights is only one of several domains in which China is attempting to reshape international norms.²¹⁹ China's revolutionary norm entrepreneurship strikes at the foundations of the liberal world order²²⁰ and may facilitate the PRC's efforts to build a more Sinocentric, illiberal, and authoritarian order,²²¹ with a diminished role for conventional notions of human rights.²²² In a sense, China would turn back the clock to a Westphalian international legal order in which states, but not individuals, have rights and obligations and may treat their citizens as they see fit.²²³ This would also be a world with reduced U.S. influence,²²⁴

217. Ginsburg, *supra* note 214, at 225.

218. *Id.* at 259.

219. See, e.g., Martha Finnemore & Duncan B. Hollis, Constructing Norms for Global Cybersecurity, 110 *Am. J. Int'l L.* 425, 437 (2016) (describing Chinese attempts to shape cybersecurity norms); Marc Lanteigne, 'Have You Entered the Storehouses of the Snow?' China as a Norm Entrepreneur in the Arctic, 53 *Polar Rec.* 117, 117 (2017) (arguing that China is acting as a norm entrepreneur in the Arctic).

220. See Chen & Hsu, *supra* note 93, at 243 ("[T]he China-backed illiberal multilateralism is bound to pose a formidable challenge to the liberal foundation of contemporary international normative order." (citations omitted)).

221. See Doshi, *supra* note 48, at 4 (arguing that China will deploy "[a] fully realized Chinese order" "in ways that damage liberal values . . . [and that] China's order-building would be distinctly illiberal relative to US order-building").

222. See *id.* at 301–02 (arguing that features of the international system that are products of American power include "the presumption that states . . . should not engage in . . . nakedly illiberal behavior"); Piccone, *supra* note 3, at 8 (arguing that Chinese human rights efforts at the UN "represent a potential pivot away from 70 years of international efforts to institutionalize human rights as the third pillar of the U.N. system"). That is not to say, however, that China would abrogate every important aspect of the liberal international order, such as the liberalization of trade. See Jones, *supra* note 46, at 250.

223. See Stephen Hopgood, *The Endtimes of Human Rights XIII*, at 166 (2013) (predicting, partly as a result of the rise of China, "a *neo-Westphalian* world . . . of renewed sovereignty, resurgent religion, globalized markets, and the stagnation or rollback of universal norms about human rights"); Stephen M. Walt, *The World Might Want China's Rules*, *Foreign Pol'y* (May 4, 2021), <https://foreignpolicy.com/2021/05/04/the-world-might-want-chinas-rules/> (on file with the *Columbia Law Review*) ("China's preferred world order is essentially Westphalian. It emphasizes territorial sovereignty and noninterference, embraces a world where many different political orders exist, and privileges the (supposed) needs of the collective (such as economic security) over the rights or freedoms of the individual.").

224. Yan, *supra* note 63, at 40 ("China believes that its rise to great-power status entitles it to a new role in world affairs—one that cannot be reconciled with unquestioned U.S. dominance.").

one that is more multipolar and thus arguably more unstable.²²⁵ Yet by generally failing to effectively confront the PRC on its interpretations of human rights, the international community has enabled China's efforts.²²⁶

B. *Counter-Normfare*

Confronting China's human rights normfare is a task for a range of actors. Non-state actors have a key role to play in disseminating information on the PRC's human rights abuses and countering illiberal human rights norms by pushing for liberal readings of human rights norms. Yet the main burden must be taken up by the United States. This may risk turning China's assault on human rights into yet another theater of great power rivalry. But of the nations that do not share China's oppressive vision, the natural leader is the United States.

America also has a powerful strategic rationale to blunt China's order-building,²²⁷ including in the human rights realm.²²⁸ Indeed, U.S. policy-makers are in consensus on the need to check China's rise,²²⁹ and President Joseph R. Biden has, at least rhetorically, placed human rights at the center of American foreign policy.²³⁰ Applying Doshi's general framing for U.S. policy toward China, an effective U.S. policy response to China's

225. See Kenneth N. Waltz, *Theory of International Politics* 170–72 (1979) (arguing that multipolar systems tend to be less stable than bipolar systems); see also John J. Mearsheimer, *The Tragedy of Great Power Politics* 335 (2001) (same).

226. See Chen, *China's Challenge*, *supra* note 3, at 1213 (“[A]s scholars observe, the international community has not openly and effectively confronted China regarding these views, allowing the government much space to sustain and expand its counter-discourse.” (footnote omitted)); see also Ahl, *supra* note 3, at 660 (“Most countries do not openly confront the Chinese government on its interpretation of human rights.”); Kinzelbach, *supra* note 3, at 332 (“China's statements at the UN must be recognized as influential. This is not least because most countries are increasingly hesitant to openly confront Beijing on human rights.”).

227. Doshi, *supra* note 48, at 317 (arguing for the United States to adopt a strategy of “blunting” Chinese power).

228. See Sarah H. Cleveland, *A Human Rights Agenda for the Biden Administration*, 115 *AJIL Unbound* 57, 57 (2021) (“Given the new rivalry with China . . . there is a new strategic rationale for reengagement on human rights.”).

229. See Jessica Chen Weiss, *A World Safe for Autocracy? China's Rise and the Future of Global Politics*, *Foreign Affs.* (July/Aug. 2019), <https://www.foreignaffairs.com/articles/china/2019-06-11/world-safe-autocracy> (on file with the *Columbia Law Review*) (“In Washington, the pendulum has swung from a consensus supporting engagement with China to one calling for competition or even containment in a new Cold War, driven in part by concerns that an emboldened China is seeking to spread its own model of domestic and international order.”).

230. E.g., Joseph R. Biden, President, U.S., *Remarks by President Biden at the Dedication of the Dodd Center for Human Rights* (Oct. 15, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/15/remarks-by-president-biden-at-the-dedication-of-the-dodd-center-for-human-rights/> [<https://perma.cc/555Z-U3EL>] (“[F]rom day one of my administration, I've taken concrete steps to put human rights back at the center of our foreign policy and reassert our moral leadership on the global stage . . .”).

human rights normfare would aim to *blunt* its efforts while *building* a more resilient liberal human rights regime.²³¹

One element of a U.S. response should be to *blunt* the effects of the PRC's human rights normfare. The United States should work to frustrate China's attempts to co-opt international bodies. For instance, now that the United States has rejoined the HRC,²³² it ought to guard that institution against becoming a clearinghouse for illiberal norms.²³³ Similarly, the United States should participate in other multilateral institutions²³⁴ to stymie China's efforts to manipulate them.

In terms of discourse, the United States should rebut the PRC's charge that mainstream human rights doctrine merely reflects Western values by encouraging liberal democracies elsewhere in East Asia or the Global South, such as Japan, South Korea, and Botswana,²³⁵ to take more of a leadership role in international human rights settings. In addition, the United States should consistently provide the global public with evidence of how profoundly China's conduct diverges from liberal norms and even the party-state's own professed values. Doing so might disrupt the transnational legal process by undermining the credibility and attractiveness of PRC-backed norm entrepreneurs. Though the United States already does this to some extent, such as by highlighting repression in Xinjiang,²³⁶ it should do so more regularly and forcefully. At all times, of course, the United States must take great care to avoid contributing to anti-Chinese or anti-East Asian bigotry. Finally, Washington should continue to support civil society groups and human rights defenders abroad as a counterweight to actors who have internalized illiberal PRC norms.

The other element of a U.S. response should be to *build* a more resilient liberal human rights regime. The United States could complicate the

231. See Doshi, *supra* note 48, at 313 (“[A] competitive strategy will involve not only efforts to blunt Chinese order, but also efforts to rebuild the foundations of US order.”).

232. Rick Gladstone, U.S. Regains Seat at U.N. Human Rights Council, 3 Years After Quitting, *N.Y. Times* (Oct. 14, 2021), <https://www.nytimes.com/2021/10/14/world/un-us-human-rights-council.html> (on file with the *Columbia Law Review*).

233. See *supra* notes 124–125 and accompanying text.

234. See Cleveland, *supra* note 228, at 59 (arguing that the Biden Administration should “reengage in promoting human rights through” institutions the Trump Administration attacked, such as the UN Human Rights Council; the UN Education, Scientific, and Cultural Organization; the UN Population Fund; and the International Criminal Court).

235. Countries and Territories, Freedom House, <https://freedomhouse.org/countries/freedom-world/scores?sort=asc&order=Total%20Score%20and%20Status> [<https://perma.cc/HMY7-8SXE>] (last visited Jan. 1, 2022).

236. E.g., 2020 Report on International Religious Freedom: China—Xinjiang, U.S. Dep’t of State (May 12, 2021), <https://www.state.gov/reports/2020-report-on-international-religious-freedom/china/xinjiang/> [<https://perma.cc/94D9-2QL4>].

PRC's attempts to subvert the liberal world order by making it more inclusive of developing states and reinforcing its rules and institutions.²³⁷ The United States should also increasingly engage in normfare of its own, fostering interactions, enunciating liberal readings of international human rights norms, and guiding transnational actors to internalize such positions. Given its global influence, soft power, and relationships with other states, the United States is well positioned to execute a strategy of counter-normfare. Indeed, human rights counter-normfare could flow from existing projects, such as the Presidential Initiative for Democratic Renewal, a \$424.4 million bundle of policy and foreign assistance initiatives announced by President Biden.²³⁸ The State Department and other U.S. government entities should use such programs to foster interactions among foreign activists, officials, and scholars that produce liberal interpretations of human rights norms.

And just as the PRC has created platforms such as FOCAC and the SSHRF, the United States should create new multilateral fora to catalyze interaction, interpretation, and internalization. For instance, the December 2021 Summit for Democracy, which placed human rights promotion as one of its three themes,²³⁹ should be turned into a recurring antidote to PRC-dominated fora such as FOCAC and the SSHRF. To compete with China, the United States must make the liberal order appeal to developing states. To enhance the attractiveness of its favored institutions relative to PRC-backed ones, the United States should ensure they are genuinely participatory, focused on forging consensus within certain bounds, rather than just ratifying preexisting U.S. positions. More broadly, the United States must recognize that developing countries are not pawns in a game between great powers but rather sovereign states with their own values and interests. Therefore, for U.S. counter-normfare to succeed, the United States should avoid patronizing or co-opting these states. Unlike China, it should treat them as true partners.

237. See Ikenberry, *Rise of China*, *supra* note 51, at 24–25, 34–35 (arguing that the United States “must work to strengthen the rules and institutions that underpin [the liberal world] order—making it even easier to join and harder to overturn,” including by making it more inclusive of ascendant powers); see also Robert D. Williams, Brookings Inst., *International Law With Chinese Characteristics: Beijing and the ‘Rules-Based’ Global Order 1–2* (2020), https://www.brookings.edu/wp-content/uploads/2020/10/FP_20201012_international_law_china_williams.pdf [<https://perma.cc/J236-WYUC>] (“In response to the China challenge, the United States, in concert with allies and partners, should reengage clear-eyed with international law in an effort to shape rules that are more robust and more effectively enforced in the coming era—however difficult that may be.”).

238. Fact Sheet: Announcing the Presidential Initiative for Democratic Renewal, The White House (Dec. 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/09/fact-sheet-announcing-the-presidential-initiative-for-democratic-renewal/> [<https://perma.cc/R68G-3S7P>].

239. The Summit for Democracy, U.S. Dep’t of State, <https://www.state.gov/summit-for-democracy/> [<https://perma.cc/4N4F-AFJ2>] (last visited Nov. 26, 2021).

Accordingly, the United States should continue to promote a liberal view of human rights, while being open-minded enough to accommodate the views of developing states. On the right to development, for instance, the United States should make the case to African leaders, academics, and ordinary people that there need not be a trade-off between development and other rights. As evidence, the United States can point to Taiwan as a place that has outpaced mainland China in economic development²⁴⁰ while also functioning as a liberal democracy respectful of universal notions of human rights.²⁴¹ To gain greater credibility with developing and non-Western states, the United States should consider adjusting its positions on certain human rights issues,²⁴² such as by signaling greater respect for economic, social, and cultural rights. The United States can back up its rhetoric by ensuring the G7's "values-driven" developing-world infrastructure investment scheme²⁴³ proves to be a credible alternative to China's Belt and Road Initiative. This may be feasible as Chinese investment in Africa ebbs.²⁴⁴ Finally, the United States should, like China, frame its normative arguments within a broader, positive vision of the world it wants to achieve.

CONCLUSION

China's human rights normfare, as demonstrated by the African case study presented here, matters for several reasons. From a theoretical point of view, it undermines any teleological notion of human rights as necessarily guiding the world toward ever-greater justice, while underscoring that international human rights law—and indeed international law generally—is inherently contested by actors and influenced by geopolitics. From a policy perspective, PRC normfare is a serious challenge for democracies, civil society organizations, and anyone who feels threatened by the rise of

240. For example, Taiwan's real GDP per capita (estimated at \$24,502 in 2018) is substantially higher than that of the PRC (estimated at \$16,400 in 2020). The World Factbook: Real GDP Per Capita, CIA, <https://www.cia.gov/the-world-factbook/field/real-gdp-per-capita/country-comparison/> [<https://perma.cc/JC22-3WDH>] (last visited Dec. 27, 2021).

241. See Krumbein, *supra* note 102, at 867 ("Whereas human rights are not part of the PRC's identity, human rights have become an integral part of the identity of Taiwan's democracy.")

242. See Cleveland, *supra* note 228, at 61 ("Some U.S. positions on human rights may warrant reconsideration if the United States is to be an effective leader in alliance with others, including the extraterritorial application of human rights treaties, and economic, social, and cultural rights." (footnote omitted)).

243. FACT SHEET: President Biden and G7 Leaders Formally Launch the Partnership for Global Infrastructure and Investment, The White House (June 26, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/26/fact-sheet-president-biden-and-g7-leaders-formally-launch-the-partnership-for-global-infrastructure-and-investment/> [<https://perma.cc/L8A2-97LQ>].

244. Africa's Ties to China and the West Are Starting to Look More Alike, *supra* note 141.

China and the prospect of a Sinocentric world order. But the most important implication is the most direct one: China's human rights normfare poses a grave threat to the international human rights system.

By spreading an illiberal, authoritarian "human rights" doctrine, China's leadership seeks to use international law to prop up authoritarian regimes and undermine human rights defenders. If human rights are a beacon of hope, China would keep the torch but make the flame shine with "[n]o light, but rather darkness visible."²⁴⁵ It must not succeed.

245. John Milton, *Paradise Lost* bk. I, at l. 64 (Stephen Orgel & Jonathan Goldberg eds., Oxford Univ. Press 2008) (1674).

