



CHINA IN CONTEXT AND PERSPECTIVE

## The Human Rights Council Advisory Committee A new tool in China's anti-human rights strategy

Andréa Worden

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### Introduction and background

In the first two resolutions the PRC sponsored and shepherded through to adoption in the Human Rights Council (June 2017 and March 2018), a request was included for the HRC's Advisory Committee (HRCAC)—the Council's "think tank"—to conduct a study relating to the topic of the resolution. The subject of the June 2017 resolution was "the contribution of development to the enjoyment of all human rights",<sup>1</sup> and China's follow-on resolution dealt with "promoting mutually beneficial cooperation in the field of human rights."<sup>2</sup> These "studies" were not academic exercises, but rather, with the PRC member of the obscure HRCAC chairing the drafting groups for both studies, a means to further entrench the Chinese Party-state's human rights agenda and discourse into the work of the HRC. They encapsulate the PRC's effort to dramatically change the orientation of UN human rights mechanisms and norms to reflect the CCP's view of state-led development as the paramount "right" to be implemented through state-to-state cooperation, with no meaningful room for individual rights holders, and an increasingly narrow space for civil society globally. Non-interference and a "criticism-free" approach to human rights—human rights as a subject of "mutually beneficial cooperation" (MBC)—is precisely what China and many other governments seek. These two resolutions, and the studies they've spawned, provide additional momentum for the regressive human rights policy of the PRC Party-state and its friends.

The Advisory Committee submitted its report on the "contribution of development" to the HRC at its recent 41st session (which concluded July 12), and the Council adopted a new resolution on the same topic. Also in July, a draft of the study called

\*Paper presented at the workshop "Mapping China's footprint in the world II", Prague, July 2019.

<sup>1</sup>Andrea Worden, *China Pushes 'Human Rights With Chinese Characteristics' at the UN*, China Change, October 9, 2017. Resolution adopted by the Human Rights Council on June 22, 2017, Res. 35/21. "The contribution of development to the enjoyment of all human rights," A/HRC/RES/35/21. 7 July 2017, operative para. 6: "Requests the Advisory Committee to conduct a study on the ways in which development contributes to the enjoyment of all human rights by all, in particular on best experiences and practices, and to submit the report to the Human Rights Council before its forty-first session." ("Contribution of Development" resolution.)

<sup>2</sup>Andrea Worden, *With Its Latest Human Rights Council Resolution, China Continues Its Assault on the UN Human Rights Framework*, China Change, April 9, 2018. Resolution adopted by the Human Rights Council on March 23, 2018, Res. 37/23. "Promoting mutually beneficial cooperation in the field of human rights," A/HRC/RES/ 37/23, April 6, 2018 ("MBC Resolution"). The US called for a vote on the MBC Resolution, which was adopted by a vote of 28 in favor, 1 country opposed (the US), and 17 abstentions.



for by the MBC resolution—a report on “the role of technical assistance and capacity-building in fostering mutually beneficial cooperation in promoting and protecting human rights”—became publicly available,<sup>3</sup> as did stakeholder submissions for that study.<sup>4</sup>

Given that the Advisory Committee members are purportedly independent experts, it is a bit curious that Liu Xinsheng 刘昕生, a veteran diplomat and official in the PRC Ministry of Foreign Affairs, chaired both of the studies emanating from the PRC-initiated resolutions. The “studies” and China’s lengthy submissions highlight where China is headed in “setting the agenda” and its reframing of global human rights discourse and governance—an agenda featuring state-led development as the paramount “right,” and cooperation, dialogue, and respect for state sovereignty as the primary means for achieving human rights. The PRC’s ultimate goal is, of course, “to build a community of shared future for humanity” (*goujian renlei mingyun gongtongti*)—a vague slogan and concept trumpeted by Xi Jinping that is intertwined with China’s Belt and Road Initiative (BRI).<sup>5</sup> Indeed, the HRCAC studies and China’s inputs provide additional insight into the Party-state’s efforts to ensconce the BRI into the work of the Human Rights Council as well as the UN’s 2030 Agenda for Sustainable Development, through its promotion of the right to development.<sup>6</sup>

## The Human Rights Council Advisory Committee

The Human Rights Council established the Advisory Committee (HRCAC) in 2007 to serve as the “think tank” of the HRC and work at its direction.<sup>7</sup> The HRCAC replaced the UN Sub-Commission on Human Rights,<sup>8</sup> a panel of human rights experts of the former Commission on Human Rights.<sup>9</sup> The HRCAC held its first meeting in August

<sup>3</sup>“Draft of the study on technical assistance and capacity building in fostering mutually beneficial cooperation in promoting and protecting human rights,” (draft report, July 8, 2019) prepared by Lazhari Bouzid, Rapporteur of the drafting group, A/HRC/AC/23/CRP.3, July 16, 2019.

<sup>4</sup>HRCAC webpage for MBC study mandate.

<sup>5</sup>See, e.g., “BRI aims to build community with shared future for mankind: Chinese ambassador to the U.S.,” Xinhua, April 24, 2019, last accessed July 28, 2019; Nadège Rolland, “Examining China’s ‘Community of Common Destiny,’” Power 3.0 Blog, January 23, 2018.

<sup>6</sup>Cf. Titus C. Chen, “A Flamboyant Mandarin in a Declining Liberal Order: China’s Revisionist Agenda in Global Human Rights Institutions,” June 12, 2019, 29-30. Chen notes that official PRC statements have “conveyed an intimate, mutually-reinforcing relationship between Beijing’s universalistic expression [*i.e.*, ‘community of shared future’] and the SDGs.” See also Andréa Worden, “The CCP at the UN: Redefining development and rights,” Sinopsis, March 17, 2019.

<sup>7</sup>Human Rights Council, “Institution-building of UN Human Rights Council,” A/HRC/Res/5.1, paras. 65-84, adopted 18 June 2007. Available on the [HRC website](#) as a Word document (click on “[Institution-building package](#)”).

<sup>8</sup>Anne Kent, *China, the United Nations, and Human Rights: The Limits of Compliance*, Philadelphia: University of Pennsylvania Press, 1999, 52 (noting that the UN Sub-Commission on Human Rights was the informal moniker of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities). The Sub-Commission on Human Rights recommended that the new Human Rights Council “should maintain a standing collegial body of independent experts.” See “[Report of the Sub-Commission on the Promotion and Protection of human rights on its fifty-eighth session](#)” (registration required), A/HRC.Sub.1/58/36, 11 September 2006, para. 67, A.1.

<sup>9</sup>Kent, *op. cit.*, p. 44. The Human Rights Council replaced the discredited Commission on Human Rights, which was widely considered to be ineffective and politicized. Barbara Crossette, “[A Disappointing Record: Will the new Human Rights Council take its mandate seriously?](#)” *America Magazine*, December 1, 2008, accessed June 22, 2019. The HRC replaced the Commission on Human Rights in an attempt to address those problems, with much hope placed on the then brand-new mechanism, the Universal Periodic Review. But



2008,<sup>10</sup> and meets twice a year, generally holding a one-week session in February and another in August.<sup>11</sup> Its main role is to produce studies as requested by the Council; unlike its predecessor body, the Committee has no authority to adopt resolutions or decisions.<sup>12</sup>

The HRCAC is comprised of 18 independent experts, apportioned to represent the five geographical regions of the UN.<sup>13</sup> The experts are nominated by governments and elected by the Council. They serve for a three-year term, and may be re-elected once for a second term. Three current members of the HRCAC who have leading roles in the two studies requested by China's resolutions, Liu Xinsheng (PRC), Mikhail Lebedev (Russian Federation), and Lazhari Bouzid (Algeria), are all serving a first term, which concludes September 30, 2019. They are thus eligible for re-election in the fall of 2019.<sup>14</sup>

The independence and impartiality of the HRCAC is stressed in the first rule of the HRCAC's Rules of Procedure: "The members of the Advisory Committee shall perform their duties with the requirements of independence and impartiality inherent to their office."<sup>15</sup> Despite these requirements of neutrality for its members, the Committee has been criticized as politicized and biased.<sup>16</sup> During the General Assembly-mandated five-year review of the work of the Human Rights Council in 2011, the views on the HRCAC split fairly evenly between liberal democracies and authoritarian states. The democracies that commented for the review recommended the Committee be abolished or replaced by a roster of individual experts who could be called upon as needed to conduct the studies requested by the Council. The authoritarian states that weighed in, including China, supported the status quo for the Advisory Committee and recommended no changes.<sup>17</sup> It appears that no significant changes were made to the HRCAC after the 2011 review.

the Council has also been criticized as politicized and for having the world's worst human rights abusers among its members. See, e.g., Robert Herman and Michael Gallagher, "With New Members, The UN Human Rights Council Goes from Bad to Worse," Freedom House Blog, November 19, 2018, accessed June 23, 2019.

<sup>10</sup>Human Rights Council, "Background information on the Advisory Committee."

<sup>11</sup>The two one-week sessions have been routinely held in February and August of each year. An exception is the 23rd session, which was held in late July 2019, see "Sessions."

<sup>12</sup>"Background information on the Advisory Committee."

<sup>13</sup>The 18 experts are apportioned as follows: 5 from African States; 5 from Asian States, 2 from Eastern European States, 3 from Latin American and Caribbean States, and 3 from Western European and Other States. "Background information..."

<sup>14</sup>See Advisory Committee website, "Members."

<sup>15</sup>"Rules of Procedure of the Human Rights Advisory Committee," A/HRC/AC/3/2, adopted 6 August 2009, Rule 1, see "Background Information..." under heading "Rules of Procedure HRCAC."

<sup>16</sup>See, e.g., Human Rights Council, "Report of the open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council," A/HRC/WG.8/2/1, pp. 84-89; Luisa Blanchfield, "The UN Human Rights Council: Issues for Congress," Congressional Research Service, RL33608 (Report number), November 15, 2011, p. 9; International Service for Human Rights (ISHR), "Advisory Committee discussing problematic study on traditional values and human rights," February 16, 2012.

<sup>17</sup>"Report of the open-ended intergovernmental working group...", pp. 84-86.



## Laying the foundation: The PRC's first resolution at the HRC, "The contribution of development to the enjoyment of all human rights"

China's June 2017 resolution titled "Contribution of development to the enjoyment of all human rights,"<sup>18</sup> which included a recognition of "the common aspiration to build a community of shared future for human beings," was the opening salvo in Xi Jinping's New Era's attack on the international human rights regime.<sup>19</sup> The resolution requested "the Advisory Committee to conduct a study on the ways in which development contributes to the enjoyment of all human rights by all, in particular on best experiences and practices."<sup>20</sup> The US, Germany, and other democracies raised objections to various parts of the resolution's text, arguing that the PRC distorted consensus language in relevant human rights instruments and inappropriately privileged development over human rights. Although the resolution was contentious and the study itself arguably unnecessary given the concentrated focus throughout the UN on the human rights-based 2030 Agenda for Sustainable Development,<sup>21</sup> China's resolution was adopted by a recorded vote of 30 in favor to 13 opposed, with 3 abstentions.<sup>22</sup>

## The Advisory Committee study on the contribution of development to the enjoyment of human rights

### Chair and Rapporteur of the Drafting Group

As with other studies requested by the Council, after China's 2017 resolution was adopted, the Advisory Committee formed a group to prepare the study requested by the resolution. The Rules of Procedure for the HRCAC are far from a model of transparency with respect to precisely how members are appointed to studies, but one factor that must be taken into account (in addition to equitable geographical distribution) is "the specialized knowledge of the members of the HRC Advisory Committee."<sup>23</sup> The HRCAC designated eight of its members as the drafting group to prepare the study requested in China's resolution; the drafting group then elected the member from China, Liu Xinsheng, to serve as the Chair, and the representative from Russia, Mikhail Lebedev, to serve as the Rapporteur.<sup>24</sup> Liu certainly had "specialized knowledge" relating to topic of this study, since its very existence was due to the PRC's resolution.

<sup>18</sup>Resolution adopted by the Human Rights Council on 22 June 2017, Res. 35/21. "The contribution of development to the enjoyment of all human rights," A/HRC/RES/35/21. 7 July 2017. See 钟声, 唱响 "发展促进人权" 理念, 《人民日报》, June 24, 2017.

<sup>19</sup>Worden, *With Its Latest Human Rights Council Resolution...*

<sup>20</sup>"Contribution of Development" resolution, operative para. 6.

<sup>21</sup>Worden, "The CCP at the UN..."

<sup>22</sup>"Contribution of Development" resolution. The 13 States that voted against the resolution include the U.S., Portugal, Slovenia, Switzerland, the U.K., Germany, Hungary, Japan, Latvia, the Netherlands, Albania, Belgium, and Croatia. The 3 abstentions were Korea, Georgia, and Panama.

<sup>23</sup>HRCAC Rules of Procedure, Rule 15.2.

<sup>24</sup>HRCAC, "Nineteenth session of the Human Rights Council Advisory Committee," "Report of the Advisory Committee on its nineteenth session," A/HRC/AC/19/2, September 18, 2017, Sec. 19/2, paras.1-2, 8th meeting, August 11, 2017.



Liu Xinsheng can hardly be considered an “independent expert.” Liu spent his career in the Ministry of Foreign Affairs (MFA), including previous stints at the UN in New York and Geneva, and from 2012 to 2016 served as the PRC Ambassador to Cyprus before retiring.<sup>25</sup> During his tenure as Ambassador to Cyprus, Liu penned an op-ed for the *Cyprus Mail* extolling the “open, inclusive and win-win nature” of the BRI.<sup>26</sup> Earlier he served as the Deputy Director General in the Department of External Security Affairs (涉外安全事务司) of the MFA.<sup>27</sup> And Mikhail Lebedev, for his part, is a high-level diplomat and academic,<sup>28</sup> whose “independence and impartiality” has been questioned by some in the NGO community.<sup>29</sup>

### Inputs and Sources for the Study

The HRCAC sought inputs for the study from a wide range of stakeholders, including States, national human rights institutions (NHRIs), NGOs, and relevant UN bodies. Submissions are listed and linked to on the Advisory Committee’s website; they include 16 States (including China), 12 NHRIs, two NGOs, and the UN Special Rapporteur on the Right to Development.<sup>30</sup> The HRCAC study contains a total of 39 footnotes; 19 of those notes include citations generated by the PRC Party-state, for example, the Chinese government’s own input to the Advisory Committee study, links to articles on the website of the China Society for Human Rights Studies (CSHRS), which Titus C. Chen recently described as “an integral component of the party-state’s external propaganda system,”<sup>31</sup> and citations (without links) to papers produced in conjunction with the first South-South Human Rights Forum (SSHFR),<sup>32</sup> a PRC initiative held in Beijing in 2017.<sup>33</sup> The articles, which are noted as available in the “paper collection prepared for the SSHRF” but with no indication of how to access the collection, were not formal inputs submitted for the study. Nevertheless, the chair and rapporteur of the drafting group apparently relied heavily on the SSHRF paper collection, which includes articles such as “The pacific (sic) alliance and one belt one road (sic) promoting human rights through economic freedom.”<sup>34</sup> The remaining 12 footnotes cite to

<sup>25</sup>岳怀让, 刘昕生即将卸任中国驻塞浦路斯大使, 澎湃新闻, June 23, 2016; “Xinsheng Liu (China)” CV, A/HRC/33/3.

<sup>26</sup>Liu Xinsheng, “Connecting Asia and Europe—China’s Silk Road Initiative and Cyprus,” *Cyprus Mail*, May 10, 2015, accessed June 18, 2019.

<sup>27</sup>See Ministry of Foreign Affairs, Department of External Security Affairs 涉外安全事务司. Liu served as Deputy Director General of the Department of External Security Affairs from the year it was created, 2004, until 2007. One of the Department’s primary functions is counter-terrorism and conducting investigations and formulating countermeasures for dealing with nontraditional security threats to Chinese diplomats and citizens abroad.

<sup>28</sup>Biographical Data, Dr. Mikhail Alexandrovich Lebedev, A/HRC/24/17.

<sup>29</sup>See Florian Irminger, “Human Rights Council Advisory Committee: Is Ziegler the problem?” Medium, September 27, 2012, accessed June 17, 2019. The Russian Federation, like China, has a problematic track record at the Human Rights Council as a whole, and in the Advisory Committee. In March 2011, a divisive resolution (adopted by vote, 23-22) on traditional values and human rights led by the Russian Federation requested a study from the Advisory Committee. The Russian representative on the HRCAC served as the rapporteur of the drafting group. NGOs and States launched a forceful counterattack on the biased, one-sided draft study. See International Service for Human Rights (ISHR), “Advisory Committee to consider latest draft of study on human rights and traditional values,” July 31, 2012, accessed June 17, 2019.

<sup>30</sup>See webpage for the mandate, “Contribution of development to the enjoyment of all human rights,” for list of and links to stakeholder submissions, (i.e., responses received by the HRCAC to call for inputs).

<sup>31</sup>Chen, “*op. cit.*”

<sup>32</sup>“South-South Human Rights Forum calls for protection of people’s right to development,” Xinhua, December 8, 2017.

<sup>33</sup>South-South Human Rights Forum Portal.

<sup>34</sup>HRCAC Study, *op. cit.*, para. 21, note 9.



inputs from other stakeholders, but many formal submissions appear to have been ignored.<sup>35</sup>

### **The First South-South Human Rights Forum (2017) and a “Comprehensive Southern Vision on Human Rights”**

The submissions from China and the inaccessible CCP-friendly papers that emanated from the SSHRF are cited to support the Party-state’s view that development trumps rights, and that, contrary to established international human rights norms, the primary subject of rights, including the right to development, is first and foremost states, rather than individuals as rights holders.<sup>36</sup> This view contravenes the Declaration on the Right to Development (among other human rights instruments), which clearly identifies “the human person” as “the central subject of development [...] and beneficiary of development.”<sup>37</sup> According to the Office of the High Commissioner for Human Rights (OHCHR), the right to development does not occupy a position above other rights, but rather, is “a human right on a par with all other human rights. It is neither an all-encompassing ‘super right,’ nor a highly restricted ‘mini right,’ but rather an equal right among the universal, inalienable, interrelated, interdependent and indivisible human rights.”<sup>38</sup> The PRC has challenged this view in its white papers, submissions to UN human rights mechanisms, and resolutions introduced in the HRC, and now in this China-chaired study, which— while quoting consensus language on the universality and nonhierarchical nature of rights—nevertheless proceeds to privilege the right to development above all other rights.

The 2017 South-South Human Rights Forum, subtitled “Building a Community of Shared Future for Human Beings: New Opportunities for South-South Human Rights Development,” produced the Beijing Declaration, which prioritizes the right to development together with the right to subsistence as “the primary basic human rights.”<sup>39</sup> In introductory text to the Declaration, the participants reportedly stressed:

President Xi Jinping’s proposal to build a community of shared future for human beings is a major concept which conforms to the trend of the times, fits the requirements of development, and reflects the pursuit of a new human social value. It has pointed out the direction for solving global problems, including human rights governance, and is a major ideological contribution made by China to promote the development and progress of human society.

<sup>35</sup>The study references inputs from Denmark, Spain, Italy, Germany, Syria, and several National Human Rights Institutions (e.g., Danish Institute for Human Rights, Commission of Human Rights of Tanzania, Commission of Human Rights of the Philippines, World Social Forum Health and Social Security, the NGOs Center African de Recherche Interdisciplinaire (CARI) and Associazione Comit  Papa Giovanni XXII, and the Special Rapporteur on the Right to Development. Other submissions were apparently ignored, including most of the NHRI contributions, and inputs from these States: Lebanon, Burkina Faso, Bahrain, Bolivia, Qatar, Bosnia and Herzegovina, Cuba, Iraq, Mexico, and Mauritius. See HRCAC Study, Mandate webpage and links to submissions.

<sup>36</sup>Worden, *With Its Latest Human Rights Council Resolution...*

<sup>37</sup>*Declaration on the Right to Development*, adopted by the UN General Assembly, resolution 41/128, December 4, 1986, art. 2.

<sup>38</sup>Office of the High Commissioner for Human Rights (OHCHR) (2016), *Frequently Asked Questions on the Right to Development*, Fact Sheet No. 37, Question 1, p.2.

<sup>39</sup>“Full Text of Beijing Declaration adopted by the First South-South Human Rights Forum,” Xinhua, December 8, 2017, art. 3, accessed June 18, 2019.



The Human Rights Council Advisory Committee's study specifically references the Beijing Declaration, and describes it disingenuously as containing "a summary of the academic and practical expectations and ambitions in this field [of South-South cooperation]."<sup>40</sup> The Beijing Declaration, however, is in fact a declaration, or perhaps more accurately, a manifesto, reportedly adopted by more than 300 representatives from 70 countries and international organizations, and contains many "musts" and "shoulds." For example, article 1 of the declaration begins with a statement that upends the established principle of the universality, interdependence and indivisibility of all human rights: "In order to ensure universal acceptance and observance of human rights, the realization of human rights must take into account regional and national contexts, and political, economic, social, cultural, historical and religious backgrounds."<sup>41</sup>

The HRCAC study highlights the contributions of Tom Zwart, Director of the Cross Cultural Human Rights Centre (CCHRC)<sup>42</sup> in Amsterdam, for his views on a "Comprehensive Southern Vision on Human Rights."<sup>43</sup> The CCHRC appears to have close ties with various PRC Party-state organizations and institutions. The HRCAC study describes Zwart's article, "Building a community of shared future for mankind by adopting a Comprehensive Southern Vision on Human Rights," as a "report produced by an academic institution in 2017 following a call from the President of China to build a shared future for mankind," and according to the HRCAC study, is "based on the [Universal] Declaration [of Human Rights] as interpreted in light of regional human rights documents and practices by Southern States."<sup>44</sup> In the last draft of the report prior to its finalization, the institution is noted by its acronym—CCHRC—twice in the discussion.<sup>45</sup> This "Comprehensive Southern Vision," reportedly concludes, *inter alia*, that the "rights to subsistence and to development are usually considered paramount in Southern societies."<sup>46</sup> The Advisory Committee study—a report submitted to the Human Rights Council as a whole—argues that this interpretation of the UDHR "deserves particular attention."<sup>47</sup>

<sup>40</sup>HRCAC Study, *op. cit.*, para. 45.

<sup>41</sup>Full Text of Beijing Declaration, *op. cit.*, art. 3.

<sup>42</sup>The **Cross Cultural Human Rights Centre** (CCHRC) was established in September 2014, and the Centre's first project was "to demonstrate that the Universal Declaration is the expression of many different philosophies and world views." The description of the Centre also notes that "[t]en top academic institutions in China and five leading universities in Africa have already signed up to this initiative."

<sup>43</sup>In an article published on the China Society for Human Rights Studies (CSHRS) website, "Establish an International Communication Platform for Human Rights and Promote China's Discourse Power on Human Rights—A Review on Ten Years of Beijing Forum on Human Rights" (2019), Ren Danhong, a researcher at CSHRS writes: "Professor Tom Zwart, at the Law School of Utrecht University in the Netherlands, believes that China is a successful story and a great society. China can share with the world its experience of rapid development and practice of protecting and developing human rights according to its own culture and national conditions, so that the world can understand the progress of China's human rights cause."

<sup>44</sup>HRCAC Study, *op. cit.*, para. 22. Cf. Bu Wei, "Human rights education key to building China's human rights discourse," China Society for Human Rights Studies, April 24, 2018, noting that "Bu called for ... uniting with countries from the third world to create our own human rights discourse."

<sup>45</sup>See "Reports, Studies and Concept Papers," for the **22nd session of the HRCAC**, "Draft final report on contribution of development to the enjoyment of human rights," A/HRC/22/CRP.4, para. 22.

<sup>46</sup>HRCAC Study, *op. cit.*, para. 22. I have not been able to locate Zwart's article, only an **abstract**. The SSHRF "paper collection" appears to be an edited hardcopy volume. From Zwart's faculty profile page: Zwart, T. (07.12.2017). "Building a Community of Shared Future for Mankind by Adopting a Comprehensive Southern Vision on Human Rights." *Collection of Papers of the South-South Human Rights Forum - Building A community of Shared Future for Human Beings: A New opportunity for South-South Human Rights Development* (pp. 436-444) (9 pp.). Beijing: State Council Information Office Press.

<sup>47</sup>Zwart's article outlining his Xi Jinping-inspired "Comprehensive Southern Vision" does not appear to be available online, making it difficult for States to pay any kind of attention to it, let alone endorse the study's claim that it is worthy of particular attention.



While Zwart's article supporting Beijing's views is discussed at length in the study, properly submitted contributions are given short shrift. For example, Germany's submission to the Advisory Committee gets only two sentences.<sup>48</sup> Much of Germany's four-page submission counters China's stated and implied positions on the nexus between human rights and development, and the right to development. For example, Germany states:

Human rights implementation is not contingent upon development. Governments cannot excuse their lack of human rights implementation with a lack of development. Universality means that all people have human rights, even if resource constraints imply prioritization. There is an immediate obligation to start implementing all human rights, starting with nondiscriminatory access.<sup>49</sup>

And while the PRC chair of the drafting group clearly had no issue using articles from the SSHRF that had not been formally submitted to the Committee for the study, he ignored pertinent materials from within the UN system that similarly had not been submitted to the Committee. To take just one example, in a regional consultation undertaken by the Special Rapporteur on the Right to Development in Addis Ababa in March 2018, which is alluded to in the report without further discussion, the Special Rapporteur reported to the UN Intergovernmental Working Group on the Right to Development that he "heard one overarching theme" throughout his discussions with stakeholders, "namely, the importance of the effective participation and inclusion of all relevant stakeholders in the development process."<sup>50</sup> Because the PRC Party-state suppresses civil society and contemplates no role for people or organizations not approved by the CCP in its state-led, top-down development theory and process, it is not surprising that this key point from the Special Rapporteur on the Right to Development did not find its way into the study.<sup>51</sup>

## The Belt and Road Initiative

In the last draft of the study before it was finalized and submitted to the Human Rights Council, the paragraph following the discussion of the South-South Human Rights Forum's Beijing Declaration focused on the Belt and Road Initiative (BRI) and "building the community of human destiny" as a model for the realization of the right to development. The source is a paper apparently written for the SSHRF, authored by Li Yunlong 李云龙, a professor at the Central Party School's Institute for International Strategic Studies:

[Paragraph 46] Chinese initiative "The One Belt and One Road", within the concept of "building the community of human destiny and achieving win-win sharing", serves as a convincing prospective experience and model for realizing of the right of development through spectrum of values of infrastructure interconnectivity and common development helping promote foreign investment, trade, economic growth, prosperity, and ultimately well-being of population. The achieved results since 2013, huge

<sup>48</sup>HRCAC Study, *op. cit.*, para. 11.

<sup>49</sup>Submission from Germany, p. 3.

<sup>50</sup>Statement by Saad Alfarargi, Special Rapporteur on the Right to Development, 19th Session of the Intergovernmental Working Group on the Right to Development, Geneva, 23 April 2018, p.6.

<sup>51</sup>Cf. "End of Mission Statement on China, by Professor Philip Alston, UN Special Rapporteur on extreme poverty and human rights," 23 August 2016, accessed 26 July 2019.





number of projects, agreements, raising amount of investments and banks involved are impressive and has yielded a very positive outcome for countries-stakeholders as a good example for South-South cooperation.<sup>52</sup>

This entire paragraph on the BRI was removed before the final version of the study was submitted to the HRC. Apparently there was some pushback against this blatant promotion of Xi Jinping’s signature foreign policy strategy in a report by the purportedly independent HRCAC.

## Conclusions and recommendations of the study

In the Conclusions section of the study—though it is not at all clear how these conclusions were reached—China’s priorities are clear, and run counter to established human rights principles and norms. For example, the conclusions reflect China’s view that the State is the primary subject of development, even though the Declaration on the Right to Development clearly provides that the human person is the central subject and beneficiary of the right to development.<sup>53</sup> The first subheading in “Conclusions” reads: “Development is conducive to the prosperity of a State” and the study claims that “[o]nly while in a situation of peace and stability can a State and its society establish the basic environment necessary for the enjoyment of all human rights by all. The development and stability of a State are closely related to the enjoyment of human rights.”<sup>54</sup> It’s not difficult to see how the PRC and other authoritarian regimes could invoke this study’s conclusions to justify current repression and “stability maintenance” measures as “necessary” for the eventual realization of human rights for all at some vague point in the distant future.

The report’s numerous recommendations reveal the PRC’s push to have even more resources and bandwidth devoted to the right to development in the OHCHR and the work of the Human Rights Council, despite the existence of many UN bodies and procedures, including in the Human Rights Council, dedicated to development (e.g., the Department of Economic and Social Affairs (DESA) and various units within DESA, UNDP, the Special Rapporteur on the Right to Development, the Working Group on the Right to Development, and a section within OHCHR on the right to development). For example, the study recommends that the section in OHCHR “responsible for development and the right to development should be strengthened in terms of personnel and financial and other resources.”<sup>55</sup> In addition, the report calls for a feasibility study to assess whether a body should be established, “such as a development fund for human rights,” which “would be responsible for studying and implementing the contribution of development to the full enjoyment of all human rights and fundamental freedoms.”<sup>56</sup> Reflecting the PRC’s position that a country’s level of development should be part of the equation when its human rights situation is considered, the report recommends: “When dealing with thematic and country issues, the human rights special procedures and treaty bodies should take into account and be guided by the

<sup>52</sup>Li Yunlong 李云龙, “The One Belt and One Road Initiative and the Realization of the Right to Development”, in *Paper Collection. South-South Human Rights Forum*, Beijing, 7-8 December 2017. Li Yunlong is a professor at the Institute for International Strategies Studies, Party School of the Central Committee of the CCP.

<sup>53</sup>Declaration on the Right to Development, , art. 2 (1).

<sup>54</sup>HRCAC Study, para. 50.

<sup>55</sup>HRCAC Study, para. 65.

<sup>56</sup>HRCAC Study,para. 66.



concept of the "level of national development" and development statistics of the relevant United Nations development agencies.<sup>57</sup>

## China's July 2019 HRC resolution takes note of Advisory Committee study, and highlights eradication of poverty

During the 41st session of the Human Rights Council, the PRC introduced its second resolution on the "contribution of development to the enjoyment of all human rights."<sup>58</sup> The resolution, which underwent several rounds of negotiations, is more detailed and expansive than China's first resolution on this issue in June 2017. The text of the July 2019 resolution refers to poverty (and the importance of its eradication) 12 times, whereas the 2017 resolution mentions poverty just once.<sup>59</sup> China's 2019 resolution contains much more text on the 2030 Agenda for Sustainable Development, highlights "international development cooperation" and continues to privilege development over human rights, minimizing the significance of individuals as rights holders and the beneficiaries of development. For example,

[The Human Rights Council] *Welcomes and appreciates* the efforts and investments made by States, international organizations and other stakeholders to eradicate poverty, as well as the remarkable progress made in this field, which is of significant importance for the enjoyment of human rights, and calls for enhanced international cooperation and exchanges regarding poverty eradication.<sup>60</sup>

Humanity's "shared future" also makes an appearance in the 2019 resolution. Where the 2017 resolution contains a reference to the full version of the CCP's BRI-linked goal: "*Recognizing* the common aspiration to build a community of shared future for human beings," the 2019 resolution contains abbreviated text suggestive of the same: "*Affirming* that international cooperation for sustainable development has an essential role in shaping our shared future [...]"

The July 2019 resolution also acknowledges the Advisory Committee's study, without expressly endorsing its conclusions or recommendations. Instead, the Human Rights Council "*Takes note with appreciation* of the report of the Human Rights Council Advisory Committee on the contribution of development to the enjoyment of all human rights."<sup>61</sup> (Curiously, the title of the HRCAC study does not include the word "all'

<sup>57</sup>HRCAC Study, para. 59 (c). Cf. Maaïke Okano-Heijmans, Frans-Paul van der Putten, et al., "[A United Nations with Chinese characteristics?](#)" Netherlands Institute of International Relations, December 2018, pp. 1, 4, 9, last accessed July 30, 2019.

<sup>58</sup>"[The contribution of development to the enjoyment of all human rights](#)," A/HRC/41/L.17/Rev.1, July 10, 2019 (the final number for the adopted text is HRC Resolution 41/19, pending translation into the remaining UN languages), last accessed July 30, 2019.

<sup>59</sup>The PRC Party-state appears to be teeing up the rights it views as most important and fundamental, *i.e.*, the rights to subsistence (which includes the eradication of poverty) and the right to development, for future moves at the Human Rights Council. As [Sustainable Development Goal 1](#), the eradication of poverty is a priority issue for the 2030 Agenda and in the UN system, most notably in the PRC stronghold of the Department of Economic and Social Affairs (DESA). Highlighting eradication of poverty may help to bring DESA into the work of the Human Rights Council. See, *e.g.*, DESA, "[Poverty eradication](#)."

<sup>60</sup>The contribution of development to the enjoyment of all human rights," A/HRC/41/L.17/Rev.1, 10 July 2019, para. 9.

<sup>61</sup>A/HRC/41/L.17/Rev.1, para. 7.



before human rights, but somehow "all human rights" shows up in China's resolution.) The resolution also requests the High Commissioner "to organize a one-day intersessional seminar, before the forty-seventh session of the Human Rights Council, on the importance of sustainable development in promoting and protecting human rights, in order to allow Member States, relevant United Nations agencies, funds and programmes, international organizations, [NHRIs], [CSOs] and other stakeholders to identify challenges and gaps and share good practices and experiences in this regard."<sup>62</sup> It further requests that the High Commissioner provide "all necessary resources" for the seminar and that a summary report be prepared for presentation to the HRC.<sup>63</sup>

In an exercise of "discourse power,"<sup>64</sup> the PRC requested an intersessional seminar on a topic that it will be able to use to continue to build its case for prioritizing development, "mutually beneficial cooperation," and the BRI's role in sustainable development. During the Human Rights Council's one-day intersessional meeting<sup>65</sup> on the linkages between human rights and the 2030 Agenda held in January 2019—in which the notion of "development first" was roundly rejected—China basically had nothing to say. Now China would have its turn.

Denmark, on behalf of the EU, called for a vote on China's 2019 resolution, explaining that the EU Members of the Council would vote against the PRC's resolution in part because the EU was "concerned that the draft resolution aims to construct an unhelpful narrative which would elevate development over human rights."<sup>66</sup> Japan also voted against the draft resolution, stating that it was concerned that as a resolution of the Human Rights Council, it "lacks balance" and "focuses too much on development, poverty eradication, and international development cooperation rather than individual human rights."<sup>67</sup> In addition, Japan took issue with the appearance of the term "shared future" in the draft, because it was a term "not commonly used in the context of human rights." The resolution was adopted by a vote of 33 in favor and 13 opposed, with no abstentions.<sup>68</sup>

In remarks reportedly given to a journalist after the resolution was adopted, the Deputy Permanent Representative for the PRC in Geneva, Li Song 李松, said that the adoption of China's resolution was "beneficial to breaking the monopoly on discourse that Western countries have had in the field of human rights" and it demonstrated that people are "increasingly taking deep into their hearts" the ideas proposed by China of "building a community of shared future for humanity" and "development promoting human rights."<sup>69</sup>

<sup>62</sup> A/HRC/41/L.17/Rev.1, para. 14.

<sup>63</sup> A/HRC/41/L.17/Rev.1, para. 15.

<sup>64</sup> On "discourse power" (话语权), cf. Victor Mair, "Freedom of speech vs. speaking rights," and comments, *Language Log*, July 14, 2016; Elsa Kania, "The Right to Speak: Discourse and Chinese Power," Center for Advanced China Research, November 27, 2018.

<sup>65</sup> Human Rights Council, "Human Rights Council intersessional meeting for dialogue and cooperation on human rights," January 2019.

<sup>66</sup> Morten Jespersen (Denmark), on behalf of the EU. *Vote on Draft Resolution A/HRC/41/L.17/Rev.1*, 40th meeting of the 41st regular session of the HRC, Chapter 7.

<sup>67</sup> Ken Okaniwa (Japan), Chapter 8.

<sup>68</sup> The 13 "no" votes were Australia, Austria, Bulgaria, Croatia, Czech Republic, Denmark, Hungary, Iceland, Italy, Japan, Slovakia, Spain and the United Kingdom.

<sup>69</sup> The UN Human Rights Council Again Adopted China's Proposed Resolution "the contribution of development to the enjoyment of all human rights," (联合国人权理事会再次通过中国提交的"发展对享有人权的贡献"决议), remarks by Li Song 李松, July 13, 2019.



## The draft report requested by China's "mutually beneficial cooperation" resolution

In March 2018, China initiated its second-ever resolution in the Human Rights Council, "Promoting mutually beneficial cooperation in the field of human rights."<sup>70</sup> The United States called for a vote on the resolution, which was adopted by a vote of 28 in favor, 1 opposed (the US), and 17 abstentions. As noted in an earlier article about the resolution,<sup>71</sup> in its Explanation of Vote, the United States stated:

It is clear that China is attempting through this resolution to weaken the UN human rights system and the norms underpinning it. The 'feel good' language about 'mutually beneficial cooperation' is intended to benefit autocratic states at the expense of people whose human rights and fundamental freedoms we are all obligated, as States, to respect. For these reasons, the United States is calling a vote and will vote against this resolution. We encourage other countries not to support this resolution.

China's 2018 MBC resolution requested a study from the Advisory Committee on "the role of technical assistance and capacity-building in fostering mutually beneficial cooperation in promoting and protecting human rights" to be submitted before the 43rd session of the Human Rights Council (which will take place in March 2020).<sup>72</sup>

The HRCAC invited states and other stakeholders to submit inputs for the report. Fifteen states responded, as well as three NGOs and one independent human rights institution.<sup>73</sup> The draft report was made public in mid-July and noted that for at least seven of the States "the concept of MBC occupied a very important place in the[ir] replies."<sup>74</sup> For example, Australia expressed the view that MBC "is not an agreed multilateral concept" in human rights, but rather a domestic concept of one particular state.<sup>75</sup> The UK noted that the term is "not agreed UN language" and is "not an approved concept in multilateral human rights contexts"; New Zealand observed that MBC "does not have an intergovernmental agreed definition"; and Switzerland noted that the term was "not sufficiently defined."<sup>76</sup> The Netherlands stated that the term MBC lacks a clear definition and prioritizes state-state relationships, which excludes other essential actors in the field of human rights and that it seems "strongly associated with economic development, and runs the risk of overemphasising economic rights above civil and political rights."<sup>77</sup> Japan also expressed concern that the terms "building a community of shared future for humanity" and MBC "are not widely recognized in the field of human rights."<sup>78</sup>

<sup>70</sup>Resolution adopted by the Human Rights Council on 23 March 2018, Res. 37/23. "Promoting mutually beneficial cooperation in the field of human rights," A/HRC/RES/ 37/23, April 6, 2018 ("MBC Resolution").

<sup>71</sup>Worden, *With Its Latest Human Rights Council Resolution...*

<sup>72</sup>MBC Resolution, para. 5.

<sup>73</sup>"Draft of the study on technical assistance and capacity building in fostering mutually beneficial cooperation in promoting and protecting human rights," (draft report, 8 July 2019) prepared by Lazhari Bouzid, Rapporteur of the drafting group, A/HRC/AC/23/CRP.3, 16 July 2019, para. 2. The 15 states that provided inputs are: Australia, Canada, China, France, Germany, Japan, Ivory Coast, Kuwait, Mauritius, Morocco, New Zealand, Philippines, Russia, Switzerland and United Kingdom.

<sup>74</sup>MBC Draft Report, para. 31.

<sup>75</sup>MBC Draft Report, para. 32.

<sup>76</sup>MBC Draft Report, paras. 45 (UK), 43 (New Zealand), 44 (Switzerland).

<sup>77</sup>MBC Draft Report, para. 42.

<sup>78</sup>MBC Draft Report, para. 40.



The draft is still very much a draft and doesn't yet have conclusions or recommendations. But a look at China's submission for the study provides some additional insight into where China is headed. Development is the priority; human rights are subsumed by development. The Belt and Road plays a role in MBC, of course: it will "create a new platform for international cooperation, and add new impetus to the common development of the world."<sup>79</sup> The following excerpt captures China's overall aim and strategy: developing countries need a much greater voice (with China at the helm), the global human rights governance system needs fixes, human rights is about "win-win cooperation" between states, and technical assistance and capacity building are the mechanisms for rights promotion and protection. The individual is nowhere to be found.

We should promote the healthy development of global human rights governance. At present, the global human rights governance system still has some problems, such as unfair opportunities, unfair rights and unfair rules. The work of international human rights mechanisms is seriously unbalanced, and the concerns of developing countries have not been given enough attention. All parties should strengthen win-win cooperation in the field of human rights through technical assistance and capacity-building, and jointly explore ways to promote the democratization, rule of law, rationalization and fair development of global human rights governance.<sup>80</sup>

The Advisory Committee will submit its final report on MBC to the Human Rights Council before its 43rd session in March 2020. But the work of the Advisory Committee on issues relating to the right to development is far from done. The Committee is currently working on a mandate to prepare a study on "the importance of a legally binding instrument on the right to development."<sup>81</sup> Liu Xinsheng is a member of the seven-person drafting group, but is neither the chair nor the rapporteur. Responses to the call for inputs were received from four states (Iraq, Liechtenstein, Mexico, and Switzerland) and the EU. Four NGOs, including Amnesty International, also made contributions. The Committee will present an oral update on the preparation of the report during the upcoming 42nd session of the Council in September 2019.

<sup>79</sup>"China's Reply to the Questionnaire of the Human Rights Council Advisory Committee on the Role of Technical Assistance and Capacity Building in Fostering Mutually Beneficial Cooperation," 14.

<sup>80</sup>China's Reply for the MBC Study, 4-5.

<sup>81</sup>See the [HRC Advisory Committee webpage](#) for the mandate "the importance of a legally binding instrument on the right to development."



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*Andréa Worden, J.D., M.A., is a researcher, translator and consultant focusing on human rights in China, and the PRC's interactions with the UN human rights mechanisms. Her writings have appeared in the Georgetown Journal of International Law, China Change, LARB China Channel, Sinopsis, Cha: An Asian Literary Journal, among other publications. She will teach a course on human rights in China this fall (2019) at the Johns Hopkins Krieger School of Arts & Sciences.*

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