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China and the Special Procedures of the UN Human Rights Council: Is China Cooperative and Can They Work Better With Each Other?

Sun Meng & Lu Haina

ABSTRACT

The Special Procedures is a unique human rights monitoring mechanism of the UN Human Rights Council. China has a long history of interacting with Special Procedures, yet, little research has been done on how these interactions impact both entities. Compared to other UN human rights mechanisms, China seems to have a particularly challenging relationship with the Special Procedures. Both sides have publicly expressed complaints against each other. As such, this study intends to look into the details of the interaction between China and the Special Procedures through social and political contexts, with the purpose of finding if and how they can work better together. The article starts with a historic review of China's participation in the UN human rights system. Within this context, the article investigates whether China has been cooperative through examining its interactions with the Special Procedures in two major methods: the communications and country visits. The article, then, examines what

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the Special Procedures and China expect from each other and ends with analysis on whether both sides can improve their cooperation with each other and how to achieve that goal.

I. INTRODUCTION

As one of the earliest UN human rights mechanisms, the Special Procedures is considered essential to effective human rights protection and thus has been called the “crown jewel” of the UN human rights system.¹ As a body of independent experts, mandated by the Human Rights Council, in the forms of Special Rapporteurs, independent experts, or working groups, the Special Procedures have multiple advantages. For example, Special Procedures is systematically and operationally flexible in terms of the issues covered and the fact that mandate holders are independent individuals.² Sometimes, “Special Procedures is the only mechanism . . . alert[ing] the international community to certain human rights issues.”³ Nevertheless, the effectiveness of the Special Procedures largely depends on the cooperation of the states.

Compared to other UN human rights mechanisms, such as the treaty bodies and the Universal Periodical Review (UPR), China seems to have a particularly challenging relationship with the Special Procedures. Both entities have publicly expressed complaints against each other, and this article will provide several examples to explore the reasons. Typically, China is criticized for being uncooperative or even bringing a “negative agenda of reform” into the system.⁴ Nevertheless, China’s interactions with the Special Procedures have not been systematically studied.⁵ To determine whether China has been

1. Addressed by the former UN Secretary-General Kofi Annan. *Annan Calls on Human Rights Council to Strive for Unity, Avoid Familiar Fault Lines*, UN NEWS (29 Nov. 2006), <https://news.un.org/en/story/2006/11/201202-annan-calls-human-rights-council-strive-unity-avoid-familiar-fault-lines>. See also Surya P. Subedi, *Protection of Human Rights Through the Mechanism of UN Special Rapporteurs*, 33 HUM. RTS. Q. 201, 203 (2011); Nigel S. Rodley, *On the Responsibility of Special Rapporteurs*, 15 INT’L J. HUM. RTS. 319, 319 (2011).
2. Ted Piccone, *Human Rights Special Procedures: Determinants of Influence*, 108 AM. SOC’Y OF INT’L L. 288, 288–289 (2014). For an analysis on the reform of the Special Procedures, see Hurst Hannum, *Reforming the Special Procedures and Mechanisms of the Commission on Human Rights*, 7 HUM. RTS. L. REV. 73 (2007).
3. U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, MAKING HUMAN RIGHTS A REALITY: THE HUMAN RIGHTS MECHANISMS (Feb. 2009), https://www.ohchr.org/Documents/AboutUs/IK_HR_mechanisms_En.pdf.
4. See, e.g., Jeroen Gutter, *Special Procedures and the Human Rights Council: Achievements and Challenges Ahead*, 7 HUM. RTS. L. REV. 93, 104 (2007), citing MEGHNA ABRAHAM, A NEW CHAPTER FOR HUMAN RIGHTS: A HANDBOOK ON ISSUES OF TRANSITION FROM THE COMMISSION ON HUMAN RIGHTS TO THE HUMAN RIGHTS COUNCIL 41 (2006).
5. For studies on China’s interactions with the UPR and treaty bodies, see Björn Ahl, *The Rise of China and International Human Rights Law*, 37 HUM. RTS. Q. 637 (2015). See also Sun Meng, *The Cooperation of China with UN Human Rights Mechanisms*, CHINA AND INT’L HUM. RTS. COOPERATION 224 (2017) (China); Sun Meng, *China and UN Human Rights*

cooperative and the necessary steps to improve such cooperation, a thorough investigation of the facts must occur. As such, this article intends to fill this lacuna by reviewing the details of the interactions between China and the Special Procedures against their social and political backdrops, purposefully searching for a better way for them to work together.

The article starts with a historic review of China's participation in the UN human rights system. Within this context, the article examines whether China has been cooperative with the Special Procedures by examining their interactions through two major methods: the communications and the country visits. The article, then, examines what the Special Procedures and China expect from each other, and ends with proposals for both entities on ways to improve their cooperation with each other.

II. A HISTORIC REVIEW OF CHINA'S PARTICIPATION IN THE UN HUMAN RIGHTS MECHANISMS

China's cooperation with the Special Procedures is a reflection of a generally consistent but evolving attitude of China towards the international human rights system. It must therefore be examined in the context of China's participation in the UN human rights system as a whole. A historic review of the latter helps us to better understand the social and political environment of China's interactions with the Special Procedures.

Before the People's Republic of China (PRC) was established in 1949, the Republic of China participated in drafting the Charter of the United Nations and the Universal Declaration on Human Rights (UDHR) and contributed to the international human rights principles.⁶ After 1949, PRC's participation in the UN human rights system can be divided into four phases.⁷

A. Phase 1: 1949 to 1978

During the pre-reform era, China was rarely involved in the international human rights system mainly due to the extreme leftist politics domestically,

Mechanisms: A Case Study of UPR, 2 FOREIGN AFF. REV. 49 (2015) (China); Sun Meng, *UPR and China: Changes and Challenges*, 3 J. OF POL. SCI. AND L. 57 (2015) (China).

6. Dr. Peng Chun Chang participated in the drafting of the UDHR and brought human rights values of Chinese culture into the UDHR. See Ju Chengwei, *On the Contribution of Confucianism to the New Human Rights Theory: Starting From Peng Chun Chang's Contributions to the Formulation of the Universal Declaration of Human Rights*, 1 GLOB. L. REV. 141 (2011) (China); Huang Jianwu, *Confucian Tradition and the Construction of Modern Human Rights: From the Perspective of Peng Chun Chang's Contribution to the Universal Declaration of Human Rights*, 6 J. SUN YAT-SEN UNIV. 167 (2012) (China).
7. For relevant materials, see Luo Yanhua, *China's Participation in International Human Rights Cooperation and Its Prospects*, 1 J. IDEOLOGICAL & THEORETICAL EDUC. 16 (2005) (China); Liu Bo, *A Study on the Continuity and Variability of China's Participation in International Human Rights Norms*, 6 REN QUAN (HUM. RTS.) 25 (2012) (China).

isolation internationally, and the Cold War.⁸ It was not until 1971 that the PRC became the sole legal representative of China at the UN by replacing the Republic of China and thereafter has been entitled to participate in the General Assembly (GA) and Economic and Social Council (ECOSOC) meetings. With regards to human rights issues, China held a rather indifferent and evasive attitude and thus played a very limited role in UN human rights mechanisms during this period.

Around the 1960s, China also encountered criticism on the human rights issues in Tibet. In the years 1959, 1961 and 1965, the General Assembly adopted three resolutions on the Tibetan issues, condemning China's human rights practice in Tibet.⁹ Such criticism made China vigilant towards human rights issues at that time.

B. Phase 2: 1978 to 1989

The period from the beginning of China's economic reform and opening-up in 1978 until the Tiananmen incident in mid-1989, can be seen as the beginning of China's participation in the UN human rights mechanisms. During this stage, China went through a relatively liberal and open domestic atmosphere and a relaxed international environment, which made it politically possible for China to become engaged in learning about and adapting itself to the UN human rights system.

In the immediate post-Cultural Revolution era, China started its reflections on what happened during the Cultural Revolution. Extreme leftism and ideologies of class fight were gradually fading in political discourse. Emancipation of thoughts were discussed and encouraged in public. Terms like "people," "democracy," and "rule by law" started to appear in public discourse.

With more opportunity for diplomacy, China increased its international activities, which encouraged China to learn more about the role of the UN and the eventual realization that the UN can serve as an important platform for China. Consequently, along with other UN activities, China started to actively participate in the UN human rights system. Moreover, during the Cold War, China was a strategic partner for both the West and the Soviet Union. Both sides needed China for its strategic role in their geo-political

8. Chen Shiqiu, China has Actively Participated in International Human Rights Activities for 30 Years, CHINA HUM. RTS. NETWORK, http://www.humanrights.cn/html/2014/3_0610/295.html.

9. Question of Tibet, G.A. Res. 1353 (XIV), U.N. GAOR, 14th Sess., Agenda Item 73, U.N. Doc. A/RES/1353 (21 Oct.1959); Question of Tibet, G.A. Res. 1723 (XVI), U.N. GAOR, 16th Sess., Agenda Item 83, U.N. Doc. A/RES/1723 (20 Dec.1961); Question of Tibet, G.A. Res. 2079 (XX), U.N. GAOR, 20th Sess., Agenda Item 91, U.N. Doc. A/RES/2079 (18 Dec.1965).

concerns. As a direct result, China enjoyed a period of immunity from human rights criticism from the West, which encouraged China to play an active role in the UN human rights system.¹⁰

Since 1979, China started to send its delegations to observe the thirty-fifth, thirty-sixth, and thirty-seventh sessions of the UN Commission on Human Rights (CHR, predecessor of the Human Rights Council) and was elected as a member of the CHR in 1983.¹¹ With the improvement of China's status in the CHR since 1984, Chinese experts had been endorsed by the government to serve as members in the Sub-Commission on Human Rights, the Working Group on Indigenous Populations, and the Working Group on Communications (the 1503 procedure).¹² In this way, China started to fully participate in the work of the CHR, including drafting various human rights treaties, reviewing of countries' human rights issues, and voting in the Special Procedures.

During this same time period, China gradually accepted international human rights standards and signed and ratified a series of UN human rights treaties.¹³ It is worth noting that the first human rights convention ratified by China was the Convention on the Elimination of All Forms of Discrimination

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10. Information is based on an interview with a former Chinese Ambassador in 2015 (the interviewee wishes to remain anonymous).
 11. See *The Relationship Between China and UN Human Rights Bodies*, PEOPLE'S REPUBLIC OF CHINA MINISTRY OF FOREIGN AFFAIRS (24 May 2019), http://www.fmprc.gov.cn/web/gjhdq_676201/gjhdqzz_681964/lhg_681966/zghgzz_681970/t358602.shtml (China) [hereinafter *Relationship*].
 12. Yanhua, *supra* note 7, at 17.
 13. During this period of time, China ratified the following documents: Convention on the Prevention and Punishment of the Crime of Genocide, *adopted* 9 Dec. 1948, G.A. Res. 260 (III), U.N. GAOR, 3d Sess., U.N. Doc. A/RES/3/260 (1948), 78 U.N.T.S. 277 (*entered into force* 12 Jan. 1951) (*ratified by China* 18 Apr. 1983); Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46 (1980), 1249 U.N.T.S. 13 (*entered into force* 3 Sept. 1981) (*ratified by China* 4 Nov. 1980); International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* 21 Dec. 1965, G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., 660 U.N.T.S. 195 (*entered into force* 4 Jan. 1969), *reprinted in* 5 I.L.M. 352 (1966) (*ratified by China* 29 Dec. 1981); International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. Res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243 (*entered into force* July 18, 1976) (*accession by China* 18 Apr. 1983); International Convention Against Apartheid in Sports, *adopted* 10 Dec. 1985, G.A. Res. 40/64, U.N. GAOR, 40th Sess., U.N. Doc. A/RES/40/64, 1500 U.N.T.S. 161 (*entered into force* 3 Apr. 1988) (*ratified by China* 3 Apr. 1988); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* 10 Dec. 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., U.N. Doc. A/39/51 (1985), 1465 U.N.T.S. 85 (*entered into force* 26 June 1987) (*ratified by China* 4 Oct. 1988); Convention Relating to the Status of Refugees, *adopted* 28 July 1951, U.N. Doc. A/CONF.2/108 (1951), 189 U.N.T.S. 150 (*entered into force* 22 April 1954) (*accession by China* 24 Sept. 1982). For the status of additional treaties, see generally, United Nations Human Rights Office of the High Commissioner, *Ratification Status for China*, UN TREATY BODY DATABASE, [hereinafter *RATIFICATION STATUS*], https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN.

against Women (CEDAW). China signed the CEDAW in 1980 at the Second World Conference on Women held in Copenhagen right after the CEDAW was adopted in 1979. Unlike some other human rights treaties that China joined later due to a specific political agenda, the ratification of the CEDAW was based on the self-confidence that China did well on implementing women's rights and the Convention was in accordance with China's domestic law.¹⁴

During this phase, in general, China was cooperative with the UN treaty-based human rights system. China regularly submitted national reports to the relevant treaty monitoring bodies and participated in the review process as required.¹⁵

C. Phase 3: 1989 to 2006

For China, the Tiananmen Incident in 1989 was a turning point for its relatively relaxed experience in the UN human rights system. After the Incident, Western countries strongly criticized the Chinese government and started to use the UN human rights mechanism to punish China. Moreover, after the end of the Cold War, China lost the geo-political advantages in international human rights politics that it had previously enjoyed. According to Ann Kent, a "soft" US policy on China's human rights issues ended with the Tiananmen Incident and the US entered "active monitoring phases" including annual human rights reports on China, tabling resolutions on China in the UN Commission on Human Rights, and attaching human rights conditions to the most-favored-nation status in trade.¹⁶

From 1990 until 2005, led by the United States, Western countries continuously tabled eleven resolutions at the Commission on Human Rights, calling to review the human rights situation in China.¹⁷ As a consequence, during this period, China's participation in the UN human rights system turned self-defensive and focused its diplomatic energy on dealing with the so-called "anti-China" motions by the West.¹⁸

Although China successfully brushed aside these resolutions, with the support of other developing countries, these actions cost China considerable diplomatic resources and certainly generated a negative impact on China's view of the UN human rights system. China felt unfairly treated, which only strengthened the belief that the UN human rights system had a

14. Information from an interview with a well-known Chinese scholar on 30 Nov. 2017 (the interviewee wishes to remain anonymous).

15. Luo Yanhua, *Reform and Opening-Up and China's Participation in International Human Rights Cooperation Process*, 4 REN QUAN (HUM. RTS.) 36 (2018) (China).

16. Ann Kent, *States Monitoring States: The United States, Australia, and China's Human Rights, 1990–2001*, 23 HUM. RTS. Q. 583, 590 (2001).

17. See *Relationship*, *supra* note 11.

18. Sonya Sceats & Shaun Breslin, *China and the International Human Rights System*, THE ROYAL INSTITUTE OF INT'L AFF., 44 (2012).

double-standard with a strong political agenda for the West and reinforced China's self-defensive attitude, which in turn, made human rights a highly sensitive subject in China's domestic politics.¹⁹

The other side of the coin is that these unpleasant experiences with the UN human rights system drove China to more actively participate in the various UN human rights mechanisms and, later, in the reform process of the Commission on Human Rights. China, seemingly cornered by the West on the human rights issues in the UN, was motivated to better learn of or even change the procedural detail of the mechanisms in order to alter its passive position. For example, during the reform of the Commission on Human Rights, China constantly advocated against country-specific monitoring, including the adoption of human rights resolutions on a country or through the creation of a country-mandate in the Special Procedures.²⁰ When the latter appears inevitable, China called for respecting "the views of the regional groups to which the country concerned belonged,"²¹ or limiting its application to only gross and large scale human rights violations.²² In fact, China's consistent position probably contributed to the creation of the Universal Periodic Review (UPR) mechanism after the Human Rights Council replaced the Commission on Human Rights.

Another consequence of the international pressure during this phase is that China signed and ratified more human rights treaties.²³ In particular, China signed the International Covenant on Civil and Political Rights in 1998, not yet ratified, and signed the International Covenant on Economic, Social and Cultural Rights in 1997, ratified in 2001.²⁴

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19. In March 2005, for example, the Chinese representative to the United Nations at the time, Mr. Sha Zukang, criticized that since the end of the Cold War, the Commission on Human Rights had "adopted over 100 country-specific resolutions that had almost all been directed against developing countries, leaving the impression that human rights problems existed only in those countries, and that developed countries had a perfect record." See *Summary Record of the 20th Meeting*, U.N. ESCOR, Comm'n on Hum. Rts., ¶ 14, U.N. Doc. E/CN.4/2005/SR.20 (2005).
 20. See 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 (2000–2001)*, 30 NETH. Q. HUM. RTS. 299, 329 (2012).
 21. *Id.* at 315.
 22. See, e.g., the speech of former Minister of Affairs, Mr. Yang Jiechi, at the HRC 1st session: available in Chinese at <http://www.china.com.cn/chinese/Pl-c/1249664.htm>.
 23. Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3 (entered into force 2 Sept. 1990). Hague Conference on Private International Law, *Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption* (29 May 1993); Equal Remuneration Convention, 1951 (ILO No. 100), adopted 29 June 1951, RATIFICATION STATUS, *supra* note, 13.
 24. International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976) (signed by China 5 Oct. 1998); International Covenant on Economic, Social and Cultural Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force 3 Jan. 1976) (ratified by China 27 Mar. 2001).

As part of the efforts to strengthen cooperation with the UN on human rights, for the first time in history, China invited the UN High Commissioner for Human Rights (OHCHR), at the time, Mrs. Mary Robinson, to visit China in September 1998 and signed an agreement on technical cooperation in the human rights area.²⁵ Mrs. Robinson visited China seven times as the High Commissioner.²⁶ In August 2005, the High Commissioner Mrs. Louise Arbour was invited to visit China,²⁷ and later that same year China hosted the Fourth World Conference on Women in Beijing.

D. Phase 4: 2006 to Present

The replacement of the Commission on Human Rights with the Human Rights Council in 2006 was a new beginning for China within the UN human rights system. Since then, China's position has become more proactive in UN human rights mechanisms. Recently, Chinese diplomats started seeking to strengthen China's own human rights discourse yet continuing to be self-defensive when encountering criticisms. This is due to changes within both international and domestic political and economic environments.

The reform of the UN regarding human rights provided an opportunity for China to be more involved. With bitter experiences in the Commission on Human Rights, China supported and actively participated in the 2006 reform. Since the establishment of the Human Rights Council, China has been elected three times with a high majority as a member state.²⁸

China probably felt relieved from the pressure of the previous country-specific resolutions, which are now largely replaced by thematic resolutions and are less important partly because of the establishment of the UPR.²⁹ With less membership for Western countries, China is entitled more discourse. This relatively "comfortable" situation brings China more confidence and energy to play a more active role in the UN human rights system.

When it comes to human rights discourse, China has consistently expressed different opinions from the West. For example, China always exhibits its strong focus on collective rights and economic, social and cultural rights

25. See Mary Robinson, OHCHR, <https://www.ohchr.org/EN/AboutUs/Pages/Robinson.aspx>.

26. See *Relationship*, *supra* note 11.

27. *Id.*

28. In 2013, China had 176 votes at the General Assembly for the term 2014–2016; in 2016, China had 180 votes for the term 2017–2019. Luo Yanhua, *China has been Elected to the UN Human Rights Council for the Fourth Time*, GUANGMING DAILY (1 NOV. 2016) (China).

29. Due to the political struggles and the course of depoliticization, the country-specific mandates have shrunk. See Tania Baldwin-Pask & Patrizia Scannella, *The Unfinished Business of a Special Procedures System*, in *NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY: WHAT FUTURE FOR THE UN TREATY BODY SYSTEM AND THE HUMAN RIGHTS COUNCIL PROCEDURES?* 422 (M. Cherif Bassiouni & William A. Schabas eds., 2011).

by emphasizing the right to subsistence and the right to development based on its history and practice. China also always emphasizes the importance of respecting state sovereignty where human rights are concerned. When it comes to monitoring mechanisms, China strongly promotes dialogues instead of confrontational forms or “naming and shaming.”³⁰ Nevertheless, these positions are not so different from those of many other developing countries and are often defined by some western scholars as “counter-discourse.”³¹ In recent years, China has shown its intent to promote its own human rights discourse or “socialist human rights theories with Chinese characteristics.”³²

In 2012, the report of the Eighteenth National Congress of the Chinese Communist Party, for the first time, raised the idea “to build a community of shared future for mankind” (*renlei minyun gongtongti*),³³ which provides a new conceptual framework for China’s foreign policy, including its human rights diplomacy.³⁴ Since then, Chinese President Xi Jinping used the expression in various speeches at the UN and other high-level events.³⁵ Since 2017, this idea has been intensively promoted at the Human Rights Council. Eventually, the expression “to build a community of shared future for mankind” was written into two resolutions adopted by the Human Rights Council on 23 March 2017, within the Question of the Realization in all Countries of Economic, Social and Cultural Rights, and within the Right to Food.³⁶ In June 2018, the expression was written in the International Labor Organization (ILO)’s 107th Conference Resolution concerning effective ILO development cooperation in support of the Sustainable Development Goals.³⁷

30. See Kinzelbach, *supra* note 20, at 331.

31. See, e.g., Ahl, *supra* note 5, at 639.

32. Wu Dabing, *The Connotation Characteristics and Development Trend of Socialist Human Rights Theory with Chinese Characteristics*, 8 J. SOCIALIST THEORY GUIDE 59, 59 (2015) (China).

33. China Society for Human Rights Studies held a *Side Event of “Building a Community of Human Destiny: A New Path for Global Human Rights Governance,”* XINHUA NEWS AGENCY (9 Mar. 2017), http://www.xinhuanet.com/world/2017-03/09/c_1120593497.htm (China).

34. For a review on when this idea came into being and was promoted, see Yang Junfeng, “*The Community of Human Destiny*” *Memorabilia*, PEOPLE’S NETWORK (9 July 2017), <http://world.people.com.cn/n1/2017/0709/c1002-29392217.html> (China).

35. On 18 Jan. 2017, President Xi Jinping attended the high-level meeting “Jointly Building a Community of Shared Future for Mankind” held in Geneva and gave a keynote speech titled “Work Together to Build a Community of Shared Future for mankind,” in which he explored the idea comprehensively. President Xi Jinping, *Speech at the UN Headquarters in Geneva* (19 Jan. 2017), http://www.xinhuanet.com/world/2017-01/19/c_1120340081.htm (China).

36. Question of the Realization in All Countries of Economic, Social and Cultural Rights, G.A. Res. 34/4, *adopted* 23 Mar. 2017, U.N. GAOR, Hum. Rts. Council, 34th Sess., Agenda Item 3, pmb1 ¶ 3, U.N. Doc. A/HRC/RES/34/L.4/Rev.1 (2017); The Right to Food, G.A. Res. 34/12, *adopted* 23 Mar. 2017, U.N. GAOR, 34th Sess., Agenda Item 3, pmb1 ¶ 11, U.N. Doc. A/HRC/RES/34/L.12 (2017).

37. ILO, *Resolution Concerning Effective ILO Development Cooperation in Support of the Sustainable Development Goals*, 107th Sess. (8 June 2018), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_633138.pdf.

While it is still too early to assess the impact of the new Chinese discourse on international human rights norms, China's determination to promote it is evident. This reveals a more confident China with increasing economic and political power in the world and a stronger leadership domestically.

This period also witnessed a new wave of ratifying human rights treaties by China, such as the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Convention on the Rights of Persons with Disabilities in 2008. Additionally, China continues to nominate Chinese experts to serve as members of treaty bodies.³⁸

In sum, China's participation in the UN human rights system has gone through four phases, gradually shifting from indifference, passive acceptance, and self-defense, to active cooperation and seeking its own discourse. This development is closely related to the international and domestic political and economic conditions that China has faced. China's interactions with the Special Procedures should be interpreted in this context.

III. IS CHINA COOPERATIVE? ANALYSIS OF THE INTERACTIONS BETWEEN CHINA AND THE SPECIAL PROCEDURES

As the Special Procedures have never established a country mandate on China, the interactions between China and the former mainly take the form of communications and country visits by various thematic mandate holders. Retrospective research on these interactions allows us to generate a more objective view on whether China has been cooperative with the Special Procedures and to what extent. Additionally, this article intends to analyze why China reacted in certain ways in order to help the Special Procedures better understand the logic of China's actions and monitor China more effectively.

A. Chinese Response to the Communications of the Special Procedures

The Special Procedures mandate holders send letters to or communicate with the states about their concerns on human rights violations within their mandates.³⁹ Such communications can include letters of allegations and

See also China's official news coverage on it, http://www.xinhuanet.com/english/2018-06/09/c_137241615.htm.

38. Currently serving experts are: Mr. Chen Shiqiu for Committee on Economic, Social and Cultural Rights (2014–2016, 2017–2020); Ms. Li Yanduan of Committee on Elimination of Racial Discrimination (2016–2020); Ms. Song Wenyan of Committee on the Elimination of All Forms of Discrimination against Women (2017–2020); Ms. Zhang Honghong of Committee Against Torture (2018–2021); Mr. You Liang of the Committee on the Rights of Persons with Disabilities (2015–2018).

39. Sometimes communications are also sent to intergovernmental organizations or nonstate actors. See Communications, OHCHR, <https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

urgent appeals which relate to “a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring.”⁴⁰ Communications may deal with individual cases and general human rights violations, such as existing laws, policy, or practice considered incompatible with international human rights standards. Compared to other UN monitoring mechanisms, such as the treaty bodies, the communication mechanism of the Special Procedures can flexibly deal with individual complaints. The alleged victims do not have to exhaust domestic remedies and it does not matter whether the concerned state has ratified a human rights treaty.⁴¹ However, the result of these communications from the Special Procedures is less formal and with less strength compared to other UN monitoring mechanisms. Mandate holders can send communications to the alleged states about such individual complaints, but it depends on the state in question to respond or not.

Communications sent by the Special Procedures and subsequent replies from China are found in the annual reports of the Special Procedures. Due to the large quantity of information, this article will only analyze what occurred during a specific time period. A comparison between China and other permanent members of the UN Security Council can offer a better understanding of the level of China’s cooperation with the Special Procedures.

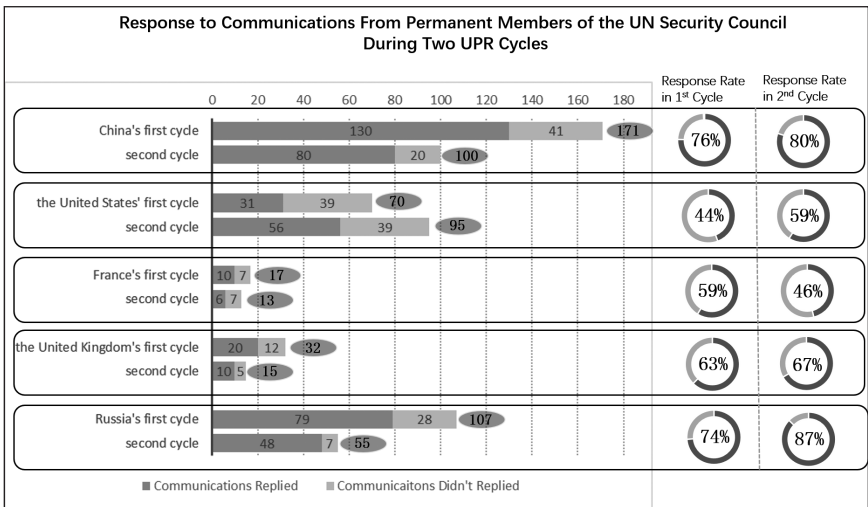


Figure 1. A Comparison of the Total Number of Communications Received by Five Countries During the First UPR Cycle (2004–2008) and the Second UPR Cycle (2009–2013).⁴²

40. *Id.*
 41. *Id.*
 42. *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1: China (including Hong Kong and Macao Special Administrative Regions) (HKSAR*

The above statistics demonstrate that among five countries, China received the most communications and had a rather high reply rate of 76–80 percent. Considering the communications received by China are more than the other four states, it appears that China is more responsive than other powerful states with the communications mechanism.

Since 2011, all the texts of communications and responses from the states have been accessible on the OHCHR website. Thus, we can further analyze China's level of cooperation through the timeliness of responses and the substantive content of communications. During the period from 2011 to 2017, China received altogether ninety-nine communications. Among them, more than 50 percent concerned the issues of freedom of expression, human rights defenders, arbitrary detention, and torture. With regard to these communications, China answered 62 percent of them within a rather short time.⁴³ Among all ninety-nine communications, 30 percent were answered within

and MSAR), U.N. GAOR, Hum. Rts. Council, 4th Sess., § II (B), U.N. Doc. A/HRC/WG.6/4/CHN/2 (2009); *Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: China (including Hong Kong, China and Macao, China)*, U.N. GAOR, Hum. Rts. Council, 17th Sess., § II (B), U.N. Doc. A/HRC/WG.6/17/CHN/2 (2013) [hereinafter OHCHR: China (including Hong Kong, China and Macao, China)]; *Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1: United States of America*, U.N. GAOR, Hum. Rts. Council, 9th Sess., § II (A) (2), U.N. Doc. A/HRC/WG.6/9/USA/2 (2010); *Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21: United States of America*, U.N. GAOR, Hum. Rts. Council, 22nd Sess., § II (B), U.N. Doc. A/HRC/WG.6/22/USA/2 (2015); *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1: United Kingdom of Great Britain and Northern Ireland*, U.N. GAOR, Hum. Rts. Council, 1st Sess., § II (A) (2), U.N. Doc. A/HRC/WG.6/1/GBR/2 (2008); *Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: United Kingdom of Great Britain and Northern Ireland*, U.N. GAOR, Hum. Rts. Council, 13th Sess., § II (B), U.N. Doc. A/HRC/WG.6/13/GBR/2 (12 Mar. 2012); *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1: France*, U.N. GAOR, Hum. Rts. Council, 2nd Sess., § II, U.N. Doc. A/HRC/WG.6/2/FRA/2 (2008); *Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: France*, U.N. GAOR, Hum. Rts. Council, 15th Sess., § II, U.N. Doc. A/HRC/WG.6/15/FRA/2 (2012); *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1: Russian Federation*, U.N. GAOR, Hum. Rts. Council, 4th Sess., § II, U.N. Doc. A/HRC/WG.6/4/RUS/2 (2008); *Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Russian Federation*, U.N. GAOR, Hum. Rts. Council, 16th Sess., § II, U.N. Doc. A/HRC/WG.6/16/RUS/2 (2013).

43. Communication Report and Search, OHCHR, <https://spcommreports.ohchr.org/TmSearch/Results>. Search results were limited to communications on China.

two months, 18 percent were answered between two and three months, and only 8 percent took three months or longer.⁴⁴ From the above information, we conclude that, in formality, China is cooperative with the communications mechanism. Nevertheless, China's cooperation does not mean that it is satisfied with the mechanism *per se*. When discussing the reform of the UN Commission on Human Rights, China suggested that "admissibility criteria" be established for communications to avoid "proliferation and duplication."⁴⁵ Regarding the substantive contents of these communications, the mandate holders often request certain responses over individual cases, such as alleged detention or sentencing of human rights defenders or activists. For those individual cases, China usually denied allegations or provided justification based on its national laws.⁴⁶ In general, it appears that China accepts the communication mechanism, but dislikes the way it is currently designed and, thus, has shown some resistance in responding to substantive issues seemingly sensitive or without factual basis.

B. Country Visits of the Special Procedures to China

Country visits are considered as the "primary mode of influence" that allows the Special Procedures to have significant impact.⁴⁷ Through the country visits, mandate holders can assess the general human rights situation in a given country and specific issues within their mandates. Mandate holders usually meet with national and local authorities, the national human rights institution, Non-Governmental Organizations (NGOs) and scholars or individuals of interest such as prisoners or activists. The mandate holders may give a press-conference at the end of the mission.⁴⁸

Many countries have issued standing invitations, which means that they are prepared to receive a visit from any thematic mandate holder at any time. Nevertheless, as China has not issued such an invitation, each mandate holder must make a request and obtain an *ad hoc* invitation from the Chinese government if they wish to visit China.⁴⁹

By the end of June 2016, China received ten country visits from eight thematic mandates, including representatives from working groups and

44. *Id.*

45. *See Summary Record of the 2nd Meeting*, Commission on Human Rights, U.N. ESCOR, Comm'n on Hum. Rts., 60th Sess., Agenda Item 3, ¶ 64, U.N. Doc. E/CN.4/2004/SR.2 (2004).

46. Communication Report and Search, *supra* note, 43.

47. Piccone, *supra* note 2, at 290.

48. Country and Other Visits of Special Procedures, OHCHR, <https://www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx>.

49. *Id.*

Special Rapporteurs.⁵⁰ These visits explored issues related to the right to education,⁵¹ freedom from torture,⁵² freedom of religion and belief,⁵³ right to food,⁵⁴ freedom from arbitrary detention,⁵⁵ discrimination against women,⁵⁶ the effects of foreign debts on human rights,⁵⁷ and issues on extreme poverty and human rights.⁵⁸ Among others, the Working Group on Arbitrary Detention visited China three times, including a preparatory mission, an official visit, and a follow-up visit.⁵⁹

50. See the China page on the Special Procedures of OHCHR <http://www.ohchr.org/ch/HRBodies/SP/Pages/CountryvisitsA-E.aspx>.
51. *The Right to Education, Report Submitted by the Special Rapporteur, Katarina Tomaševski, Addendum, Mission to China*, U.N. ESCOR, Comm'n on Hum. Rts., 60th Sess., Agenda Item 10, U.N. Doc. E/CN.4/2004/45/Add.1 (2003).
52. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Mission to China*, U.N. ESCOR, Comm'n on Hum. Rts., 62d Sess., Agenda Item 11(a), U.N. Doc. E/CN.4/2006/6/Add.6 (2006) [hereinafter *Report on Torture, Nowak*].
53. *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Report Submitted by Mr. Abdelfattah Amor, Special Rapporteur, in Accordance with Commission on Human Rights Resolution 1995/23, Addendum, Visit by the Special Rapporteur to Pakistan*, U.N. ESCOR, Comm'n on Hum. Rts., 52d Sess., Agenda Item 18, U.N. Doc. E/CN.4/1996/95/Add.1 (1996); see also *Human Rights Questions: Human Rights Questions, including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, Implementation of the Declaration on the Elimination of All Forms of Religious Intolerance and of Discrimination Based on Religion or Belief, Note by the Secretary-General*, U.N. GAOR, 51st Sess., Agenda Item 110 (b), U.N. Doc. A/51/542 (1996).
54. *Report of the Special Rapporteur on the Right to Food, Olivier De Schutter, Addendum, Mission to China*, U.N. GAOR, Hum. Rts. Council, 19th Sess., Agenda Item 3, U.N. Doc. A/HRC/19/59/Add.1 (2012) [hereinafter *Right to Food, Schutter*]; *Report submitted by the Special Rapporteur on the Right to Food, Olivier De Schutter, Addendum, Preliminary Note on the Mission to China (15–23 December 2010)*, U.N. GAOR, Hum. Rts. Council, 16th Sess., Agenda Item 3, U.N. Doc. A/HRC/16/49/Add.3 (2011) [hereinafter *Right to Food, Preliminary Note*].
55. Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment: Report of the Working Group on Arbitrary Detention, U.N. ESCOR, Comm'n on Hum. Rts. 53th Sess., Item 8 of the provisional agenda, U.N. Doc. E/CN.4/1997/4 (1996); Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment: Report submitted by the Working Group on Arbitrary Detention, U.N. ESCOR, Comm'n on Hum. Rts. 54th Sess., Agenda Item 8, U.N. Doc. E/CN.4/1998/44/Add.2 (1997) [hereinafter *Question of Human Rights*]; Civil and Political Rights, Including the Questions of Torture and Detention: Report of the Working Group on Arbitrary Detention, Addendum, Mission to China, U.N. ESCOR, Comm'n on Hum. Rts. 61st Sess., Agenda Item 11(a), U.N. Doc. E/CN.4/2005/6/Add.4 (2004) [hereinafter *Arbitrary Detention, Addendum*].
56. *Report of the Working Group on the Issue of Discrimination Against Women in law and in Practice: Mission to China*, Hum. Rts. Council, 26th Sess., Agenda Item 3, U.N. Doc. A/HRC/26/39/Add.2 (2014) [hereinafter *Issue of Discrimination Against Women*].
57. *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, Particularly Economic, Social and Cultural Rights on his Mission to China*, U.N. GAOR, Hum. Rts. Council, 31st Sess., Agenda Item 3, U.N. Doc. A/HRC/31/60/Add.1 (2016) [hereinafter *Effects of Foreign Debt*].
58. *Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to China*, U.N. GAOR, Hum. Rts. Council, 35th Sess., Agenda Item 3, U.N. Doc. A/HRC/35/26/Add.2 (2017) [hereinafter *Extreme Poverty*].
59. *Arbitrary Detention, Addendum, supra* note 55.

Against the political and social context of these visits, a closer look at these interactions reveals China's subtly changing attitude towards the Special Procedures, from reactive to initiative.

As discussed in the above section, China had been occupied with defending itself to the Commission on Human Rights since the Tiananmen Incident in 1989. China realized that human rights were an important element to the success of its diplomatic relations and had cost it politically when attempting to build its international image. Since 1990, the Western states, led by the US, almost annually tabled resolutions to review China's human rights situation at the Commission on Human Rights.⁶⁰ In 1993, China lost its bid for hosting the 2000 Olympic games partly due to the human rights accusations against it. In order to turn this around, China started to pay attention to human rights research and to strengthen international cooperation in this area. In the early 1990s, China was in the process of amending its criminal law and eventually passed the Amendment to the Criminal Law of the People's Republic of China in March 1997, setting the principle of legality and equality before the law. Under such circumstances, especially China's intention to demonstrate a good-faith gesture on human rights to the international society, the Special Rapporteur on freedom of religion and the Working Group on Arbitrary Detention were able to make their historical visits to China.

1. Special Rapporteur on the Freedom of Religion

From 19 to 30 November 1994, Mr. Abdelfattah Amor, the Special Rapporteur on the Freedom of Religion, visited China. It is worth noting that this visit was initiated by China, instead of being requested by Special Rapporteur, as occurs in most cases. The detailed program of the visit was discussed and agreed to by both Mr. Amor and the Chinese authorities. Mr. Amor then spent twelve days in China, visiting several cities, including Beijing, Shanghai, Chengdu, and Lhasa (the capital city of Tibet Autonomous Region). During that visit, the Special Rapporteur met senior government officials and NGO representatives. In particular, he had discussions with the leaders of the five principal religions recognized in China (Buddhism, Taoism, Islam, Catholicism, and Protestantism), worshippers and scholars, and was permitted to visit places of worship.⁶¹

Among various topics of human rights, freedom of religion is one of the most sensitive subjects for China. It is therefore very interesting or even surprising to see that China's acceptance of country visits of the Special

60. See *Relationship*, *supra* note 11.

61. *Implementation of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, Report Submitted by Mr. Abdelfattah Amor, Special Rapporteur*, U.N. Doc. E/CN.4/1995/91, at 110 (1994) [hereinafter *1994 China Visit Report*].

Procedures started with this topic and Chinese officials were very open-minded with the visiting program. The Special Rapporteur was allowed to visit highly sensitive places, like Tibet, to meet with NGOs, religious groups, and even a “recently released Tibetan monk” who advocated for the Tibetan independence.⁶²

Mr. Amor also discussed sensitive individual allegations with the Chinese authorities.⁶³ In fact, Mr. Amor expressed his appreciation of the openness of the Chinese government in the report after his visit and pointed out the “symbolic importance” of this visit.⁶⁴ In his report, Mr. Amor stated that China has made “substantial progress” in the field of freedom of religion and is aware of the “complexity of the situation in China.”⁶⁵ This statement emphasizes the complicated situation within China and represents exactly the message China intends to convey.

The report by Mr. Amor addressed many concerns and made a series of recommendations. From the way it is written, it is clear the Special Rapporteur remained objective by referring to sources from both Chinese authorities and other independent institutions or individuals. Moreover, the report is written in quite a calm and balanced or more diplomatic style, by not avoiding sensitive issues, such as those concerning Tibet, but at the same time pointing out other elements and interests to be considered.

Unlike with some other visits that took place later, China did not give an official response to the report. The silence suggests that China was not offended by what the report said, despite the criticism. The general open attitude of China towards this visit reflects the government’s eagerness to demonstrate a good-will gesture to the international society regarding human rights under a difficult international environment in the immediate aftermath of the Tiananmen incident.

2. Working Group on Arbitrary Detention (First Visit)

From 6 to 16 October 1997, the Working Group on Arbitrary Detention carried out a visit to China, preceded by a five-day preparatory mission in July 1996.⁶⁶ During its visit, the Working Group was able to attend a trial, visit prisons and centers of Re-education-through-Labor (RETL) in Beijing and Shandong Province,⁶⁷ and visit pre-trial detention centers in Shanghai.⁶⁸

62. *Id.* at 130.

63. Special Rapporteur handed China a list of allegations on detained believers in various locations.

64. *1994 China Visit Report*, *supra* note 61, at 110.

65. *Id.* at 131.

66. *Arbitrary Detention, Addendum*, *supra* note 55, ¶¶ 1–2.

67. The Re-education-through-labor system was abolished in 2013 by the decision of the Standing Committee of the National People’s Congress (28 Dec. 2013).

68. *Question of Human Rights*, *supra* note 55, ¶ 4.

In the report of the Working Group, experts expressed their appreciation of the flexibility and the “coordinated efforts” made by the Chinese authorities to facilitate their visits.⁶⁹ For example, the Working Group was able to visit two detention centers that had never been open to foreign visitors, an act that required efforts by the central government to persuade local authorities.⁷⁰ The experts were also able to talk with individuals without any official accompaniment by the Chinese government.⁷¹

The Working Group stated that it was a fruitful visit, affirmed the efforts of China on amending Criminal Law and Criminal Procedure, and suggested further amendments to relevant laws that would enhance legal protection on this issue.⁷² The report also expressed their concerns on the RETL system, summarizing a technical analysis of it and recommendations for reform.⁷³ Interestingly, the Working Group showed an open-mind towards this heavily criticized system, by considering its possible justification due to the special circumstances in China.⁷⁴ In fact, China abolished the RETL system in 2013 eventually.⁷⁵

The style of writing of the report was also mild compared with some of reports of other mandates, focusing on the technical aspects of an issue rather than being judgmental. The technical style of the report may partly explain why the Chinese government did not react negatively to the report. The very fact that China accepted the visit regardless of its focus on such a sensitive subject for the Chinese government, revealed China’s continuous open attitude towards the Special Procedures at the time.

3. *Special Rapporteur on the Right to Education*

During 9 to 20 September 2003, Ms. Katarina Tomaševski, the Special Rapporteur on the Right to Education visited China. This invitation originated from the human rights dialogue between the European Union and China in 2002.⁷⁶ China’s acceptance of this visit may also be related to its ratification of the International Covenant on Economic, Social and Cultural Rights in 2001.

The Special Rapporteur confined her visit to Beijing due to limited time because of the tight budget, as she explained in the report. In addition to

69. *Id.* ¶ 5.

70. *Id.* ¶ 101.

71. *Id.* ¶ 9.

72. *Id.* ¶ 109.

73. *Id.* ¶¶ 81–99.

74. For example, some persons subjected to the RETL accepted the punishment and do not see themselves as criminal. *Id.* ¶ 97.

75. Decision of the Standing Committee of the National People’s Congress on Abolishing the Law on Reeducation Through Labor, The Central People’s Government of People’s Republic of China, http://www.gov.cn/jrzq/2013-12/28/content_2556412.htm.

76. *Report by the Special Rapporteur, Katarina Tomaševski, supra note 51, ¶ 1.*

the planned official visits, she was able to arrange some additional meetings by herself and to meet some individuals alone.⁷⁷

After the visit, the Special Rapporteur gave an in-depth analysis of issues related to the Right to Education in China and made a series of recommendations. Unlike most mandate holders, Ms. Tomaševski wrote her report in a more personalized style, demonstrated in the beginning of the report where she describes the rich to poor contrast of Beijing.⁷⁸ She also questioned the idea of “human rights with Chinese characteristics” as the Chinese authorities often claimed. This was offensive in the eyes of the Chinese government. In contrast with reports by other mandate holders, Ms. Tomaševski’s report did not begin by recognizing the achievements and progress that China had made in the past, but instead immediately began by directly criticizing the identified problems. While her analysis on the issues addressed in the report appear to have some factual basis and she pointed out some deeply rooted problems within the Chinese education system, such as the way it was financed which caused many problems in practice, for example, educational resources are unevenly distributed. It is likely that the Chinese government was humiliated and regarded such criticism as disproportionate to the efforts and progress that China had made since reform and opening up.

In fact, the Chinese government was upset by the report, and sent a diplomatic note to the OHCHR, written in a straightforward style with strong expressions.⁷⁹ For example, China accused the Special Rapporteur of making “groundless comments” on the education situation in China and “false and inappropriate comment[s]” on “public health, military expenditure, the Olympic project[s] and NGO activities, . . . which are irrelevant to the right to education.”⁸⁰ China stated that some of the statements made by the Special Rapporteur in the report were untrue, such as “education in China ‘denies the religious or linguistic identity’ of ethnic minorities”⁸¹ and “integrated education was only selectively provided to a few children with disabilities.”⁸² Moreover, China made harsh comments such as being “confused about the motives of the Special Rapporteur” at 60th session of Commission on Human Right in 2004.⁸³ Among all reports of the mandate

77. *Id.*

78. *Id.* ¶ 4.

79. *Note verbale dated 10 December 2003 from the Permanent Mission of China to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights*, U.N. ESCOR, Hum. Rts. Comm., 60th Sess., Agenda Item 10, U.N. Doc. E/CN.4/2004/G/16 (2003).

80. *Id.* at 2–3.

81. *Id.* at 6.

82. *Id.* at 10.

83. Statement on the Report of the Special Rapporteur on the Right to Education in China by Liu Zhongxin, Adviser to the Chinese Delegation, at the 60th session of the Commission on Human Rights of United Nations, Official website of Permanent Mission of the People’s Republic of China to the United Nations Office at Geneva and the other

holders who visited China, this reaction by the Chinese authorities remains the fiercest so far.

With regards to the substantive issues, Tomaševski's report was not more critical than other reports on China. It is probably because of her particular writing style and how the subject of the Right to Education directly relates to many other areas, which was considered irrelevant by the Chinese government. It also revealed that at the time China was not very experienced in dealing with straightforward criticism on human rights issues. Compared to China's reaction to Mr. Philip Alston in 2016, which was more diplomatic in nature, it appears to be an overreaction by Chinese officials to Professor Tomaševski's criticism in 2003.

4. Working Group on Arbitrary Detention (Second Visit)

From 18 to 30 September 2004, the Working Group on Arbitrary Detention made their second visit to China. This was a follow-up visit to monitor the relevant development since the first visit in 1997 and was also related to China's judicial reform, such as abolishing the "custody and repatriation" system.⁸⁴ In order to monitor whether recommendations raised in the report of the previous visit had been implemented, the Working Group visited the same cities, officials from the same departments, and the same detention facilities including police stations, pre-trial detention centers, prisons, center of re-education through labor, and psychiatric hospitals.⁸⁵ The Working Group met with more than seventy inmates detained for various reasons in private without accompaniment of Chinese officials.⁸⁶

The report, while noticing some positive developments since 1997, also directly pointed out that not all recommendations made after the last visit were implemented by China, such as defining the term "endangering the national security" in the Chinese criminal law.⁸⁷ The report criticized that the rules and practices concerning judicial deprivation of liberty did not meet international standards, the period of time for which suspects can be held in police custody without judicial approval is too long, and the status of the

international organizations in Switzerland, <http://www.china-un.ch/chn/gjhyfy/hy2004/t154236.htm> (China).

84. Abolishing of the "custody and repatriation" system is a direct result of the Sun Zhigang incident in 2003. Sun was a young college graduate who worked in a company in Guangzhou and was put under the "custody and repatriation" system for not carrying an ID when intercepted by police in the street. He was physically abused and eventually beaten to death during the custody. Sun's case has triggered a major debate on the validity of system and the regulations creating it. For more information, see *Sun Zhigang's Brutal Killers Sentenced*, CHINA DAILY (6 Oct. 2003), http://www.chinadaily.com.cn/en/doc/2003-06/10/content_168514.htm.
85. *Arbitrary Detention, Addendum*, *supra* note 55, at 2.
86. *Id.*
87. *Id.* ¶ 23–26.

public prosecutor did not meet international requirements.⁸⁸ The Working Group made a series of recommendations at the end of the report, including some that were viewed as sensitive, such as reviewing the laws that may deprive personal liberty due to its practice on Freedom of Expression.⁸⁹

Although the report appeared quite straightforward and did contain direct criticisms, it is written in a neutral way, with focus on the technical aspects of the law and policy and taking into account the general circumstances in China. The report must have been viewed by the Chinese government as being neutral and acceptable, because the government did not officially react to the report.

5. *Special Rapporteur on Torture*

During 2 December and 20 November 2005, Mr. Manfred Nowak, the Special Rapporteur on Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, visited China. He visited prisons and detentions centers in Beijing, Lhasa of Tibet, and Urumqi of Xinjiang and was able to interview inmates and detainees in private. Although in his report the Special Rapporteur pointed out the intervention of Chinese national security officials, he seemed generally satisfied with the arrangement of the visits and cooperation of the Chinese government and prison authorities.⁹⁰

In his report, the Special Rapporteur pointed out multiple barriers to prevent torture or other degrading, inhuman treatment in China, such as police's pressure to solve the case and the lack of the legal culture of presumption of innocence.⁹¹ The report did not avoid discussing issues with political sensitivities, but it did recognize the significant efforts that the central government made to prevent and reduce torture and the resulting progress that resulted.⁹² In the end of the report, the Special Rapporteur made a series of recommendations, such as abolishing the Re-education-through-Labor system, which was in fact abolished in the end of 2013.⁹³

The Chinese government did not make any official comments to the report. Subsequently, on 2 December 2008, the Special Rapporteur sent a request to the Chinese government for information and comments on the follow-up measures taken with regard to the implementation of his recommendations but did not receive any feedback from China.⁹⁴

88. *Id.* ¶ 74.

89. *Id.* ¶ 78 (e).

90. *Report on Torture, Nowak, supra* note 52, ¶ 10.

91. *Id.* ¶ 73.

92. *Id.* ¶ 72.

93. *Id.* ¶ 82.

94. *Report on Torture, Nowak supra* note 52, at 4, ¶ 7.

6. *Special Rapporteur on the Right to Food*

From 15 to 23 December 2010, Mr. Olivier De Schutter, the Special Rapporteur on the Right to Food, conducted a visit to China at the invitation of the Chinese government. From the timing of the visit it seems somehow to be related to the 2008 incident of melamine-contaminated infant milk powder in China, so it is natural that the Special Rapporteur addressed his concern over this notorious food safety incident and recognized the measures that China took afterwards to strengthen supervision, including a new Food Safety Law in March 2009 aimed to establish Food Safety Commission and coordinate and guide food safety supervision, and urge all departments to fulfill their respective responsibilities.⁹⁵

The Special Rapporteur addressed a series of concerns and made corresponding recommendations such as reforming the land policy, ensuring gender equality on the land rights and addressing discrimination against rural migrant workers.⁹⁶ His report did not elicit a response from Chinese officials.

7. *Working Group on Discrimination against Women in Law and in Practice*

From 12 to 19 December 2013, the Working Group on the Issue of Discrimination against Women in Law and in Practice visited China at the invitation of the Chinese government.⁹⁷ The report of the Working Group did not mention whether they were able to conduct meetings in private, which suggests it did not meet any difficulties.

In the report, the Working Group expressed its appreciation of the “openness of China” towards the Special Procedures.⁹⁸ While noting the significant progress that China achieved on women’s rights and gender equality, the Working Group was quite straightforward with their concerns and did not avoid sensitive topics like the women refugees from North Korea and the independence issue of Chinese trade unions, and made recommendations accordingly.⁹⁹ The Working Group also recommended China establish a national institute for human rights, which echoed suggestions from other mandate holders and the treaty bodies.¹⁰⁰ China did not officially comment on the report.

95. *Right to Food, Preliminary Note, supra* note 54, ¶ 20; *Right to Food, Schutter, supra* note 54, ¶ 22.

96. *Right to Food, Preliminary Note, supra* note 54, ¶¶ 40–45.

97. *Issue of Discrimination Against Women, supra* note 56, ¶ 1.

98. *Id.* ¶ 3.

99. *Id.* ¶¶ 47, 85, 110 (b).

100. *Id.* ¶ 108 (b).

8. *Independent Expert on the Effects of Foreign Debt on Human Rights*

From 29 June to 6 July 2015, Mr. Juan Pablo Bohoslavsky, the Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, particularly Economic, Social and Cultural rights, conducted a country visit to China.¹⁰¹ The Independent Expert also met scholars, NGO representatives, and industrial representatives.¹⁰² As the theme of the mandate did not concern sensitive matters and Mr. Bohoslavsky did not meet any individuals with sensitive backgrounds, private meetings do not seem to have been an issue during this country visit.

After the visit, the Independent Expert recommended in his report that the Chinese government should integrate a more visible human rights-based approach into development cooperation and international loans.¹⁰³ During this visit, the Independent Expert addressed many concerns from the international society over the human rights impact of China's increasing overseas investments in recent years.¹⁰⁴ Like in most cases, China did not react officially to this report.

9. *Special Rapporteur on Extreme Poverty and Human Rights*

From 15 to 23 August 2016, Mr. Philip Alston, the Special Rapporteur on Extreme Poverty and Human Rights visited China at the invitation of Chinese government.¹⁰⁵

In his mission report, Mr. Alston used six paragraphs to complain about the interference of the government, through which he was basically unable to "meet with the great majority of civil society actors with any degree of freedom or confidentiality."¹⁰⁶ For example, he pointed out that he was "regularly followed by security officers posing as private citizens, thus making it virtually impossible to meet privately with civil society organizations and individuals."¹⁰⁷

In addition, among five paragraphs discussing achievements, the Special Rapporteur used two paragraphs of which to discuss challenges, one of which included a particularly harsh critique: "[t]he greatest challenge in this respect is to understand how the leading role of the Communist Party

101. *Effects of Foreign Debt*, *supra* note 57.

102. *Id.* ¶ 4.

103. *Id.* ¶ 88.

104. *Id.* ¶ 87; see also *Concluding Observations on the Second Periodic Report of China, Including Hong Kong, China, and Macao, China*, U.N. ESCOR, Comm. On Econ., Soc. & Cult. Rts., 52nd Sess., ¶ 13, U.N. Doc E/C.12/CHN/CO/2 (2014).

105. *Extreme Poverty*, *supra* note 58, ¶ 1.

106. *Id.* ¶¶ 6–11.

107. *Id.* ¶ 6 (e).

can coexist with the recognition of individual rights and the provision of meaningful accountability mechanisms, which are indispensable elements in a human rights framework.”¹⁰⁸

In the rest of the report, the Special Rapporteur gave a comprehensive and critical review of human rights aspects of poverty relief of China, such as education, rural migrant workers, equality, and participation, and made a series of recommendations as other mandate holders had done.¹⁰⁹

Not surprisingly, China responded negatively to the report of Mr. Alston. Not only did Chinese officials send an official “state comment” on the report to the UN, but it also publicly criticized the statements of Mr. Alston through media outlets within China. For example, the spokesman of Ministry of Foreign Affairs made the following comments in a press conference when questioned about the Special Rapporteur’s claim of interference and his criticism of China’s ethnic minority policies. First, China hopes that the Special Rapporteur could see the achievements China has made in promoting human rights, could respect Chinese way toward human rights realization which is insisting the socialist road with Chinese characteristics, and do not evaluate human rights development with only one method. Second, the spokesman denied all the allegations of interference and stated that the alleged harassment of an activist is “absurd.”¹¹⁰

Interestingly, in China’s written comments sent to the UN, China’s level of dissatisfaction was considerably toned down. In five pages of comments (in Chinese), China used the most space trying to correct the “misunderstandings” on certain issues and some opinions or data that did not “match the facts.”¹¹¹ Only one paragraph in the end of the comments related to the interference allegation, stating that China has “tried their best to meet the requests of meetings by the Special Rapporteur,” and China is willing to have “constructive dialogue and cooperation with the Special Rapporteur,” China hopes the Special Rapporteur “cherishes the kindness of China, strictly implement his authorized mandate and do not refer to subjects irrelevant to poverty relief.”¹¹²

In comparison with other mission reports on China, Mr. Alston’s report was not much more critical on substantive issues. In fact, all the reports contained very critical contents and harsh comments. In general, all man-

108. *Id.* ¶ 16.

109. *See id.*

110. See Ministry of Foreign Affairs Answers Questions About the G20 Hangzhou Summit Hangzhou (24 Aug. 2016) [hereinafter Ministry of Foreign Affairs], http://www.gov.cn/xinwen/2016-08/24/content_5102096.htm.

111. *Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to China: Comments by the State*, U.N. ESCOR, Hum. Rts. Council, 35th Sess., Agenda item 3, at 3, U.N. Doc. A/HRC/35/26/Add.6 (2017) (China). Quotation is translated from the Chinese version by the authors as the official English version is not available.

112. *Id.* at 6.

date holders were straightforward about the problems, only some focused more on achievements. What distinguished Mr. Alston's report and triggered a harsh reaction from China is as follows.

First, the report questioned the Chinese Communist Party's role in human rights protection and seemed to imply that the political regime of China caused difficulties in implementing human rights obligations. Criticizing the political system of China surely infuriated the Chinese authorities.

Second, while mandates like torture and religion, although sensitive, are focused on one area and can be monitored in a relatively technical way, mandates like right to education or poverty involve comprehensive matters and problems often with social roots. As such, the mission reports on such mandates are likely to appear to criticize everything.

Third, Mr. Alston's criticism may have surprised Chinese authorities, as they see poverty relief as one of China's biggest achievements that has received much attention. In fact, China has made tremendous efforts for poverty relief in recent years and as a result reduced the poverty rate of the world. The UN Millennium Development Goals Report 2015 shows that the proportion of people living in extreme poverty in China fell by half from 61 percent in 1990 to below 30 percent in 2002, and down to 4 percent in 2015.¹¹³ The number of citizens China has raised from poverty accounts for 70 percent of the world's total.¹¹⁴ On many occasions, President Xi Jinping emphasized that poverty reduction is among the top priorities. Hard indicators are set and determined to meet no matter how difficult it is. In fact, Mr. Alston's report pointed out that China made significant achievements in poverty relief.¹¹⁵ Chinese officials probably did not realize there were as many problems as Mr. Alston pointed out in his report, and thus had trouble accepting the allegations and possibly felt wrongfully accused. It also revealed a different approach to poverty relief: China stressed the role of development in poverty reduction and focused on the result of poverty relief, such as the number of people out of poverty while a human rights expert focuses on how the poverty relief is achieved and human rights impacted.

10. Findings.

Is China cooperative with the country visits of the Special Procedures? Based on the mission reports of the mandate holders, the level of cooperation will be evaluated by China's acceptance of the visits, facilitation during the visits, and the follow-up implementation to the recommendations of the mandate holders.

113. U.N. DEPARTMENT OF ECONOMIC AFFAIRS, THE MILLENNIUM DEVELOPMENT GOALS REPORT 2015, at 14–15 (2015).

114. *Id.*

115. *Extreme Poverty*, *supra* note 58, ¶¶ 12–13.

Compared to communications, country visits are more intrusive. For a country like China, which strongly emphasizes state sovereignty in international relations and is vigilant with any kind of international monitoring or jurisdiction, it is not a surprise why China was initially reluctant to receive such visits and still refuses to give standing invitations, which is considered an important indicator of cooperation by the UN.¹¹⁶ Looking at the past visits, we can see that China adopted a selective approach when accepting the requests of country visits, which depended on the international and national circumstances, the topic of the mandate, and who the specific mandate holders were.

Once a visit was accepted, China was generally cooperative. The mandate holders were able to meet senior officials and a variety of organizations and individuals in private, without interference from the Chinese authorities. The interference that Mr. Alston and Mr. Nowak addressed in their reports, in 2005 and 2016, respectively, were the only two cases officially reported. During early visits, such as that of the Special Rapporteur on the Freedom of Religion and the Working Group on Arbitrary Detention in the mid-1990s, the Chinese authorities showed a particularly open and cooperative attitude. With regards to Mr. Alston's complaints on interference by Chinese authorities, it is still too early to judge whether this will be a trend for the future visits or just an isolated occurrence. Nevertheless, interfering with a mandate holder's meetings is certainly against the principle of independence and unwise since such a mission was accepted as a good gesture to cooperate with the Special Procedures. Interfering with the meetings may render such a mission meaningless or even counterproductive—for both China and the Special Procedures.

With regard to the substantive aspect, which means whether China implemented the recommendations made by mandate holders, it is more difficult to reach a clear assessment. Following their second visit, the Working Groups on Arbitrary Detention reported that China did not implement the recommendations the group made following its first visit. The Special Rapporteur on Torture made a follow-up request for response from Chinese officials that went unrecognized—the evaluation on the follow-up performance of China was not positive either. However, over the years, as the report pointed out, China had made progress in certain aspects. In fact, China did abolish the notorious RETL system eight years after that recommendation was made.¹¹⁷ At the surface, it may appear that whatever the Special Procedures have

116. Similar to the United States, China refuses to accept jurisdiction of any international bodies such as ICJ, ICC, or UN human rights treaty bodies.

117. For an in-depth analysis on the gap between the RETL system and international human rights standards, see Lu Haina, *Rethinking the "Reeducation-Through-Labor" System in China: Does it Impose Prohibited or Permitted Forced Labor?*, 38 HONG KONG L. J. 831 (2008).

suggested China has its own pace to deal with human rights related issues. Nevertheless, one cannot conclude that the Special Procedures are useless to countries like China. As many mandate holders have pointed out in their reports, China has a very complex situation, any reform or efforts to improve the human right situation will encounter tremendous obstacles. It takes time and good timing for positive change to occur is essential. For that purpose, the Special Procedures can still serve as a useful pressure mechanism.

IV. WHAT DO CHINA AND THE SPECIAL PROCEDURES EXPECT FROM EACH OTHER?

To answer whether China and the Special Procedures can better work with each other, it must first be evaluated why they are not satisfied with each other and what expectations they have of each other.

A. Expectations of the Special Procedures Towards China

From the report submitted by the OHCHR to the UPR and recommendations given by other states to China on strengthening cooperation with the Special Procedures, we conclude that the Special Procedures has the following expectations of China.

First, China is expected to extend a standing invitation to the Special Procedures.¹¹⁸ During the first UPR on China in 2009, China rejected the recommendations of seven states to issue a standing invitation, and rejected the recommendations by four states to accept all existing visit requests made by mandate holders.¹¹⁹ Nevertheless, China accepted the recommendation to invite “Special Rapporteurs dealing with economic and social rights”¹²⁰ and to “enhance the “cooperation” with the Special Procedures.¹²¹ During the second round of the UPR in 2014, China again rejected the recommendations given by three states to issue a standing invitation and recommendations to accept all existing visit requests. Similar to the first round of the UPR, China accepted the recommendations to enhance the cooperation with the special procedures.¹²²

118. For example, Mr. Philip Alston wrote this suggestion in his mission report on China. See *Extreme Poverty*, *supra* note 58, ¶ 5.

119. *Report of the Working Group on the Universal Periodic Review: China*, U.N. GAOR, Hum. Rts. Council, 11th Session, Agenda Item 6, ¶ 41, U.N. Doc. A/HRC/11/25 (2009).

120. *Id.*

121. *Id.* ¶ 81. Recommendations by Saudi Arabic, New Zealand, and Latvia.

122. *Report of the Working Group on the Universal Periodic Review, China (including Hong Kong, China, and Macao, China)*, Human Rights Council, 25th Sess., Agenda Item 6, ¶ 186.68, U.N. Doc. A/HRC/25/5 (4 Dec. 2013). See also China accepted the relevant

To explain these rejections, China gave the following reasons:

The government will assess its decision to extend a standing invitation to special procedures based on its national conditions. Although China has not extended a standing invitation, China has received many visits by special procedures. China takes every visit by special procedures seriously, and these visits have produced good overall results.¹²³

Standing invitations are considered as a good measurement of a state's cooperation with the Special Procedures.¹²⁴ Up until 10 December 2018, there were 118 member states and one non-member observer state that extended a standing invitation to the Special Procedures.¹²⁵ It is clear that many Western and Eastern European countries have a high acceptance of country visits and African and Asia countries have a lower acceptance of country visits despite the fact that the latter have had more country visits.¹²⁶ It also reflects states' level of acceptance and trust in the Special Procedures. In the past ten years, attitudes toward the Special Procedures in Asian and African countries have significantly improved, which may be attributed to the reform of the HRC. But given China's past statements and vigilant attitude towards international monitoring in general, it is unlikely that China will change to issue a standing invitation in the near future.

Second, China is recommended by Special Rapporteurs to accept country visit requests on certain issues, such as freedom of peaceful assembly and association, the situation of human rights defenders, protection of ethnic minorities, the right to safe drinking water, the independence of judges and lawyers, involuntary disappearance, etc.¹²⁷ To consider and accept those country visits requested by mandate holders reflects China's willingness to cooperate with the Special Procedures and can be an alternative to the standing invitation. During the third round of the UPR on China that occurred in November 2018, several states recommended China invite more Special Rapporteurs.¹²⁸ During the review session, China promised to invite mandate holders on rights of old persons, right to food, water and sanitation, and right to development.¹²⁹ Again, China exhibited its preference for

recommendation of Ecuador, *Report of the Working Group on the Universal Periodic Review, China Addendum*, Human Rights Council, 25th Sess., Agenda Item 6, pg. 6, U.N. Doc. A/HRC/25/5/Add.1 (27 Feb. 2014) [hereinafter *China Addendum*].

123. *China Addendum*, *supra* note 122.

124. Piccone, *supra* note 2, at 290.

125. See Standing Invitations, OHCHR, <https://spinternet.ohchr.org/StandingInvitations.aspx?lang=en>.

126. See Special Procedures Standing Invitations Percentages Table (as of 13 September 2016), <https://www.ohchr.org/Documents/HRBodies/SP/StandingInvitationsPercentagesTable.pdf>.

127. OHCHR: China (including Hong Kong, China, and Macao, China), *supra* note 42, § III.

128. *Report of the Working Group on the Universal Periodic Review, China*, Human Rights Council, 40th Sess., Agenda Item 6, at 7, U.N. Doc. A/HRC/40/6 (26 Dec. 2018).

129. As the final report has not been issued, it is not yet available to see what recommendations China accepts or rejects. The above information comes from the live video of the UPR session on China.

economic, social and cultural rights. If these visits happen as promised, there will certainly be harsh criticism from mandate holders as these rights are closely related to civil and political rights and there are indeed a lot of problems from a human rights perspective.

Third, China is expected to better cooperate with the work of the mandate holders when they visit China. So far, two mandate holders have indicated in their reports that China needs to provide mandate holders with freedom to privately meet individuals of their choosing, although China denied the interference.¹³⁰ While this particular point has not been directly addressed by the UPR on China, the OHCHR and other states do point out generally that China needs to improve its cooperation with the mandate holders, which include both communications and country visits. While China indeed accepted the UPR recommendations to improve cooperation, the level of cooperation depends on many variables including the political and economic conditions both at the international and domestic level.

B. China's Expectations Towards the Special Procedures

As evidenced by China's official statements at the Commission on Human Rights and the Human Rights Council and other documents, China has the following expectations towards the Special Procedures.

First, China expects the Special Procedures to be less politically influenced. The Chinese government appears to genuinely believe that the Special Procedures, together with other UN human rights mechanisms, is selective, double-standardized and motivated by geo-political concerns.¹³¹ This view does not seem changed after the Human Rights Council replaced the Commission on Human Rights in 2006. As such, China has consistently opposed setting up country-specific mandates, even when such a proposal is targeted at the United States.¹³² From the perspective of human rights monitoring, it is certainly not realistic or desirable to eliminate the country mandates since it is an important means to address serious human rights violations in a specific country while the UPR or treaty bodies may not be able to deal with thoroughly. Nevertheless, the selective approach of the Special Procedures on the targeted states, as opposed by China, does indeed need improvement. For example, Saudi Arabia has never become the target of such a mandate despite its notorious human rights record. It does raise questions about the fairness of the country-specific mandates. This issue cannot be corrected unless the establishment of the country mandate is decided by independent bodies instead of the states.

130. *Extreme Poverty*, *supra* note 58; *Report on Torture*, Nowak, *supra* note 52.

131. See, e.g., *Chinese Government Puts Forward Five Propositions on International Human Rights* (21 Jun. 2006), <http://www.china.com.cn/chinese/PI-c/1249664.htm>.

132. Kinzelbach, *supra* note 20, at 314.

Second, China expects the Special Procedures to pay equal attention to economic, social and cultural rights as well as civil and political rights. This expectation is legitimate because during the first two decades, the Special Procedures was exclusively focused on civil and political rights. It wasn't until 1998 that the Special Procedures developed its first mandate on economic, social, and cultural rights, after the 1993 Vienna World Conference on Human Rights, which recognized the interdependence and indivisibility of two categories of rights.¹³³ China is more interested in the emphasis on economic, social, and culture rights, because it is more confident in its implementation and protection these rights.

Third, China expects the mandate holders to be fair, objective, and more sympathetic with China's conditions as a developing country facing complicated challenges. During the prolonged discussion of reforming the Commission on Human Rights, China supported the adoption of a code of conduct for Special Rapporteurs, stating that it is necessary "in order to avoid irresponsible behaviors such as had sometimes been witnessed in the past."¹³⁴ As reflected in China's previously discussed official comments on the mission reports of the Special Rapporteurs on the Right to Education and the Extreme Poverty and Human Rights, the Chinese government believes that some mandate holders have an inherent prejudice against China, which prevents them from attempting to understand the human rights situation in China and making an objective assessment. This expectation may be based on China's misunderstanding of the role of mandate holders, which are meant to be critical and to find out what needs to be done in order to improve the human rights situations. In fact, Mr. Alston is equally critical in his reports to the US as he is towards China.

Fourth, China expects that the mandate holders will not exceed the scope of their mandate. In both official comments of China in response to the reports of Ms. Tomaševski and Mr. Alston, the Chinese government expressed their dissatisfaction and suggested that the Special Rapporteurs exceeded the scope of their mandates.¹³⁵ This point is debatable. On the one hand, according to the code of conduct, the mandate holders are indeed expected to strictly observe the terms of the mandate.¹³⁶ On the other

133. Vienna Declaration and Programme of Action, *adopted* 25 June 1993, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., 22d plen. mtg., ¶ 5, U.N. Doc. A/CONF.157/23 (1993), *reprinted in* 32 I.L.M. 1661 (1993).

134. See UN Commission on Human Rights, Summary Record of the 2nd Meeting, U.N. Doc. E/CN.4/2004/SR.2 (2004), ¶ 64, Referred by Kinzelbach, *supra* note 20.

135. See *China's Comments on the Report of the Special Rapporteur on the Right to Education*, U.N. Doc. E/CN.4/2004/G/16 (11 Dec. 2003), ¶ 3; *on Report of the Special Rapporteur Extreme Poverty and Human Rights on his Mission to China: Comments by the State*, *supra* note 111, Point 11.

136. See *Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*, art. 7. Observance of the terms of the mandate: It is incumbent on the mandate holders to exercise their functions in strict observance of their mandate and in particular to ensure that their recommendations do not exceed their mandate or the mandate of the Council itself.

hand, there is no clear-cut boundary on substantive issues to each mandate since all human rights are interrelated. In China's comments in response to the report of Ms. Tomaševski, it was said that "public health policy, military expenses, Olympic project and activities of NGOs" that the Special Rapporteurs addressed in her report were "irrelevant" subjects to her mandate. Actually, from the perspective of international human rights law, these issues are related to the right to education, since the allocation of budget really mattered in realization of right to education. Thereafter, it does not seem that the Rapporteur exceeded her mandate on this point.

V. CAN CHINA AND THE SPECIAL PROCEDURES BETTER WORK WITH EACH OTHER AND, IF SO, HOW?

Based on the above analysis, the authors conclude that China and the Special Procedures can better work with each other. However, this certainly requires great effort from both sides, with an understanding that all expectations cannot be met. For this purpose, this article makes the following suggestions for both China and the Special Procedures. These suggestions are not aimed at making the parties completely satisfied with one another but to provide suggestions to work better together to eventually improve the human rights implementation by China.

A. What China Can Do

First, China needs to invite more mandate holders, especially on civil and political rights, to visit China before it is ready to send a standing invitation. To that end, China needs to better understand that all human rights are interrelated. China's acceptance of country visits largely depends on the substantive issue concerned. In the pre-Human Rights Council era, it appears that China was more open to accept visits by mandate holders on civil and political rights, which was probably due to the diplomatic pressure in the post-Tiananmen time. Since the Human Rights Council replaced the Commission on Human Rights in 2006, none of the four accepted country visits were on civil and political rights, probably because China felt less pressure and more confident in human rights issues. Such a selective approach towards country visits reflects China's consistent attitude towards human rights—which prioritizes economic, social, and cultural rights over civil and political rights—and China's confidence in its implementation of the former. Nevertheless, the mission reports show that China did not receive less criticism on economic, social, and cultural rights than civil and political rights. As such, China's preference for specific thematic mandates has not

and will not win more praise on human rights. Moreover, accepting more civil and political mandate visits would improve China's image in terms of cooperation with the Special Procedures.

Second, China should react more actively to the communications and country visits and needs to keep an open mind as it did in 1990s. While all mission reports contain straightforward criticisms of China's protection of human rights in some fields, in most cases the Chinese government chose to keep silent, which may be because China did not want to raise too much public attention on the visits and report of the mandate holders. Alternatively, China could actively respond to all mission reports, showing willingness to react according to the recommendations by mandate holders and to seek further advice from them if needed. Interfering with the meetings of mandate holders is counterproductive to what China wants to achieve by accepting such visits in the first place and needs to be avoided. Most of all, China should fully realize the task of independent mandate holders is to monitor the states and being critical is their job.

Third, China needs to raise the public's awareness of the Special Procedures and the country visits of mandate holders through the media. So far, there has been very little publicity of the visits of mandate holders in China. News coverage by official media is rather rare, only with a few sporadic reports with basic information or the mentioning of the visits by press conference of the Ministry of Foreign Affairs.¹³⁷ It is the requirement of the Special Procedures that the visits of mandate holders are publicized. Moreover, publicity can benefit both sides. China's bureaucratic system is not iron-plated. The central government needs the cooperation of the local authorities to facilitate the visit of UN mandate holders, such as providing requested information or opening the detention facilities for interviews. Smooth cooperation requires good understanding of the purpose of such visits. In the central government system, it appears that each related branch has more or less learned about the Special Procedures and at least one official in each organization is familiar with the mechanism. But at the local level, there is little knowledge about it. It can cause practical difficulties during mandate holders visits and also bring extra work for the Ministry of Foreign Affairs. In fact, several mission reports of the mandate holders have mentioned that, sometimes, the Ministry needed to work hard to persuade the local authorities to allow interviews or visits.¹³⁸

Fourth, China can make more donations to the Special Procedures. It has been pointed out that Special Procedures have been facing budget constrains since the number of mandates increased but no extra budget has

137. See, e.g., Ministry of Foreign Affairs, *supra* note 110. See also Liu Jianchao Answered Reporter's Questions on the Visit to China by the UN Rapporteur, <http://news.sohu.com/20051122/n227568074.shtml>.

138. For example, *Question of the Human Rights*, *supra* note 55, ¶¶ 9–10.

been provided.¹³⁹ Donations from China will assist in eliminating this burden and contributions will benefit both sides. During the third UPR on China in November 2018, China claimed that it would donate 800,000 USD to the UN High Commissioner Office on Human Rights. In the UN report, the High Commissioner Office on Human Rights acknowledged appreciation for the donation by China.¹⁴⁰ Nevertheless, as the second largest economy of the world and one of the biggest providers of foreign aid, this sizeable donation may appear insufficient compared to China's financial capacity.¹⁴¹

B. What the Special Procedures Can Do

First, the Special Procedures need to increase the resources for mandate holders, including monetary, administrative, and research resources. As mentioned previously, the Special Procedures have the advantage of flexibility that other procedures do not have, mainly because its mandate holders are independent experts. Nevertheless, Special Procedures also has its weaknesses. As some mandate holders and scholars have pointed out, the capacity of the mandate holders has been seriously constrained by the limited and reduced budget and other resources,¹⁴² which negatively affects the effectiveness of the mechanism.

To improve the human rights situation in a country with a history like China, those issues must be understood with respect to the very complicated national circumstances, including its political, social, economic reality, and its history and culture. A deeper understanding requires that mandate holders spend significant time and resources devoted to conducting research. A country visit to China requires even more resources. For instance, China is well-known for its regional disparity and diversity. Visiting a few cities or one region does not allow mandate holders to draw representative conclusions. But mandate holders usually have only enough resources for a ten-day or two-week visit and are limited in the places they can visit. This constraint

139. See, e.g., Gutter, *supra* note 4, at 102–03.

140. *Compilation on China: Report of the Office of the United Nations High Commissioner for Human Rights*, U.N. GAOR, Hum. Rts. Council, 31st Sess., ¶ 10, U.N. Doc. A/HRC/WG.6/31/CHN/2 (2018).

141. As some research has shown, China has become the biggest overseas aids provider. See *With US Poised to Slash Foreign aid, China in Pole Position to Become World's Biggest Donor*, SOUTH CHINA MORNING POST (12 Oct.2017), <https://www.aiddata.org/in-the-news/south-china-morning-post-with-us-poised-to-slash-foreign-aid-china-in-pole-position-to-become-worlds-biggest-donor>.

142. Various researches raised the issue of the restraining resources of the Special Procedures, including insufficient budget and administrative support. See, e.g., Piccone, *supra* note 2, at 290; Gutter, *supra* note 4, at 102–03; Rosa Freedman & Jacob Mchangama, *Expanding or Diluting Human Rights? The Proliferation of United Nations Special Procedures Mandates*, 38 HUMAN RIGHTS Q. 164 (2016).

of resources has indeed been frequently pointed out in the mission reports of the mandate holders on China.¹⁴³

In fact, from the mission reports, we can see that all mandate holders have done impressive work to learn about China's history, social conditions, and to understand human rights in China in the context of its unique national conditions. Nevertheless, given the limited available resources, omissions or misunderstandings may be inevitable, which in certain cases can trigger negative reactions from China that could have been avoided if more resources were available. In any case, mandate holders will produce better work with the availability of more resources.

Second, the Special Procedures can establish a training-like mechanism to facilitate the thorough education of the mandate holders, with emphasis on education about the state they intend to visit, and to provide opportunities for new mandate holders to learn from the experiences from other mandate holders. Working with China also requires diplomatic wisdom and know-how to deal with its authorities—wisdom that could be gained from sufficient preparation, including predecessors' experiences. In fact, the Special Procedures improved the exchange among mandate holders by establishing a Coordination Committee in 2005, with the task, among others, to enhance the cooperation among mandate holders through information exchange or methodology sharing.¹⁴⁴ Unfortunately, the Coordination Committee appears to be distracted by too many goals that the Coordination Committee set for itself.¹⁴⁵ For example, the Coordination Committee seems to pay significant attention to substantive human rights issues, which may be a deviation from the original purpose—to “coordinate.”¹⁴⁶

Third, the Special Procedures needs to review the instructions for mandate holders, including the code of conduct, with a goal to improving the effectiveness of the monitoring. Although mandate holders should have adequate discretion to decide how to work and how to present their findings and opinions, it could be valuable for the Special Procedures to discuss what approaches may be more effective in terms of encouraging or persuading states to better implement their human rights obligations and to give suggestions accordingly.

For instance, Article 7 of Code of conduct for Special Procedures of Mandate Holders of the Human Rights Council on the scope of the mandate is not clear enough for assessing whether a mandate holder has exceeded

143. See *Issue of Discrimination Against Women*, *supra* note 56, ¶ 3; *Report on Torture, Nowak*, *supra* note 52, ¶ 3; *Report by the Special Rapporteur, Katarina Tomaševski*, *supra* note 51, ¶ 2.

144. Coordination Committee of Special Procedures, OHCHR, <https://www.ohchr.org/EN/HRBodies/SP/CoordinationCommittee/Pages/CCSpecialProceduresIndex.aspx>.

145. See *id.* The Coordination Committee has set eight categories of tasks for itself. For details of these tasks.

146. *Id.*

the terms of his/her mandate. This can cause confusion and misunderstanding between the states and the mandate holders.

Additionally, it should be discussed whether a mandate holder should make comments, even suggestive, on the political regime of the state concerned. International human rights systems are based on compromises no matter what political regime they have—all states should and would respect and protect human rights. In this reasoning, criticizing the political system of the state does not help with the success of the mandate.

Fourth, as the same suggestion for China, the Special Procedure needs to make more efforts to raise the public awareness of the mechanism, especially the country visits by mandate holders. It has been suggested by scholars that the mechanism could benefit from new technology.¹⁴⁷ Better use of social media by mandate holders can also be the more efficient way to reach people in China today.

VI. CONCLUDING REMARKS

From the history of China's interactions with the UN human rights mechanism as a whole, and the Special Procedures in particular, we can see that China cares about its international image in human rights aspect and during the past three decades has become more and more active in participating in this mechanism. It is fair to say that, in general, China has been cooperative with the Special Procedures, at least in formality. The Special Procedures have exacted its impact on China mainly as a pressure mechanism, although often not in a very direct or visible way.

Both China and international society are changing. The perception of human rights and the international monitoring system is facing challenges. The UN human rights mechanism, including the Special Procedures, relies on China as an important participant and partner. Some scholars previously described China's attitude towards the international human rights system as "tactical learning" rather than socialization into international norms.¹⁴⁸ That idea may have been true before, but that phase has now passed. From China's recent promotion of its own human rights discourses, we predict that China will be more proactive in the Special Procedure as well as other UN human rights mechanisms in the future.

As such, there is a common ground for China and the Special Procedures to effectively cooperate with each other. In order to achieve this, it is necessary for both China and the Special Procedures to better understand

147. Piccone, *supra* note 2, at 290.

148. Ahl, *supra* note 5, at 639, citing MING WAN, HUMAN RIGHTS IN CHINESE FOREIGN RELATIONS 126 (2001).

each other by learning about each other's expectations so that they can work better together.

Nevertheless, the challenges for the future are also inevitable. China will be more interested in participating in the UN human rights mechanism, but likely with a strong agenda of its own. The UN human rights mechanism needs to address its own deficiencies and be prepared to work with China with a stronger position on human rights. In any scenario, understanding more about each other is a good start.