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Junxiang Mao
Central South University Law School

Xi Sheng

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STRENGTH OF REVIEW AND SCALE OF RESPONSE: A QUANTITATIVE ANALYSIS OF HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW ON CHINA

Junxiang Mao & Xi Sheng†

INTRODUCTION

A. Purpose

On March 15, 2006, the UN General Assembly adopted Resolution 60/251 to create the Human Rights Council (HRC).¹ The purpose was to redress the shortcomings in the UN Commission on Human Rights' work, and to recognize "the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization."² The Resolution also established the general outline of the Universal Periodic Review (UPR) mechanism.³ On June 18, 2007, the HRC adopted Resolution 5/1 to finalize the modalities of the UPR.⁴ According to this resolution, the UPR mechanism shall promote the "universality" and "indivisibility" of human rights, through "interactive dialogue" and "cooperative mechanism," and shall review the human rights situation of all states in an "objective," "non-selective," "non-confrontational and non-politicized manner."⁵

† *Junxiang Mao*, Vice Dean and Associate Professor of Central South University Law School, P. R. China; Visiting Scholar in Human Rights Center of University of Minnesota Law School, USA (March 2015-March 2016) (email:tangmao200304@sina.com). *Xi Sheng*, Master of Laws of Central South University Law School (2013-2016). We sincerely appreciate comments and help of great value by Professor Marsha Freeman, Director of the International Women's Rights Action Watch (IWRAP); Professor Kristi Rudelius-Palmer, Co-Director of Human Rights Center of University of Minnesota Law School; and Marc J. Shinn-Krantz, Human Rights Center /Humphrey Research Advisor of University of Minnesota Law School. Also, we are especially grateful for the funding of Program of National Social Science Foundation of China (Grant No. 12CFX104) and the third round of Project of Innovation-driven Plan of Central South University.

1. See G.A. Res. 60/251, U.N. Doc. A/RES/60/251, at 2 (Mar. 15, 2006).
2. *Id.*
3. *Id.*
4. See Human Rights Council Res. 5/1, Rep. of the Human Rights Council, (Aug 7, 2007).
5. *Id.* at ¶ 3.

China and the UPR is not just a significant scholarly subject but a case study of the UPR's strengths and weaknesses, particularly with respect to a very powerful state. On the one hand, China actively participated in the HRC's establishment and capacity building. China frequently criticized the Commission on Human Rights' country-specific review process.⁶ China claimed "the Commission was moving increasingly further away from its original objective of promoting international cooperation in the field of human rights, and reform was therefore necessary."⁷ HRC Resolution 5/1 emphasized the UPR should ensure "universal coverage and equal treatment of all States" using a "cooperative mechanism" based on "interactive dialogue"; this basically accords with China's fundamental positions.⁸ Therefore, when it ran for an HRC seat for the third time in 2013, China stated it "engages constructively in the institutional building of the Human Rights Council, the universal periodic review and consideration of all the items before the Council."⁹ On the other hand, China's rising power has complex impacts on other states' attitudes toward China's performance in the UPR. As Bjorn Ahl has said, "China's influence is also reflected in the change of tone by most statements and recommendations."¹⁰ Inevitably, China's influence and performance in the UPR are the focus of international attention.

The second cycle of the UPR concluded in 2016. As of 2015, the HRC has performed two UPR cycles on China. This raises several questions: To what extent does the HRC review the human rights situation in states, like China, that actively support UPR and have increasing power in the international community? To what extent does China respond to recommendations from other states in the UPR? Is the extent of China's responses consistent with that of its position in support of the UPR? This Article presents answers to those questions. Section I presents the Article's purpose, background, and methodology. Section II introduces two cycles of the HRC's review of China. Section III describes recommending states' concentration on China's human rights issues and its variations. Section IV discusses the actions requested by recommendations to China. Section V discusses China's responses to those recommendations. Section VI, relying on the

6. See UNHCR, 61st Sess., 20th mtg. at ¶ 7, U.N. Doc. E/CN.4/2005/SR.20 (Apr. 8, 2005); UN GAOR, 61st Sess., 52d mtg., at ¶ 15, UN Doc. A/C.3/61/SR.52 (Jan. 18, 2007).

7. E/CN.4/2005/SR.20, *supra* note 6, at ¶ 17.

8. See Rhona K.M. Smith, *Form over Substance? China's Contribution to Human Rights through Universal Periodic Review*, 17 *ASIAN Y.B. OF INT'L. L.* 85, 89 (2011).

9. Permanent Mission of China to the United Nations addressed to the President of the General Assembly, U.N. Doc. A/68/90 (June 5, 2013).

10. Bjorn Ahl, *The Rise of China and International Human Rights Law*, 37 *HUM. RTS. Q.* 637, 660 (2015).

results of quantitative analysis, makes comments on the UPR and China's performance. Section VII concludes.

B. *Background and Methodology*

The UPR has become a hot topic in academia since it came into being. Scholars have provided inconsistent evaluations and comments on the UPR through analyses of the UPR's reviews of the United States,¹¹ the United Kingdom,¹² Canada,¹³ Spain,¹⁴ Singapore,¹⁵ Malaysia,¹⁶ Egypt,¹⁷ the Pacific Island states,¹⁸ African countries,¹⁹ and the five permanent members of the Security Council.²⁰ Laura K. Landolt has pointed out "the Egyptian case suggests that the relative success of NGO externalization and internalization strategies at the UPR depends on a number of crucial domestic conditions."²¹ Leanne Cochrane and Kathryn McNeilly argue "it is difficult to quantify the specific contribution of the UPR mechanism given that a number of domestic and international political and legal pressures are often also

11. See John R. Crook (ed.), *International Human Rights: U.S. Human Rights Record Assessed in UN Rights Council's Universal Periodic Review Process*, 105 *ASIAN J. OF INT'L. L.* 139 (2013).

12. See Leanne Cochrane & Kathryn McNeilly, *The United Kingdom, the United Nations Human Rights Council and the First cycle of the Universal Periodic Review*, 17 *INT'L J. HUM. RTS.* 152 (2013).

13. See Joanna Harrington, *Canada, the United Nations Human Rights Council, and Universal Periodic Review*, 2 *CONSTITUTIONAL FORUM* 79 (2009).

14. See Björn Arp, *Lessons Learned from Spain's Practice before the United Nations Human Rights Reporting Mechanism: Treaty Bodies and Universal Periodic Review*, 15 *SPANISH Y.B. OF INT'L. L.* 1 (2011).

15. See Mahdev Mohan, *Singapore and the Universal Periodic Review: An Unprecedented Human Rights Assessment*, 3 *J. E. ASIA & INT'L. L.* 365 (2010).

16. See Ying Hooi Khoo, *Malaysia Human Rights Performance: Assessment of its First Session of Universal Periodic Review in the United Nations Human Rights Council*, 6 *COSMOPOLITAN CIV. SOCIETIES: INTERDISC. J.* 19 (2014).

17. See Laura K. Landolt, *Externalizing Human Rights: From Commission to Council, the Universal Periodic Review and Egypt*, 14 *HUM. RTS. REV.* 107 (2013).

18. See Rhona K.M. Smith, *The Pacific Island States: Themes Emerging from the United Nations Human Rights Council's Inaugural Universal Periodic Review?*, 13 *MELBOURNE J. INT'L. L.* 1 (2012).

19. See Allehone Mulugeta Abebe, *Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council*, 9 *HUM. RTS. L. REV.* 1 (2009).

20. See Rhona K.M. Smith, "To see Themselves as others see Them": *The Five Permanent Members of the Security Council and the Human Rights Council's Universal Periodic Review*, 35 *HUM. RTS. Q.* 1 (2013).

21. See Landolt, *supra* note 17, at 126.

willing the same result.”²² Other scholars have made broadly positive comments on the UPR.²³ For example, John Carey emphasizes the “Council’s innovative Universal Periodic Review is like a breath of fresh air. UPR is genuinely innovative, positive, and encouraging.”²⁴

In *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, scholars with various backgrounds analyzed the rituals and ritualism in the UPR and systematically summarized the achievements and defects of the first UPR cycle. Roland Chauville, the founder and executive director of UPR Info, noted the outcomes of the UPR process were “universality,” “putting human rights at the forefront of the international and domestic agenda,” “complementarity with other human rights mechanisms,” and “implementation,” while its failures were “weak modalities,” “lack of follow-up mechanism,” “use [of] recommendations to weaken the process,” and “lack of responses.”²⁵ Other scholars have commented on the UPR from specific perspectives. For example, Jane K. Comana and Julie Billaud exposed political problems in the UPR.²⁶ Rosa Freedman pointed out the problems of politicization, selectivity, and bias in the UPR.²⁷

In terms of China and the UPR, the scholastic focus concentrates on China’s performance in the UPR and its influence. Some scholars do not approve of China’s performance in the UPR. For instance, after examining China’s performance in the first cycle of the review as a recommending

22. See Cochrane & McNeilly, *supra* note 12, at 170.

23. See, e.g., Elvira Domínguez Redondo, *The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session*, 7 CHINESE J. INT’L L. 721 (2008) [hereinafter Redondo (2008)]; John Carey, *The UN Human Rights Council: What Would Eleanor Roosevelt Say?*, 15 ILSA J. INT’L & COMP. L. 459 (2009); Alex Conte, *Reflections and Challenges: Entering into the Second Cycle of Universal Periodic Review Mechanism*, 9 N.Z. Y.B. INT’L L. 187 (2001); Elvira Domínguez Redondo, *The Universal Periodic Review – Is There Life beyond Naming and Shaming in Human Rights Implementation?*, 4 N.Z. L. Rev. 673 (2012) [hereinafter Redondo (2012)]; HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM (Hilary Charlesworth & Emma Larking eds., 2014).

24. See Carey, *supra* note 23, at 460.

25. See Roland Chauville, *The Universal Periodic Review’s First Cycle: Successes and Failures*, in HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM, 87-103 (Hilary Charlesworth & Emma Larking eds., 2014).

26. See Jane K. Cowana & Julie Billaud, *Between Learning and Schooling: The Politics of Human Rights Monitoring at the Universal Periodic Review*, 36 THIRD WORLD Q. 1175-90 (2015).

27. See Rosa Freedman, *New Mechanisms of the UN Human Rights Council*, 29 NETH. Q. OF HUM. RTS. 289 (2011) [hereinafter Freedman (2011)]. See also Rosa Freedman, *The United Nations Human Rights Council: More of the Same?* 31 WIS. INT’L L. J. 208 (2013) [hereinafter Freedman (2013)].

state and as a State under Review (SuR) in the UPR, Rhona K. M. Smith found “China’s involvement is a classic case of ‘much ado about nothing’ - justifying a fanfare and claims of ‘credit’ on the international stage, without any underpinning substance.”²⁸ Smith also believes “the five permanent member states of the Security Council have not acquitted themselves well in the field, tending to consider international human rights as something applicable to other states.”²⁹ A recent study provides a new way to understand how China makes its impact on the international human rights order. The study analyzes China’s response to UPR recommendations on its record and China’s recommendations in reviews of other states.³⁰

This article aims to analyze the UPR and China’s performance from a different perspective and apply a different research method from that of the existing scholarship on this topic. The authors believe the category and quality of proposed recommendations determine the strength of the review; the attitude of the SuR to recommendations and their outcome determines the scale of response. Statistical analyses of the content and category of recommendations offered by recommending states, and the rate and variations of recommendations accepted and implemented by the SuR, furnish an empirical foundation for judging a country’s performance in the UPR and the UPR mechanism itself.

This kind of empirical analysis is lacking in the works cited above. Those works analyzed the UPR mechanism either by researching a single state’s performance in the UPR or with an abstract analytical method. One pair of authors has taken a different approach. Edward McMahon and Marta Ascherio, under the support of UPR Info Database, have developed an “Action of Category” approach. They have categorized all recommendations in the UPR through 2008 and 2009 by framing the type of actions requested and statistically analyzed the categories of and issues involved in the recommendations to each group: including Asia, Africa, The Eastern European Group (EEG), the Group of Latin America and Caribbean Countries (GRU-LAC), and the Western European and Others Group (WEOG).³¹ Based on this holistic research and quantitative analysis, McMahon and Ascherio objectively evaluate the UPR engagement of states belonging to different re-

28. See Smith *supra* note 8, at 115.

29. See Smith, *supra* note 20, at 28.

30. See Ahl, *supra* note 10, at 637-61.

31. See Edward R. McMahon & Marta Ascherio, *A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council*, 18 GLOBAL GOVERNANCE 231-48 (2012). See also Edward R. McMahon, *International Organizations and Peer Review: Assessing the Universal Periodic Review Mechanism of the United Nations Human Rights Council*, 17 AFRICAN Y.B. OF INT’L. L. 353-77 (2009).

gions by examining the scale and content of proposed recommendations. This article follows the same methodological model.

The starting point of this article is an analysis of how peer states proposed recommendations to China and how China responded to those recommendations by reference to McMahon and Ascherio's Action Category approach. The article analyzes statistics regarding: (1) which issues the recommendations have addressed; (2) the variation of issues through the years; (3) each recommendation's action category; (4) China's responses to recommendations in different categories; and, (5) the variation of those responses. The authors also evaluate China's performance in the UPR against a larger framework by conducting a comparative analysis between the data on China and data on the international community as a whole. This provides new insight into the performance of the UPR mechanism.

I. THE UPR AND CHINA'S PARTICIPATION IN TWO CYCLES OF THE UPR

A. *Basic process and purposes of the UPR*

The UPR is a "peer review" process, driven by States,³² to review all UN member States' human rights records at regular intervals. The UPR is a three-stage process. First, the review stage is undertaken by the UPR Working Group, which consists of the forty-seven members of the Human Rights Council. Using a lottery system, the Working Group forms a troika of three rapporteurs to facilitate each review and prepare the Working Group's report.³³ Each review takes place through an interactive discussion between the SuR and other UN Member States. During this discussion, any UN Member State can pose questions, comments, and/or make recommendations to the SuR. The outcome report includes an assessment of the human rights situation in the SuR, recommendations proposed to the state, and voluntary commitments and pledges made by the state concerned.³⁴

Second, the following-up stage requires SuRs to implement the recommendations received during the review. The last stage is an assessment of the SuR's implementation efforts at the next review four and one-half years

32. Kofi Annan, In larger freedom: development, security and human rights for all — Addendum: Human Rights Council Explanatory Note, U.N. Doc. A/59/2005/Add1 (2005), at ¶¶ 6-7.

33. See H.R.C. Res. 5/1, *supra* note 4, at ¶ 18.

34. See *id.* at ¶ 27.

later.³⁵ Each State has the opportunity to declare the actions it has taken to improve its human rights situation and fulfill its human rights obligations.

The UPR process emphasizes two primary principles. The first principle is universal review and equal treatment. This requires periodic and universal review of each State's fulfillment of its human rights obligations and commitments, in a manner that ensures universal coverage and equal treatment of all states.³⁶ The second principle is human rights cooperation and dialogue. According to General Assembly Resolution 60/251, the UPR shall be a cooperative mechanism based on interactive dialogue, fully involve the SuR, and take full consideration of the country's capacity-building needs.³⁷ The process encourages mutual cooperation and confrontation reduction. To improve the human rights situations in all States, the process welcomes meritorious criticism and supervision. To ensure the objectivity of the review process, the Working Group reviews the SuR's human rights situation based on three documents: (1) a national report presented by the State, not exceeding twenty pages; (2) a compilation prepared by Office of the High Commissioner for Human Rights (OHCHR) of the information contained in the reports of Treaty Bodies and Special Procedures, including the State's observations and comments, and other relevant official UN documents, not exceeding ten pages; and (3) a summary of credible and reliable information provided by other relevant stakeholders, such as civil society, academic bodies, and international organizations, prepared by OHCHR and not exceeding ten pages.³⁸

The UPR differs from the state reporting procedure stipulated by UN human rights treaties³⁹ in that the UPR is an intergovernmental "peer review" process while the state reviews under the human rights treaties are conducted by a committee comprised of independent experts. The procedures and norms that apply in State Party reviews under the international human rights treaties are prescribed by the content of the respective treaties, which the State accepts upon ratification. The basis of the UPR review is broad; it relies on: (1) the Charter of the United Nations; (2) the Universal Declaration of Human Rights (UDHR); (3) Human Rights instruments to which a State is a party; (4) States' voluntary pledges and commitments, including those undertaken when presenting their candidacy for election to

35. UNIVERSAL PERIODIC REVIEW INFO (UPR INFO), ON THE ROAD TO IMPLEMENTATION (2012), <http://s.upr-info.org/OnTheRoadtoImpl>.

36. See H.R.C. Res. 5/1, *supra* note 4, at ¶ 3(c).

37. See G.A. Res. 60/251, *supra* note 1.

38. See H.R.C. Res. 5/1, *supra* note 4, at ¶ 15.

39. See Rhona K.M. Smith, *More of the Same or Something Different? Preliminary Observations on the Contribution of Universal Periodic Review with Reference to the Chinese Experience*, 10 CHINESE J. OF INT'L. L. 565, 568-74 (2011).

the HRC; and, (5) applicable international humanitarian law.⁴⁰ Under this mechanism, the universal application of the UN Charter and the UDHR puts every State under UPR scrutiny. The UPR's inclusion of the UDHR—as a statement of international human rights principles according to which countries are reviewed—is particularly important because some countries have failed to ratify many core international human rights treaties and accordingly reject responsibility for the full panoply of human rights violations.⁴¹ Therefore, as stressed in HRC Resolution 5/1, the UPR is intended to “complement and not duplicate other human rights mechanisms.”⁴²

On September 21, 2007, the HRC in its sixth session adopted a review timetable, planning to proceed with the first cycle of the UPR for all 192 UN members in the course of four years, from 2008 to 2011.⁴³ In 2011 the Council adopted Resolution 16/21, making some changes to the UPR process.⁴⁴ According to the resolution: (1) The second cycle of the review will focus on the implementation of the accepted recommendations and the developments of the human rights situation in SuRs; (2) The whole review cycle will last 4.5 years, from 2012 to 2016, to accomplish the review of all 193 UN members. No country will avoid the UPR⁴⁵; (3) Each State review will last 3.5 hours. The SuR will be given 70 minutes and other States 140 minutes. All statements at the meeting will be recorded. States may propose recommendations on human rights situations in SuRs, and SuRs may accept or refuse recommendations at the Working Group review meeting or the subsequent HRC meeting.

40. See H.R.C. Res. 5/1, *supra* note 4, at ¶ 1.

41. See Sarah H. Paoletti, *Using the Periodic Review to Advance Human Rights What Happens in Geneva Must Not Stay in Geneva*, 45 CLEARINGHOUSE R. J. POVERTY L. & P. 268, 269 (2011).

42. See H.R.C. Res. 5/1, *supra* note 4, at ¶ 3(f).

43. Human Rights Council, Rep. on its 6th Sess., U.N. Doc. A/HRC/6/22 Annex VI (2008).

44. See Human Rights Council Res. 16/21, UN Doc. A/HRC/RES/16/21, Annex (Apr. 12, 2011).

45. The HRC will decide on the measures it would need to take in case of persistent non-cooperation by a State with the UPR. After Israel refused to participate in the second UPR cycle on the scheduled date, January 29, 2013, the HRC called upon Israel to resume its cooperation with the UPR mechanism and decided to reschedule the universal periodic review of Israel. See Human Rights Council, Rep. of the HRC on its 7th org. mtg., U.N. Doc. A/HRC/OM/7/1 (Jan 29, 2013). Eventually, Israel agreed to participate in the review. The date of consideration of Israel's report was postponed to October 29, 2013.

B. *The two cycles of review of China*

China has undergone two review cycles in 2009 and 2013. The Working Group on the UPR held its fourth session from February 2-13, 2009, at Geneva. Rapporteurs from Canada, India, and Nigeria facilitated the first China review cycle⁴⁶ and adopted an outcome document on May 29, 2009.⁴⁷ The HRC in its 11th session, 17th meeting, without a vote, adopted the outcome on China.⁴⁸ In addition, according to the principle of transparency,⁴⁹ the Working Group published China's views on conclusions and/or recommendations, voluntary commitments, and its responses to issues that were not fully discussed during interactive dialogue with the Working Group prior to adoption of the outcome document by the HRC plenary.⁵⁰

China's second review took place during the Working Group's 17th meeting, from October 21 to November 1, 2013. The troika was comprised of rapporteurs from Poland, Sierra Leone, and the United Arab Emirates⁵¹ and prepared the second Working Group report.⁵² The HRC adopted the outcome without a vote at its 25th session, 41st meeting, on March 20, 2014,⁵³ and it published China's views on conclusions and/or recommendations, its voluntary commitments, and its responses to issues that were not fully discussed during the interactive dialogue with the working group.⁵⁴

46. See Human Rights Council, Rep. of the Working Grp. On China, ¶ 2, U.N. Doc. A/HRC/11/25 (May 29, 2009).

47. *Id.*

48. See Human Rights Council Dec. 11/110, U.N. Doc. A/HRC/DEC/11/110, at 1 (June 11, 2009).

49. See H.R.C. Res. 5/1, *supra* note 4, at ¶ 3(g).

50. See Human Rights Council, Rep. of the HRC, U.N. Doc. A/HRC/11/37, at ch. VI (Oct. 16, 2009).

51. *Id.*

52. See Human Rights Council, Rep. of Working Grp. on the Universal Periodic Review - China, U.N. Doc. A/HRC/25/5, at ¶ 4 (Dec. 4, 2013) [hereinafter HRC, UPR - China]; Human Rights Council, Rep. of Working Grp. on the Universal Periodic Review - China, U.N. Doc. A/HRC/25/5/Corr.1 (Dec. 26, 2013) [hereinafter HRC UPR - China, Corrigendum].

53. See Human Rights Council Dec., U.N. Doc. A/HRC/DEC/25/111, at I (Apr. 16, 2014).

54. See Human Rights Council, Rep. of Working Grp. on the Universal Periodic Review - China, Add., U.N. Doc. A/HRC/25/5/Add.1, at add. 1 (Feb. 27, 2014); Human Rights Council, Rep. of the HRC on its twenty-fifth session, U.N. Doc. A/HRC/25/2, at ch. VI (July 17, 2014).

II. RECOMMENDING STATES' CONCENTRATION ON CHINA'S HUMAN RIGHTS ISSUES AND ITS VARIATIONS

A. *Focus on Human Rights issues in two cycles of the review*

During the two cycles of review on China, unusually high numbers of countries actively participated in the interactive dialogue and with a high level of engagement. Compared with the first cycle, there was a remarkable increase in state participation in the second cycle, from 47 to 124 States. Additionally, the scope of issues widened slightly, from 39 to 41 issues. According to HRC statistics, China is among the countries that received the greatest number of recommendations.⁵⁵ During the two review cycles, 171 countries (45 developed countries and 126 developing countries) participated and proposed 422 recommendations.⁵⁶ The five most active participants were Germany, Australia, Czech Republic, Canada, and France.⁵⁷ France, Spain, Canada, Norway, and Mexico have been the five most vigorous proponents in the UPR overall.⁵⁸ The data indicates that developed countries in Western and Northern Europe are the principal recommendation proponents. In addition, developing countries have an increasing interest in the UPR. For example, the number of developing countries participating in the review on China rose significantly, from 31 in the first cycle to 95 in the second cycle.

During the interactive dialogue of the first UPR on China, implementation of international instruments was the most addressed issue, and the International Covenant on Civil and Political Rights (ICCPR) drew the most attention. Eighteen of 138 recommendations were pertinent to this issue. Australia,⁵⁹ Sweden,⁶⁰ Algeria,⁶¹ Argentina,⁶² Brazil⁶³ and other countries all made recommendations involving this issue. In addition, recommending States primarily addressed detention, the death penalty, justice, civil and

55. Cuba received 534 recommendations, Iran received 511 recommendations, Egypt received 492 recommendations, the Democratic People's Republic of Korea received 436 recommendations and Viet Nam received 428 recommendations. These five SuRs have received the most recommendations to date. UNIVERSAL PERIODIC REVIEW INFO (UPR INFO), STATISTICS OF RECOMMENDATIONS, <https://www.upr-info.org/database/statistics/> (last visited June 10, 2015).

56. *See id.*

57. *Id.*

58. *Id.*

59. *See A/HRC/11/25, supra* note 46, at ¶ 27.

60. *Id.* at ¶ 92.

61. *Id.* at ¶ 33.

62. *Id.* at ¶ 84.

63. *Id.* at ¶ 95.

political rights, Special Procedures, the rights of minorities, and other issues of development, poverty, freedom of religion and belief, torture, and other CID treatment (see Figure 1). In the second cycle review of China, the main concerns of recommending States included international instruments, the death penalty, judicial justice, rights of the child, economic, social, and cultural rights, freedom of religion and belief, rights of development, the right to education, and detention (see Figure 2).

FIGURE 1: MAIN ISSUES ADDRESSED IN THE FIRST CYCLE OF REVIEW

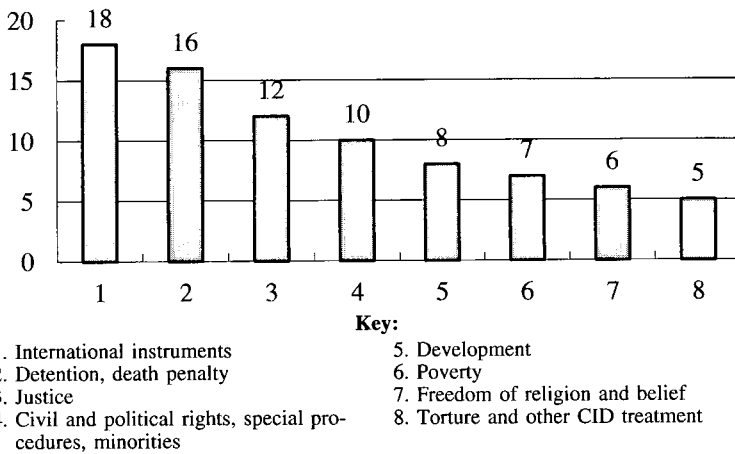
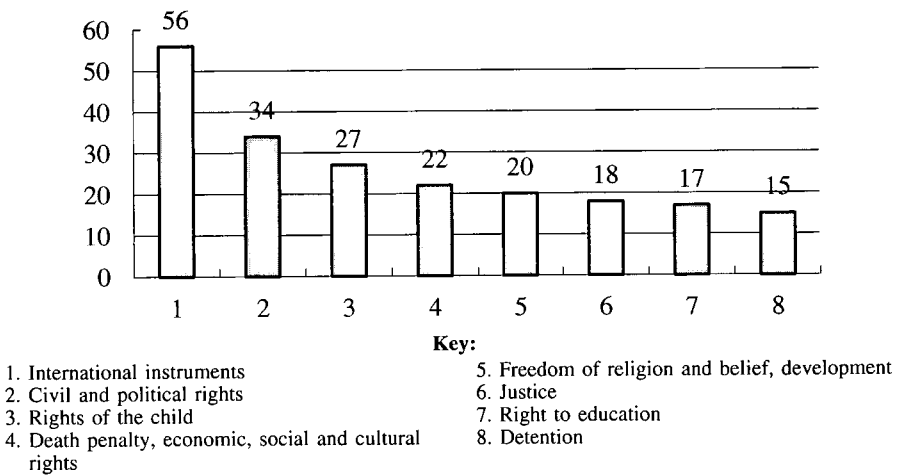


FIGURE 2: MAIN ISSUES ADDRESSED IN THE SECOND CYCLE OF REVIEW



Developed countries were more concerned about China's protection of civil and political rights, while developing countries focused on development, rights of the child, and economic, social and cultural rights. For instance, recommendations from developed countries mainly related to international instruments (35 times), the death penalty (30 times), detention (23 times), civil and political rights (20 times), minorities (19 times), freedom of religion and belief (18 times), and freedom of opinion and expression (15 times). Recommendations from developing countries mainly focused on international instruments (39 times), civil and political rights (24 times), rights of the child (22 times), economic, social and cultural rights (22 times), justice (17 times), poverty (17 times), women's rights (14 times), human rights education and training (14 times), rights to education (13 times), and the national plan of action (13 times).⁶⁴ It appears that countries at different stages of development place different emphasis on human rights protection. Compared to developed countries, developing countries are more interested in the practice and experiences of China in the fields of development, poverty elimination, protection of the rights of the child, protection of women, and human rights education.

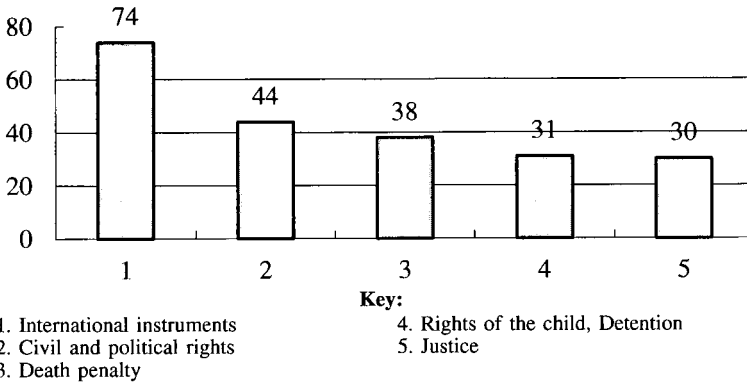
Figure 3 illustrates that the ratification of ICCPR, rights of the child, detention, the death penalty, justice, and civil and political rights are among the top five concerns.⁶⁵ During both reviews, recommending states mostly focused on the civil and political rights aspect of China's human rights situation. China has not ratified the ICCPR,⁶⁶ so this covenant is not an element of the review. However, China is a party to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention of the Rights of Persons with Disabilities, all of which deal with civil and political rights to a varying extent. These conventions provide a crucial basis for recommending states to raise comments from the perspective of civil and political rights.

64. *Id.*; see also A/HRC/25/5, *supra* note 52; A/HRC/25/5/Corr.1, *supra* note 52.

65. The statistics for the international community are different. Statistics from UPR Info show that international instruments, rights of women and the child, torture, and justice are the top five issues attracting attention. See UNIVERSAL PERIODIC REVIEW INFO (UPR INFO), BEYOND PROMISES-THE IMPACT OF THE UPR ON THE GROUND 26 (2014), www.upr-info.org/sites/default/files/general-document/pdf/2014_beyond_promises.pdf.

66. China signed the ICCPR on October 5, 1998, but has not ratified it.

FIGURE 3: COMMON FOCUS ISSUES IN TWO CYCLES

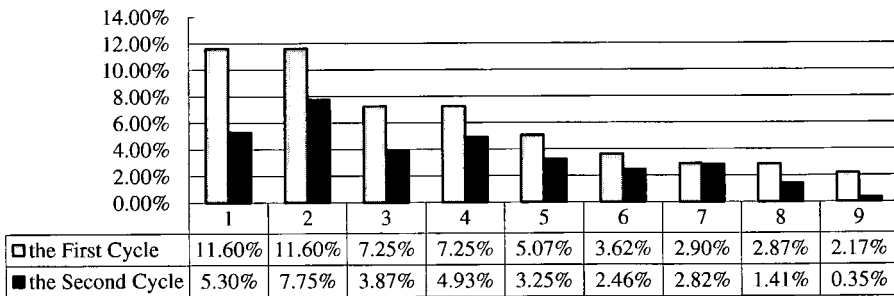


B. Rate variations of human rights issues in two cycles

The attention to other human rights issues varied between the two reviews. Rights of the child, the right to education, freedom of religion and belief, and economic, social, and cultural rights drew more attention in the second review. Many more countries offered recommendations on these issues. Since a large number of countries participated in the review, the result indicates what the international community, in general, sees as China’s major human rights issues.

The proportion of issues involved in the two cycles reflects the degree of interest in each issue. As shown in Figure 4, nine issues lost attention from the first review to the second.

FIGURE 4: RATE VARIATIONS OF THEMATIC ISSUES



- Key:
- 1. Detention
 - 2. Death penalty
 - 3. Special Procedures
 - 4. Minorities
 - 5. Poverty
 - 6. Torture and other CID treatment
 - 7. Right to health
 - 8. National human rights institution (NHRI)
 - 9. Freedom of movement

Figure 4 shows a sharp decline from the first review to the second review in the percentage of recommendations on detention, Special Procedures, and freedom of movement. Although recommending states were less concerned about the death penalty in the second cycle, interest remained high. There was very little decrease on the right to health. The rates of the recommendations related to NHRI and freedom of movement were not high in the first review and moved farther down in the second review. Minorities, Special Procedures, torture and other CID treatment, and poverty drew much attention from the recommending states in the first review. However, these issues received little attention in the second review. One reason for this may be that China has achieved initial progress in some areas of human rights protection, and accordingly the focus of the international community changed. A case in point is that the HRC's Special Rapporteur on the Right to Food visited China upon invitation in December 2010,⁶⁷ while in 2009 China did not accept this kind of recommendation. Meanwhile, the Outline for Development-oriented Poverty Reduction for China's Rural Areas (2011–2020) has been implemented vigorously. In 2011, the Government raised the standard income ceiling for poverty relief to 2,300 yuan, covering 122,380,000 recipients; by the end of 2012, the number of people covered under that standard had dropped to 98,990,000 persons, or 10.2 per cent of the rural population.⁶⁸

In the first review, five issues attracted little attention, including racial discrimination,⁶⁹ human rights violations by state agents,⁷⁰ impunity,⁷¹ public security, and extrajudicial executions.⁷² All of these issues were mentioned just one time and were not raised again in the second cycle. In the second cycle, the following seven issues were discussed less: trafficking,⁷³ asylum seeker-refugees,⁷⁴ HIV/AIDS,⁷⁵ sexual orientation and gender identity,⁷⁶ elections,⁷⁷ right to housing,⁷⁸ and right to water.⁷⁹ Only eighteen rec-

67. See Human Rights Council, Nat'l Rep. Submitted in Accordance with ¶ 5 of the Annex to HRC Res. 16/21, U.N. Doc. A/HRC/WG.6/17/CHN/1, at ¶ 85. (Aug. 5, 2013).

68. *Id.* at ¶ 23.

69. See A/HRC/25/5, *supra* note 52, at ¶ 59.

70. *Id.* at ¶ 27(g).

71. *Id.* at ¶ 82(g).

72. *Id.* at ¶ 82(h).

73. See A/HRC/25/5, *supra* note 52; A/HRC/25/5/Corr.1, *supra* note 52, at ¶¶ 186.96, 186.97, 186.98.

74. See *id.* at ¶¶ 186.241, 186.242-243.

75. See *id.* at ¶¶ 186.78, 186.80.

76. See *id.* at ¶¶ 186.89, 186.80.

77. See *id.* at ¶¶ 186.172-173.

ommendations out of 284 referred to these seven issues, and these issues were not discussed until the second review. This also reflected the international community's attention to newly emerging issues in China's human rights protections, although these emerging issues are not currently principal problems in human rights protection in China. A particularly interesting aspect of this record is that, of the collectively fifty-four issues⁸⁰ cited in recommendations in all states' reviews, six major issues were not raised as to China: corruption, counter-terrorism, indigenous people, displaced persons, right to food, and right to land.

III. ACTIONS REQUESTED BY RECOMMENDATIONS

Proposing recommendations by states to SuRs is the main aspect of the first stage of review. Therefore, the content of recommendations is crucial to evaluate the review. Categorizing recommendations according to the actions requested and then analyzing them facilitates observation of the recommendation's strength. The Action Category, developed by Professor Edward R. McMahon of the University of Vermont with the support of UPR Info, creates a new approach to look into the type of action requested by recommendations.

The Action Category ranks recommendations on a scale from 1 to 5. First is minimal action, referring to recommendations directed at a non-SuR, or calling upon the SuR to request technical assistance or share information. Second is continuing action, meaning recommendations emphasizing continuity. Third is considering action, meaning recommendations to consider change. Fourth is general action, referring to recommendations of action that contain a general element. Fifth is specific action, meaning recommendations that request specific action.⁸¹

Table 1 reflects the Action Category distribution of recommendations for China and all states in two cycles.

78. *See id.* at ¶¶ 186.196, 186.197.

79. *See id.* at ¶ 186.195.

80. *See* UPR INFO, *supra* note 65.

81. *See id.* at ¶¶ 21-25.

TABLE 1.1 RECOMMENDATIONS TO CHINA IN THE FIRST CYCLE

Rank	Action Category	Total Reco.	% of 138 Reco.
1	Specific action (5)	49	35.5%
2	General action (4)	41	29.7%
3	Continuing action (2)	27	19.6%
4	Considering action (3)	13	9.4%
5	Minimal action (1)	8	5.8%

TABLE 1.2 RECOMMENDATIONS TO CHINA IN THE SECOND CYCLE

Rank	Action Category	Total Reco.	% of 284 Reco.
1	General action (4)	119	41.9%
2	Continuing action (2)	77	27.1%
3	Specific action (5)	68	23.9%
4	Considering action (3)	18	6.3%
5	Minimal action (1)	2	0.8%

TABLE 1.3 RECOMMENDATIONS TO CHINA OVER BOTH CYCLES

Rank	Action Category	Total Reco.	% of 422 Reco.
1	General action (4)	160	38%
2	Specific action (5)	117	27.7%
3	Continuing action (2)	104	24.6%
4	Considering action (3)	31	7.3%
5	Minimal action (1)	10	2.4%

TABLE 1.4 RECOMMENDATIONS BY DEVELOPED COUNTRIES AND DEVELOPING COUNTRIES TO CHINA

Action Category	Comments by developed countries		Comments by developing countries		Total
	Count	Percentage	Count	Percentage	
Minimal action (1)	0	0%	10	100%	10
Continuing action (2)	14	13%	90	87%	104
Considering action (3)	6	19%	25	81%	31
General action (4)	71	44%	89	56%	160
Specific action (5)	83	71%	34	29%	117
Total	174	41%	248	59%	422

TABLE 1.5 RECOMMENDATIONS TO ALL STATES⁸²

Rank (from Session 1 to 20)	Action Category	Total Reco.	% of 38292 Reco.
1	General action (4)	16261	39.6%
2	Specific action (5)	13772	33.54%
3	Continuing action (2)	6981	17%
4	Considering action (3)	3449	8.4%
5	Minimal action (1)	603	1.47%

Tables 1.1, 1.2, and 1.3 show that in the first and second reviews, the largest portion of recommendations to China, nearly forty percent, mentioned general action.⁸³ The portion of recommendations requiring specific

82. UPR INFO, *supra* note 55.

83. General actions mainly request China to take steps towards the ratification of ICCPR and its optional protocols; to strengthen human rights education with a view toward enhancing human rights awareness; to intensify legislation and the judicial protection system; to further guarantee the rights of life, education and health; etc. See A/HRC/11/25, *supra* note 46; see also A/HRC/25/5, *supra* note 52; A/HRC/25/5/Corr.1, *supra* note 52.

action and continuing action was also relatively high.⁸⁴ Minimal actions, namely recommendations requesting China to seek technical assistance and to share experiences and endeavors in developing its economy and improving its human rights situation, account for the smallest portion. This is similar to the overall breakdown of recommendations to all states shown in Table 1.5. According to this table, among recommendations to all states, recommendations demanding general actions account for the greatest number, followed by recommendations for specific actions. Recommendations asking for minimal action make up the smallest group. Recommendations falling into the general action category usually require SuRs to take pertinent measures, intensify endeavors in some areas, or speed up certain action to improve human rights. This kind of requirement is abstract or fuzzy and covers a wide range of actions. For SuRs, any action improving human rights will be easily attributed to this category and SuRs welcome this kind of recommendation.

Recommending states must strike a balance between proposing recommendations with political and diplomatic considerations so as not to harm their relationship with SuRs and maintaining their status as a supporter of human rights in the UPR. Thus, for recommending states, recommendations for general action will involve a relatively low demand and will avoid rejection by the SuR or risk straining the relationship with the recommending state. It is also more appropriate for recommending states to put forward general recommendations than specific recommendations if they are unfamiliar with the SuR's level of progress in human rights protection.

Numerous recommendations were offered during the process, many of which were accepted by SuRs. The recommendations have different potential impacts on human rights. Classifying recommendations based on the type of actions requested provides a valuable approach to evaluating the quality of these recommendations. Recommendations belonging to categories 1-3 (Minimal Action, Continuing Action, and Considering Action) are usually easier to implement because they do not require costly action by the SuR. Category 4 (General Action) can also be comparatively easy to implement because the recommendations are so vague even minimal action can be perceived as an effort toward implementation. Meanwhile, it is difficult

84. Specific actions include: To effectively implement and establish the necessary institutional mechanisms to ensure the enforcement of existing laws prohibiting torture and dismissing illegally obtained evidence; to set up a national institution in line with the Paris Principles; to enhance cooperation with the OHCHR by agreeing to outstanding requests for visits to China and extending a standing invitation for future UN special procedures requests; and to create national and local-level systems to protect children from all forms of exploitation, including child labor. *See id.*

to assess implementation because category 4 recommendations do not indicate how they should be implemented or what the tangible outcomes of implementation are. Category 5 (Specific Action) is often more difficult to implement because it requires precise action, but it is also easier to assess for that reason. In the context of the UPR, category 5 recommendations have the most potential to affect human rights because these recommendations leave the least amount of room for window-dressing.⁸⁵

Table 1.4 indicates developed countries have more vigorously engaged than developing countries during the review process on China, and a remarkable difference exists between recommendations from developed countries and developing countries. On one hand, 59% of recommendations are raised by 126 developing countries (73.68%) and 41% of recommendations are issued by 45 developed countries (26.32%). On the other hand, developed countries prefer category 5 (83 recommendations) and category 4 (71 recommendations), which account for 47.7% and 40.8% respectively of the total developed countries' proposals. In contrast, developing countries tend to raise recommendations that belong to category 2 (90 recommendations) and category 4 (89 recommendations), which account for 36% and 35.8% respectively of the total developing countries' recommendations. Developed countries prefer to put forward precise and concrete recommendations while developing countries prefer to offer general recommendations as to China's human rights situation, with the hope China continues to assist them with economic and social development. This confirms Edward R. McMahon's earlier conclusions: namely, overall, Asian and African countries prefer to come up with recommendations that fall into category 2 (Continuing Action) and category 4 (General Action) while European countries prefer to bring forward recommendations in category 3 (Considering Action) and category 5 (Specific Action).⁸⁶

Table 1.1 and 1.2 also show in the second China review there was a rapid increase of the proportion of general category and continuing category recommendations and a remarkable decline of specific category recommendations. Generally, the reduction of specific category action has become a noticeable negative phenomenon in the UPR mechanism.⁸⁷ The proportion of category 5 has declined from 34.4% in the first cycle to 32.5% in the second cycle.⁸⁸ This high rate of general recommendations is explained by the fact that states face diplomatic or other constraints in making precise

85. See UPR INFO, *supra* note 65, at ¶ 20.

86. See McMahon & Ascherio, *supra* note 31, at 238.

87. UPR INFO, A YEAR AT THE UPR: AN ANALYSIS OF 2014, www.upr-info.org/en/news/year-at-the-upr-analysis-of-2014 (last visited June 12, 2015).

88. See UPR INFO, *supra* note 55.

recommendations.⁸⁹ In March, 2014, nineteen Civil Society Organizations (CSOs) denounced recommendations in the second cycle for being less specific, noting the overall number of recommendations made has increased, but the quality has decreased.⁹⁰ The 2014 UPR annual report set the annual goals to ensure stronger recommendations at the UPR and to draw the attention of the HRC to the lack of specific recommendations. It notably called on states to improve the quality and specificity of UPR recommendations.⁹¹

The decline in quality of recommendations has harmed the efficiency of recommendation implementation and human rights improvement in SuRs. UPR Info classified the implementation situation into four groups: fully implemented, partially implemented, not implemented, and not assessed.⁹² Out of 11,527 commented recommendations from 165 States evaluated by UPR Info, the percentage of full implementation declined from category 1 to category 5. The percentage of non-implementation increased, from category 1 to 5, with the exception of category 3 (Considering action).⁹³ As demonstrated above, the less action a recommendation demands, the more likely it is to be fully implemented, and this does not necessarily translate to human rights progress. Category 5 has the greatest potential to result in concrete progress in human rights,⁹⁴ and the implementation percentage is not promising. Over time, a negative response to specific category recommendations by SuRs may in turn reduce recommending states' enthusiasm for submitting high quality recommendations and ultimately detract from the substantive effect of the UPR.

V. CHINA'S RESPONSES TO RECOMMENDATIONS

"Unlike Council sessions, which are widely reported in and where taking a stance may further a state's reputation, the UPR sessions are less scrutinized and therefore criticisms earn little reward but carry a large risk to a state's foreign affairs."⁹⁵ Because of diplomatic concerns, recommending states may equivocate rather than raise precise recommendations. However, recommendations that include specific action requirements can be extremely helpful to encourage SuRs to take substantive actions. One of the

89. See UPR INFO, *supra* note 65, at ¶¶ 20-21.

90. UPR INFO, *supra* note 88.

91. UPR INFO, *UPR Info annual report in 2014*, (2015), www.upr-info.org/sites/default/files/general-document/pdf/upr_info_annual_report_2014.pdf.

92. See UPR INFO, *supra* note 65, at ¶ 21.

93. See *id.*

94. See *id.* at ¶ 20.

95. ROSA FREEDMAN, *THE UNITED NATIONS HUMAN RIGHTS COUNCIL: A CRITIQUE AND EARLY ASSESSMENT* 271 (2013); see also Smith, *supra* note 20.

challenges confronting SuRs as well as other stakeholders is that some recommendations are equivocal and abstract or even deviate from reality, making them hard to implement. Consequently, such recommendations are ineffective in improving human rights in the SuRs. Thus, it is most useful to study the human rights situation of the SuRs through multiple valid channels, and then to make recommendations that are SMART (Specific, Measurable, Achievable, Relevant, and Time-bound).⁹⁶ In this way, the SuR is more likely to voluntarily commit to recommendations or accept and actually implement pertinent recommendations, thereby achieving true human rights improvements in the SuRs.

SuRs' responses to recommendations were categorized with the following terms: (1) accepted, (2) rejected, (3) general response, and (4) no response.⁹⁷ In conformity with paragraph 32 of HRC Resolution 5/1⁹⁸ and according to new HRC practice, the UPR Info modified its classification of recommendations and now uses only two types of responses: accepted and noted.⁹⁹

96. See UPR INFO, *supra* note 65, at ¶ 61.

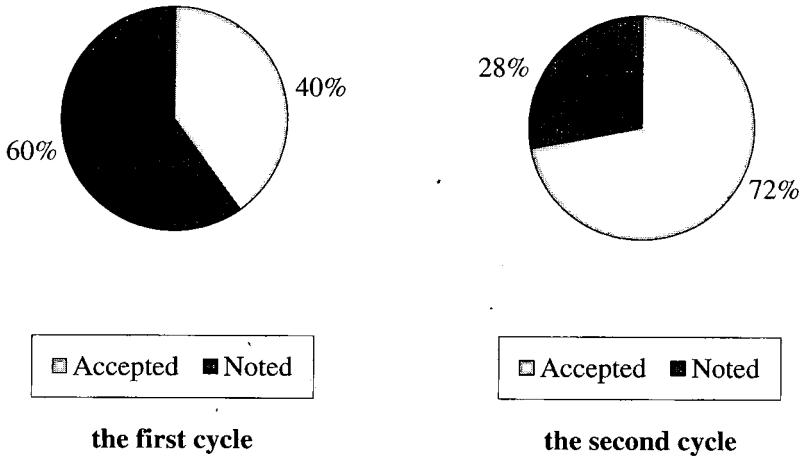
97. See UPR INFO, *supra* note 35, at ¶ 2.4.

98. "Recommendations that enjoy the support of the State concerned will be identified as such [accepted]. Other recommendations, together with the comments of the State concerned thereon, will be noted." BROWNLIE'S DOCUMENTS ON HUMAN RIGHTS 24 (Sir Ian Brownlie, CBE, QC & Guy S. Goodwin-Gill eds., 2010).

99. See UPR INFO, *supra* note 65, at ¶ 13.

A. *Proportions and categories of accepted recommendations by China*

FIGURE 5: PROPORTION OF ACCEPTED AND NOTED RECOMMENDATIONS BY CHINA¹⁰⁰



As Figure 5 demonstrates, the proportion of accepted recommendations increased considerably, from 40% in the first review to 72% in the second review. The increase indicates China became more enthusiastic in engaging in this mechanism and more willing to embrace reasonable and constructive recommendations. Overall, across the two reviews, the average percentage of China's accepted recommendations is 61.37%: 259 recommendations were accepted out of a total of 422. For reference, the rate of accepted recommendations is 75% for Norway,¹⁰¹ 65% for the United States,¹⁰² 64.85% for Japan,¹⁰³ 46.15% for Netherlands¹⁰⁴ and 30.5% for India.¹⁰⁵ Three states, Jordan, Paraguay, and Somalia, accepted all the rec-

100. See A/HRC/11/25, *supra* note 46; see also A/HRC/25/5/Add.1, *supra* note 54.

101. See *id.* Over two cycles, Norway received a total of 320 recommendations and accepted 241 of them. See UPR INFO, *supra* note 55 (Norway as SuR).

102. In the first cycle, the United States received 280 recommendations and accepted 183 of them. See UPR INFO, *supra* note 55 (United States as SuR).

103. See *id.* Over two cycles, Japan received a total of 239 recommendations and accepted 155 of them. See UPR INFO, *supra* note 55 (Japan as SuR).

104. See UPR INFO, *supra* note 55 (United States as SuR). Over two cycles, Netherlands received a total of 182 recommendations and accepted 84 of them. See UPR INFO, *supra* note 55 (Netherlands as SuR).

105. See UPR INFO, *supra* note 55 (United States as SuR). Over two cycles, India received a total of 200 recommendations and accepted 61 of them. See UPR INFO, *supra* note 55 (India as SuR).

ommendations they received and sixteen states accepted less than 50% of the recommendations.¹⁰⁶ In the UPR in the overall international community from sessions 1 through 20, 30,472 out of 41,066 total recommendations were accepted—a 74.2% acceptance rate.¹⁰⁷ The rate of accepted recommendations by China and some developed countries were lower than the average. Some scholars believe the high overall acceptance rate suggests the political nature of the process in that many states seek to issue recommendations the SuRs can accept, and SuRs generally wish to be seen as accepting most recommendations.¹⁰⁸

Table 2 presents the rate of accepted and noted recommendations in each category, by China and by the international community. Table 2.1 indicates most of China's accepted recommendations belong to the second and fourth category. Among the 259 accepted recommendations, recommendations in category 2 and 4 account for 81% of the total sum, while those in category 3 and 5 account for the lowest rate of acceptance, only 6.9% and 8.1% respectively. Moreover, among 163 noted recommendations, 59% of them belong to category 5. Table 2.2 shows that in the international community, recommendations in categories 1 and 4 make up 67% of the accepted recommendations, and recommendations in category 5 account for 59% of the noted recommendations.¹⁰⁹ Similarly, for China, the plurality of accepted recommendations are those in category 4 while the majority of noted recommendations are those in category 5.

106. The acceptance proportion is 48.3% for Bahamas, 45.6% for Brunei Darussalam, 26.1% for the Democratic People's Republic of Korea, 45.8% for Eritrea, 49.7% for Gambia, 30.5% for India, 14.1% for Israel, 49.1% for Malaysia, 35.6% for Malta, 39% for Myanmar, 46.15% for Netherlands, 46.8% for South Korea, 38.9% for St Kitts & Nevis, 48.7% for St Vincent & the Grenadines, 40.6% for Trinidad & Tobago, and 12.1% for South Sudan. See UPR INFO, *supra* note 55.

107. See *id.*

108. See McMahon & Ascherio, *supra* note 31, at 240.

109. See UPR INFO, *supra* note 55.

TABLE 2.1: RATE OF ACCEPTED AND NOTED RECOMMENDATIONS BY CATEGORY IN CHINA

Categories	Accepted		Noted	
Minimal action (1)	10	3.9%	0	0%
Continuing action (2)	101	39%	3	1.8%
Considering action (3)	18	6.9%	13	8%
General action (4)	109	42.1%	51	31.2%
Specific action (5)	21	8.1%	96	59%
Total	259	100%	163	100%

TABLE 2.2: RATE OF ACCEPTED AND NOTED RECOMMENDATIONS BY CATEGORY FROM SESSIONS 1 TO 20¹¹⁰

Categories	Accepted		Noted	
Minimal action (1)	579	2%	24	0.2%
Continuing action (2)	6671	22%	310	3%
Considering action (3)	1979	6%	1470	13.8%
General action (4)	13698	45%	2562	24%
Specific action (5)	7545	25%	7227	59%
Total	30472	100%	10593	100%

Table 3 shows China's different acceptance rates for each category. Recommendations in category 1 and category 2 are almost always accepted, while 58% of recommendations in category 3, and 68% of those in category 4 are accepted. Only 18% of recommendations in category 5 are accepted. In contrast, from sessions 1 to 20 for the international community, 96.02% of recommendations in category 1; 95.56% of category 2; 57.38% of category 3; 84.24% of category 4; and 54.79% of category 5 were accepted.¹¹¹ The two groups of data show the lowest rate of acceptance is in category 5, both for China and for other countries. However, China's rate of acceptance

110. See UPR INFO, *supra* note 55 (China as SuR).

111. See UPR INFO, *supra* note 55.

in categories 4 and 5 is far lower than the average acceptance rate by the international community.

Interestingly, category 3 recommendations, which do not require states actually to take any actions, find fewer acceptances than category 4 recommendations, which call for actions to be taken. Edward R. McMahon suggests the rationale for this is due to the nature and context of the recommendations included in this category. He believes, "Analysis of the category 3 recommendations reveals that many of them contravene deeply held beliefs or policy positions of the governments, and possibly also the populations involved. These types of recommendations are hyper-sensitive to many governments, making it radioactive for the SuR to even think about adopting the reforms, especially as they could subsequently be called upon to present the results of their considerations. By contrast, category 4 recommendations, by virtue of their lack of specificity, can often prove to be low-hanging fruit for a SuR to pick."¹¹²

TABLE 3: RATE OF ACCEPTED AND NOTED RECOMMENDATIONS
WITHIN CATEGORIES BY CHINA¹¹³

	Category 1 Minimal action	Category 2 Continuing action	Category 3 Considering action	Category 4 General action	Category 5 Specific action
Accepted	10 (100%)	101 (97.1%)	18 (58%)	109 (68%)	21 (18%)
Noted	0 (0%)	3 (2.9%)	13 (42%)	51 (32%)	96 (82%)
Total	10	104	31	160	117

B. China's acceptance, rejection and responses to recommendations

1. China's acceptance of recommendations and its variations

Recommendations China accepted in both reviews covered a wide range of topics. These included: (1) creating conditions for an early ICCPR ratification;¹¹⁴ (2) continuing to implement the policy of strictly controlling

112. See McMahon, *supra* note 31, at 370-72.

113. See UPR INFO, *supra* note 55 (China as the SuR).

114. See A/HRC/11/25, *supra* note 46, at ¶ 114.1; see also A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.3-186.10.

and applying the death penalty;¹¹⁵ (3) continuing its constructive and cooperative dialogue with the UN human rights system and human rights treaty bodies;¹¹⁶ (4) strengthening human rights education and trainings and human rights awareness campaigns;¹¹⁷ (5) attaching importance to and enhancing the rights of vulnerable persons like women, children and disabled persons;¹¹⁸ (6) strengthening its efforts in poverty alleviation and bridging the gap in economic and social development between rural and urban areas and among regions;¹¹⁹ (7) continuing its endeavor to build a sound social security system and health care facilities for its people;¹²⁰ (8) strengthening international cooperation with other countries, sharing its experiences and best practices in the field of poverty reducing;¹²¹ (9) improving standards of living in other developing countries;¹²² (10) providing protection to citizens' economic, social, and cultural rights;¹²³ (11) adopting measures to ensure access to health and job opportunities;¹²⁴ (12) continuing legal and judicial efforts to promote and protect human rights;¹²⁵ (13) and protecting the legitimate rights and interests of ethnic minorities.¹²⁶

Legislative and policy changes in China's domestic human rights protections directly led to its accepting some of the recommendations in the second review that were not accepted in the first review. These recommen-

115. See A/HRC/11/25, *supra* note 46, at ¶ 114.30; A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.110-186.111.

116. See A/HRC/11/25, *supra* note 46, at ¶ 114.9-11; A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.63, 186.65, 186.69, 186.71, 186.73.

117. See A/HRC/11/25, *supra* note 46, at ¶ 114.7; A/HRC/25/5/Add.1, at ¶¶ 186.40-41, 186.44, 186.47.

118. See A/HRC/11/25, *supra* note 46, at ¶¶ 114.13-15, 114.20; A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.74-186.78, 186.80-81, 186.84.

119. See A/HRC/11/25, *supra* note 46, at ¶ 114.19, 114.27; A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.188, 186.190, 186.192-193.

120. See U.N. Doc. A/HRC/11/25, *supra* note 46, at ¶¶ 114.20, 114.21 and U.N. Doc. A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.186-186.188.

121. See A/HRC/11/25, *supra* note 46, at ¶¶ 114.28, 114.29, 114.42; A/HRC/25/5/Add.1, *supra* note 54, at ¶ 186.250.

122. See A/HRC/11/25, *supra* note 46, at ¶¶ 114.28, 114.40, 114.41; A/HRC/25/5/Add.1, *supra* note 54, at ¶ 186.252.

123. See A/HRC/11/25, *supra* note 46, at ¶ 114.24; A/HRC/25/5/Add.1, *supra* note 54, at ¶ 186.185.

124. See A/HRC/11/25, *supra* note 46, at ¶ 114.16-17; A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.176, 186. 178-179, 186.206-186.217.

125. See A/HRC/11/25, *supra* note 46, at ¶ 114.2; A/HRC/25/5/Add.1, *supra* note 54, at ¶ 186.50, 186.53.

126. See A/HRC/11/25, *supra* note 46, at ¶¶ 114.16, 114.20; A/HRC/25/5/Add.1, *supra* note 54, at ¶ 186.84.

dations were: (1) ensuring any reformed prison or compulsory care system meets international human rights standards;¹²⁷ (2) abolishing the system of re-education through labor;¹²⁸ (3) taking effective measures to ensure lawyers can defend their clients without fear of harassment, and practice their profession freely;¹²⁹ and (4) ensuring judicial independence, and that judicial authorities exercise their powers in accordance with the law.¹³⁰ This shows China does not completely reject recommendations issued by the international community. China's responses are based on its objective acknowledgement the above problems exist, and on pragmatic concerns about its domestic political, economic, and social development. This represents an effort made by the Chinese government beyond voluntary promises.

2. China's rejection of recommendations and its responses

China did not accept some recommendations involving specific requested actions due to the current political, economic and social situation in China. Those recommendations are:

- (1) Setting out a timetable for implementing recommendations: For example, China is now prudently carrying out positive preparations but unable to set a specific timetable for the ratification of the ICCPR.¹³¹ China rejected recommendations from Norway, Portugal, South Korea, and the United Kingdom, to ratify the ICCPR as soon as possible.¹³²
- (2) Ratifying some core international human rights conventions: China rejected Tunisia's recommendation requesting China to ratify the International Convention on the Protection of All Persons from Enforced Disappearance (CPED),¹³³ and rejected Namibia's recommendation that China ratify outstanding core human rights instruments, including the ICCPR, although it issued this recommendation without a timetable requirement.¹³⁴

127. See A/HRC/11/25, *supra* note 46, at ¶ 92(d); A/HRC/25/5/Add.1, *supra* note 54, at ¶ 186.118.

128. See A/HRC/11/25, *supra* note 46, at ¶ 28(d), 82(e); A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.117, 186.118.

129. See A/HRC/11/25, *supra* note 46, at ¶79(a); A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.129, 186.131.

130. See A/HRC/11/25, *supra* note 46, at ¶ 82(d); A/HRC/25/5/Add.1, *supra* note 54, at ¶ 186.125.

131. See U.N. Doc. A/HRC/25/5/ Add.1, *supra* note 54, at ¶ 186.1 (China's position).

132. See *id.* at ¶¶ 186.11-13,15.

133. See *id.* at ¶ 186.16.

134. See *id.* at ¶ 186.21.

- (3) Demanding China accept individual complaint procedures and investigation mechanisms based on visits to the state party: China rejected recommendations raised by Benin, Estonia, Portugal, and Albania, which would require China to ratify optional protocols on the individual complaint procedure.¹³⁵ In addition, China rejected Tunisia's recommendation on ratifying the Optional Protocol to the Convention against Torture (CAT), which provides for an investigation mechanism that includes visits to States Parties.¹³⁶
- (4) Reforming China's political institutions: For example, China rejected the recommendations by New Zealand and Tunisia to establish a NHRI. China insisted "it has not established a NHRI in terms of Paris Principles, however, many government agencies in China assume and share similar responsibilities. The issue of establishing a NHRI falls into China's sovereignty, and should be considered in a holistic manner in accordance with its national conditions."¹³⁷
- (5) Handling sensitive diplomatic issues: China rejected Canada's recommendation on inviting the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea to visit North-Eastern China to meet officials and North Korean citizens who have fled to China.¹³⁸
- (6) Extending a standing invitation to special procedures mandate holders: While China agreed to cooperate with a special procedures recommendation issued by France, it refused to issue a standing invitation for mandate holders, and to accept all requested visits by them, as Hungary recommended.¹³⁹
- (7) Abolishing the death penalty: In response to the recommendations to abolish the death penalty by New Zealand, Australia, and Portugal, China emphasized its position to retain the death penalty, but promised it would strictly and prudently limit its application according to law. China insisted it "has been making legal and systematic efforts to gradually reduce the application of death penalty."¹⁴⁰
- (8) Protecting ethnic minorities' rights: China pointed out the non-objectivity of recommendations regarding to the protection of

135. *See id.* at ¶¶ 186.17-19.

136. *See id.* at ¶ 186.16.

137. *See id.* at ¶ 186.59.

138. *See id.* at ¶ 186.66.

139. *See id.* at ¶¶ 186.70-71.

140. *See id.* at ¶ 186.17.

ethnic minorities' rights, raised by Australia, Sweden, German, and Czech Republic, and rejected them.¹⁴¹

C. *Implementation of recommendations by China: follow-up*

As previously stated, the UPR mechanism is a three-stage process. The second stage, following-up, is of great significance and is the backbone to realizing the UPR's goals. The follow-up phrase should focus on implementing accepted recommendations and developing human rights in SuRs.¹⁴² Because the review interval is long and some recommendations can be implemented immediately, UPR Info created an update process to re-evaluate the human rights situation two years after the UPR examination. UPR Info especially invites states, NGOs, and NHRIs to share their comments on the implementation (or the lack thereof) of recommendations adopted at the HRC. UPR Info also publishes a Mid-term Implementation Assessment (MIA) for this purpose.¹⁴³

1. China's implementation of the first review recommendations

According to the China's MIA conducted by UPR Info, 71 recommendations (51%) were not implemented, 19 recommendations (14%) were partially implemented, 4 recommendations (3%) were fully implemented, and no answer was received for 44 (32%) out of 138 recommendations in the first cycle of review.¹⁴⁴ The above data show 17% of first cycle recommendations triggered practical actions in China's MIA, which demonstrates that, to some extent, the scale of implemented recommendations in China can still be increased. However, a positive aspect of the record is, ultimately, China fully implemented all three out of four recommendations concerning the death penalty that were not accepted in the first review.¹⁴⁵ Not only that, the overwhelming majority of partially implemented recommendations in China's MIA also had been rejected in the first review cycle by China, including recommendations pertinent to the death penalty,¹⁴⁶ strengthening cooperation with special procedures,¹⁴⁷ and extending stand-

141. *See id.* at ¶¶ 186,225, 230, 232-33.

142. *See* HRC Res. 16/21, *supra* note 44, at Annex?C § 6.

143. UPR INFO, THE FOLLOW-UP PROGRAMME ON CHINA (Feb 13, 2012), www.upr-info.org/followup/index/country/china.

144. *Id.*

145. *Id.* at ¶¶ 12, 14, 57; A/HRC/11/25, *supra* note 46.

146. UPR INFO, *supra* note 143, at ¶¶ 12, 13, 24, 34, 37, 40, 57.

147. *Id.* at ¶¶ 18, 25,41.

ing invitations.¹⁴⁸ For instance, at first, China did not accept the two first cycle recommendations requiring it to limit death penalty applicability. However, two years after the first cycle review, the Chinese government abolished the death penalty for thirteen economic crimes.¹⁴⁹ The data indicate rejected recommendations are not necessarily more difficult to implement than accepted ones. States may decide to implement recommendations in accordance with to their own changing circumstances.

2. Comparison of implementation status between China and the international community

Of 11,527 recommendations examined by UPR Info in MIA for the 165 countries in the first cycle (HRC sessions 2 through 12), 2,068 recommendations (18%) were fully implemented at mid-term, 3,428 recommendations (30%) were partially implemented at mid-term, and 5,602 recommendations (48%) were not implemented at mid-term. For the remaining 429 recommendations (4%), the information provided by the stakeholders was not sufficient for determining implementation status.¹⁵⁰ As to overall implementation of the first cycle, almost half the recommendations were either fully or partially implemented, and the other half not implemented by mid-term.

In terms of statistics at the mid-term of implementing recommendations after the first cycle of review, the international community was ahead of China. The comparison is not simple, however, in that the vast majority of China's fully or partially implemented recommendations had not been accepted during the review process, while the recommendations implemented by other countries overall were those that had been accepted by the SuRs; only 5% were not accepted recommendations.¹⁵¹ Therefore, China's implementation of recommendations that were not accepted indicates more flexibility in meeting the recommendations than was expected. Taking an optimistic view of the UPR, states may take additional action to implement recommendations in the latter half of the review cycle. Additionally, UPR Info noted, "a substantial part of the information upon which the analysis relies was provided by CSOs, who tend to be more critical of the govern-

148. *Id.* at ¶ 77.

149. *See* 中华人民共和国刑法修正案（八）[Amendment (VIII) to the Criminal Law of the People's Republic of China] (promulgated by National People's Congress Standing Committee, Feb. 25, 2011, effective May 1, 2011; UPR INFO, *supra* note 65.

150. *See* UPR INFO, *supra* note 65, at ¶ 17.

151. *See id.* at ¶ 33.

ment's human rights record. Thus, the final percentage of implementation may be even more promising for the future of the UPR."¹⁵²

VI. IDEALITY AND REALITY: UPR AND CHINA'S ENGAGEMENT

China's attitude towards human rights has changed a great deal since it adopted its reform policy: "China's human rights diplomacy has been morphing from a reactive, defensive, sovereignty-based, and inward-looking approach into an ever active, expansive, system-focused and revisionist agenda."¹⁵³ China's attitude towards international human rights mechanisms and norms has gradually become a subject of research by many scholars.¹⁵⁴ Ann Kent believes China's membership in international human rights institutions demonstrates its international socialization. Kent believes China has gradually begun to accept basic international human rights procedures and norms in multilateral forums.¹⁵⁵ Andrew Nathan argues, "China will be a taker, not a shaper, of emerging world norms and institutions in the rights field."¹⁵⁶ In contrast, Kent insists China plays a multifaceted role in international human rights mechanisms. She believes in some cases—such as when it engaged in the UN Human Rights Commission and its Sub-Commission—China was "the taker, shaper and even the breaker of norms."¹⁵⁷ Katrin Kinzelbach quantitatively analyzed China's positions and statements in the UN and concluded "Beijing accepts, by and large, the normative frame provided by international human rights, but it rejects many of its implications."¹⁵⁸ After analyzing China's rise and its influence on UPR, Bjorn Ahl found "the fact that China faces less direct criticism enables it to

152. *See id.* at ¶¶ 17-18.

153. Titus C. Chen, *China's Increasing Important Role in Global Human Rights Regimes*, APSA Annual Meeting Paper 46 (2010).

154. *See, e.g.*, Ann Kent, *China and the International Human Rights Regime: A Case Study of Multilateral Monitoring, 1989-1994*, 17 HUM. RTS. Q. 1 (1995); James V. Feinerman, *Chinese Participation in the International Legal Order: Rogue Elephant or Team Player?* 141 CHINA Q. 189 (1995); Wei-Chin Lee, *With Open Arms? China and Human Rights in United Nations*, 2 PACIFICA 16 (1990); Sophia Woodman, *Human Rights as "Foreign Affairs": China's Reporting Under Human Rights Treaties*, 35 H.K. L. J. 179 (2005).

155. *See* ANN KENT, CHINA, THE UNITED NATIONS AND HUMAN RIGHTS: THE LIMITS OF COMPLIANCE 240-44, 247 (1999).

156. Andrew J. Nathan, *Human Rights in China's Foreign Policy*, 139 CHINA Q. 643, 643 (1994).

157. *See* KENT, *supra* note 155, at 244.

158. Katrin Kinzelbach, *Will China's Rise Lead to a New Normative Order? An Analysis of China's Statements on Human Rights at the United Nations (2000-2010)*, 30 NETH. Q. OF HUM. RTS. 299, 331 (2012)

build a coherent counter-discourse as a basis of challenging international human rights norms.”¹⁵⁹ China’s engagement in two cycles of the UPR now provides a new window into its relationship with international human rights mechanisms.

A. *Active support and engagement of China in the review process*

Experience shows China’s attitude towards the UPR might be more active than some detractors expected. As a SuR, the Chinese government actively organized multiple departments to prepare the National Report¹⁶⁰ and submitted it in accordance with paragraph 5 of the annex to HRC Resolution 16/21. During China’s review, other states comprehensively examined human rights in China and raised wide-ranging issues and recommendations. The Chinese government has sent high-level and cross-department delegations to participate¹⁶¹ to ensure immediate responses to

159. See Ahl, *supra* note 10, at 660.

160. To compile the second cycle’s report, China’s Ministry of Foreign Affairs took the lead in setting up a special task force comprising representatives of nearly 30 legislative, judicial, and administrative organs of the national government. The Ministry also solicited the oral and written opinions of nearly 20 non-governmental organizations and academic institutions. See Nat’l Rep. Submitted in Accordance with ¶5 of the Annex to HRC Res. 16/21, China, U.N. Doc. A/HRC/WG.6/17/CHN/1 (Aug 5, 2013).

161. In the first cycle, the delegation of China was headed by H.E. Mr. Li Baodong, Representative, Ambassador and Permanent Representative of China to the United Nations Office at Geneva and composed of 42 members from Ministry of Foreign Affairs, Supreme People’s Court, Supreme People’s Procuratorate, The United Front Work Department of CPC Central Committee, Political and Law Commission of CPC Central Committee, Commission of Legislative Affairs of the Standing Committee of NPC, Ministry of Education, State Ethnic Affairs Commission, Ministry of Public Security, Ministry of Justice, Ministry of Human Resources and Social Security, Ministry of Housing and Urban-Rural Development, Ministry of Health, State Administration for Religious Affairs, State Council Information Office, State Bureau for Letters and Calls of Complaint, State Council Commission on Affairs of Disabled People, Permanent Mission of China to the UNOG, the MSAR Government, and the HKSAR Government. See above n.46.

In the second cycle, the delegation of China was headed by H. E. Mr. Wu Hailong, Special Envoy of Ministry of Foreign Affairs of China, and composed of 44 members from Ministry of Foreign Affairs, Supreme People’s Court, Supreme People’s Procuratorate, The United Front Work Department of CPC Central Committee, Political and Law Commission of CPC Central Committee, Commission of Legislative Affairs of the Standing Committee of NPC, Ministry of Education, State Ethnic Affairs Commission, Ministry of Public Security, Ministry of Justice, Ministry of Human Resources and Social Security, Ministry of Housing and Urban-Rural Development, Ministry of Health, State Administration for Religious Affairs, State Council Information Office, State Bureau for Letters and Calls of Complaint, State Council Commission on Affairs

comments and questions raised in the review.¹⁶² The Chinese delegation even positively responded to critical statements, thus indicating the effectiveness of constructive dialogue.

In the two UPR cycles, China vigorously engaged in reviews of other states as a recommending state. As of August 31, 2015, China offered 239 recommendations to 143 states, which covered the full range of human rights while primarily focusing on development, poverty, and women's rights.¹⁶³ These are areas of great significance to China, and the country has made remarkable progress on these issues. The practice that China's recommendation mainly focuses on is those areas where China has the comparative advantage in its domestic experience corresponds to the goal of the UPR mechanism, namely, "the sharing of best practice among states and other stakeholders."¹⁶⁴ Based on this record, some scholars argue, "when all comments made by all states are rated positive and negative, to the same criteria, China is the most positive Asian participant and, indeed, one of the most positive of all states participating in the review process."¹⁶⁵

A major reason for China to actively support and participate in the UPR is China identifies with its fundamental principles and values. China opposed the Commission on Human Rights' review style, which was characterized by confrontation and "naming and shaming."¹⁶⁶ During the embryonic stage of the HRC, China exerted great effort in building UPR's capacity and shaping its norms. As Rhona Smith notes, "China led the Like Minded Group¹⁶⁷ who were against singling out any states for criticism or comment within the new Council."¹⁶⁸ The UPR, applying equally to all

of Disabled People, State Council Commission on Affairs of Disabled People, Permanent Mission of China to the UNOG, the MSAR Government, and the HKSAR Government. See also U.N. Doc. A/HRC/25/5, *supra* note 52.

162. See Rhona K.M. Smith, *Equality of 'Nations Large and Small': Testing the Theory of the Universal Periodic Review in the Asian-Pacific*, 12 ASIA-PACIFIC J. ON HUM. RTS. & L. 36, 50 (2011).

163. See UPR INFO, *supra* note 55 (China as SuR).

164. H.R.C. Res. 5/1, *supra* note 4.

165. Smith, *supra* note 8, at 108.

166. Redondo (2008), *supra* note 23, at 722-23.

167. The 'Like Minded Group of Developing Countries' (LMDC) is a group of developing countries who organize themselves as a block negotiator in international organizations such as the United Nations and the World Trade Organization; they represent more than 50% of the world's population. According to a statement by the Chinese diplomat Sha Zukang in 2005, the member countries of the Like Minded Group are Algeria, Bangladesh, Belarus, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, Syria, Vietnam, and Zimbabwe. Smith, *supra* note 8.

168. See Smith, *supra* note 8, at 87.

states, matches the anti-selectivity stance advocated by the Like Minded Group, which influenced the formative stages of the HRC.¹⁶⁹ Some of the terms that reflect China's position have been successfully incorporated into the principles of the UPR, such as "cooperation," "interactive dialogue," "non-selective," "non-confrontational," and "non-politicized."¹⁷⁰ Therefore, China ran for HRC membership three times: in 2006, 2009, and 2013, and made a promise to the international community on the campaign trail to support the UPR's work.¹⁷¹ As both a recommending state and a SuR, China participated in the review activities in accordance with the procedural rules of UPR. Together, these actions constitute a concrete effort by China to integrate into the international human rights mechanism as both an influence shaper and taker.

B. "*Implicit politicization*" in the UPR

Statistics show general action category recommendations accounted for most of the recommendations to both China and the international community. When China participated in reviews of other states, very few of its recommendations required the SuRs to take positive actions. Only 27 of the 239 recommendations China issued belong to category 5—requesting specific actions.¹⁷² Meanwhile, both China and the international community are willing to accept general recommendations lacked a precise action requirement. States' tendency to propose recommendations that lack substantial content and are easy for the SuRs to accept has become common.

Many observers have sharply criticized this trend and recognize the existence of ritualism in the UPR. Ritualism can be defined as "acceptance of institutionalized means for securing regulatory goals while losing all focus in achieving the goals or outcomes themselves."¹⁷³ Walter Kälin argues:

elements of ritualism were already apparent during the first cycle . . . participated without the intention of accepting any recommendations; or accepted most or even all recommendations without being willing

169. Statement by H.E. Ambassador SHA Zukang, on behalf of the Like Minded Group, at the Meeting between the President of the General Assembly and the Commission on Human Rights, Nov. 25, 2005. *See also* Smith, *supra* note 8, at 89.

170. *See* H.R.C., *supra* note 4.

171. Permanent Mission of China to the United Nations, Letter addressed to the President of the General Assembly, U.N. Doc. A/68/90 (June 5, 2013).

172. *See* UPR INFO, *supra* note 55 (China as SuR).

173. Hilary Charlesworth & Emma Larking, *Introduction: The Regulatory Power of the Universal Periodic Review*, in *HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM*10 (Hilary Charlesworth & Emma Larking eds., 2014).

to implement them effectively . . . peers made recommendations which were not based on an analysis of the human rights situation in the relevant state, or made recommendations that were too general, and largely devoid of content, or which served as a vehicle to praise friendly countries with problematic human rights records.”¹⁷⁴

Ritualism detracts from the overall quality of recommendations in many ways and cannot substantially improve the human rights situations in the SuRs.

Recommending states tend to issue comments with vague content for a variety of reasons. First, for the SuR, it is not pleasant to be subjected to other states’ recommendations on an international public platform. The exercise shatters the human rights image each SuR crafts in its National Report. Recommending states cannot help but consider whether their relationships with the SuR will be damaged. Second, each country faces its own human rights problems. Therefore, recommending states will inevitably worry about whether it will be subjected to “equivalent retaliation” when offering unfavorable recommendations to the SuR. Third, each SuR assumes the primary responsibility to promote and protect human rights in its own country, and its human rights situation, good or bad, has no direct relationship with other countries’ interests. There are neither legal rewards nor obligations for recommending states to issue recommendations practical enough for the SuR. Fourth, “allied states are clearly free to work together on either a concerted campaign of ‘gotcha’ aimed at one state or another, or as a mutual praise society to assist each other’s review.”¹⁷⁵ Allehone Mulugeta Abebe even suggests the UPR is just like a political market for bargaining and “[g]roups never issue statements that are critical of one of their own. In fact, states belonging to similar regional groupings often make statements praising the human rights situation in the state under review.”¹⁷⁶

HRC Resolution 5/1 stressed the review should be conducted in a “non-politicized”¹⁷⁷ manner. However, the reality is this principle has not been complied with well. The HRC is formally opposed to the infiltration of politics during the review, but politics often shadow this process and exert explicit or implicit influences on the review. Rosa Freedman believes the “UPR has the potential to become further politicized in a number of

174. Walter Kalin, *Ritual and Ritualism at the Universal Periodic Review: A Preliminary Proposal*, in *HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW: RITUALS AND RITUALISM* 40 (Hilary Charlesworth & Emma Larking eds., 2014).

175. See Harrington, *supra* note 13, at 88.

176. See Abebe, *supra* note 19, at 19.

177. See H.R.C. Res. 5/1, *supra* note 4, ¶ 3(g).

ways.”¹⁷⁸ Rhona Smith argues “the review process is by necessity selective with the selection of issues depending on the interest and concerns of the commenting states.”¹⁷⁹ “The use of multiple positive statements, often filling the allocated time, undermine[s] the review’s ability to improve human rights situations within reviewed states.”¹⁸⁰ From the NGO perspective, states offer recommendations selectively based on political considerations.¹⁸¹ In this regard, the pessimists have thought, “this ‘politicization’ has seemed more pronounced than ever. In several instances information provided by SuRs, or by those praising them, has been misleading at best.”¹⁸² This concern may seem extreme, but it is not without merit. Many states do not precisely understand the meaning of constructive dialogue. Instead, they regard their engagement in the UPR as multilateral diplomatic activity. Politics is still an important element affecting states’ participation in the review, and many states do not treat the improvement of human rights as the starting point of proposals for SuRs.

The term “politicization,” as defined by Rosa Freedman, “is used where political discussions [occur that are] unrelated to the particular debate at an organization or body.”¹⁸³ The modalities and degrees of politicization in the UPR and the country-specific review of the Commission on Human Rights are slightly different. In the work of the Commission on Human Rights, political confrontations and “naming and shaming” of individual countries purposely occurred during the review process, and the reviews were selective and frequently contentious. This is an aggressive “explicit politicization” approach. Admittedly, politicization also exists in the UPR. Countries undergo individual scrutiny that can resemble the approach adopted by the Commission on Human Rights.¹⁸⁴ However, compliance with principles such as universal review, non-selective equal treatment, and dialogue and cooperation can, at least in form if not in substance, contribute to the suppression of the “explicit politicization” phenomenon in the UPR. During the Commission on Human Rights period, through politicization, certain major powers became “judges,” while other countries with so-called abnormal human rights records often became

178. See Freedman (2011), *supra* note 27.

179. See Smith, *supra* note 164, at 52.

180. See Freedman (2011), *supra* note 27, at 309.

181. See Gareth Sweeney & Yuri Saito, *An NGO Assessment of the New Mechanism of the UN Human Rights Council*, 9 HUMAN RIGHTS L. REV. 203, 211-13 (2009).

182. Human Rights Council, Joint NGO Statement on Item 6, 8th Sess. (June 13, 2008), http://olddoc.ishr.ch/lca/statements_council/otherngos/upr_statement_final_13_june_2008.pdf.

183. See Freedman (2013), *supra* note 27, at 210.

184. See *id.* at 220-23.

“judged.” Countries attacked on human rights grounds might have regarded the attacks as selective political confrontations that deviated from the purpose of the Commission on Human Rights. In contrast, in the UPR, each country has the potential to become the target of criticism from other countries. In this context, confrontation and “naming and shaming” usually are not good behavioral choices for recommending countries. Therefore, in the UPR, politicization rarely shows itself in those forms. On the contrary, it mainly emerges in the form of tacit mutual cooperation, praise, or trivial recommendations. By following this kind of “diplomatic” pattern, states can tacitly exchange their recommendations for “friendly” positions from other states. This is called “implicit politicization,” and it shadows the UPR in a more clandestine form.

C. *China’s moderate response to recommendations*

China’s responses to recommendations in the review are relatively moderate. First, China is not willing to accept recommendations that specifically interfere with its own human rights policies. In two reviews, most of the recommendations accepted by China fall into categories 1, 2, and 4, while rejected recommendations primarily belong to category 5, most of which request a specific action by China. China’s acceptance rate is low compared to the average rate of the international community. China’s acceptance rate of category 5 recommendations is also far lower than that of the international community. In particular, if a recommendation includes a slightly more precise requirement than another on the same subject, even though the content of the two are roughly the same, China may reject the former and accept the latter. For instance, China accepted the recommendation “Take steps to an early ratification of the ICCPR” by Czech Republic¹⁸⁵ while refusing the recommendation “Move towards ratification of the ICCPR in the near future” by Norway.¹⁸⁶ China responds to recommendations “according to its economic and social development.”¹⁸⁷ When recommendations require concrete actions and do not accommodate China’s basic public policy and actual circumstances, China will explicitly reject them. Examples include recommendations to abolish the death penalty, to accept the individual complaint procedure, to invite State Parties to investigate, or to extend standing invitations to special procedures.

Second, the rate of implemented recommendations for China is lower than that of the international community, and China still has not submitted a

185. See U.N. Doc. A/HRC/25/5/Add.1, *supra* note 54, at ¶ 186.4.

186. See *id.* ¶ 186.11.

187. See *id.* ¶ 186.17.

report on the implementation status of recommendations. The only true measure of the UPR's success, according to Sweeney and Saito, is whether states implement the review's recommendations and report back during the follow-up stage.¹⁸⁸ For the second cycle, only fifty-one states have submitted implementation reports so far.¹⁸⁹ A lack of implementation reports on the follow-ups will lead to failure in assessing the actual implementation status of accepted recommendations and whether the human rights situation has improved in a practical sense.

However, it would be unequivocally wrong to regard China, in this regard, as merely perfunctorily engaged in the UPR. Over its two reviews, China accepted nearly 62% of recommendations. After the first review, at least 17% of recommendations triggered policy changes and influenced the human rights situation in China. In addition, as mentioned above, some recommendations China rejected in the first review were ultimately implemented due to the changes that occurred in China's society. For example, China refused several recommendations in both cycles to abolish the death penalty.¹⁹⁰ But then, faced with increasing public pressure to limit the death penalty, it adopted the Amendment Nine of Crime Law in 2015 and abolished the death penalty for 22 economic crimes. Therefore, China's participation in the UPR is not, as detractors have said, "without any underpinning substance."¹⁹¹

At the same time, it is necessary to observe China's attitude towards recommendations in comparison to the overall international community. SuRs often selectively accept and implement recommendations based on a variety of considerations. For instance, as of 2015, over two reviews, India's acceptance rate is only 30.5%, which is slightly more than that of the Democratic People's Republic of Korea, Israel, and South Sudan.¹⁹² The SuR may selectively and "euphemistically" reject recommendations, even if these proposals are objective and relevant. For example, during the review of the United States, Department of State Legal Adviser Harold Hongju Koh classified recommendations into three categories and responded to them accordingly. Koh stated, "several recommendations are plainly in-

188. See Sweeney & Saito, *supra* note 184, at 219. See also Freedman (2011), *supra* note 27, at 322.

189. OCHR, UPR MID-TERM REPORTS, www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx.

190. See A/HRC/25/5/Add.1, *supra* note 54, at ¶¶ 186.17, 18, 19.

191. See Smith, *supra* note 8, at 115.

192. See UPR INFO, *supra* note 55 (India as SuR).

tended as political provocations, and cannot be taken seriously.”¹⁹³ A SuR’s rejection of a large number of specific recommendations demonstrates its consideration of recommendations is based on factors other than human rights. Moreover, many countries, including China, are unwilling to subject their freedom to act on human rights issues to too many restrictions.

In the UPR, states have considerable freedom to accept or reject recommendations and whether to implement them. This is a concession the international human rights mechanism made to state sovereignty. Most international human rights monitoring procedures are devoid of binding force. Making international human rights monitoring mechanisms mandatory may discourage countries from engaging and result in their severing connections with the international human rights system, which could eventually damage the universal application of the international human rights standards. For the UPR, the pursuit of universality necessarily means a sacrifice of mandatory-binding force. Therefore, the most important tasks of the UPR right now are to advance universal acceptance of the review, to spread the human rights concept, and to promote universal acceptance and compliance with human rights standards by constantly reiterating international human rights standards during reviews. At present, it is beyond the UPR’s capacity to compel states to implement recommendations. It is essentially a moral pursuit to promote and protect human rights, which depends on states’ internal legal system and ultimately on the universal commitment of all states to the value of human rights.

VII. CONCLUSION

Rosa Freedman believes “one of the UPR’s main tasks will be to ensure that it does more than merely giving [sic] the appearance of human rights protection.”¹⁹⁴ The statistics cited here indicate that during the UPR the human rights situations of each state were comprehensively reviewed through dialogue rather than confrontation, and in adherence to the principles of universal participation, equal treatment, and cooperative dialogue. In addition, nearly half of the recommendations triggered changes in domestic human rights policies. The UPR is a great advance, in form and substance, compared to the country-specific review mechanism of the Commission on Human Rights. The UPR has contributed substantially to the improvement of human rights policy implementation and awareness. Even so, “implicit politicization” undeniably continues to exist in the UPR, although it differs

193. Hongju Koh U.S. Dept. of State Legal Advisor, Response of the United States of America to Recommendations of the United Nations Human Rights Council (Nov. 9, 2010), www.state.gov/s/l/releases/remarks/150677.htm.

194. See Freedman (2011), *supra* note 27, at 293.

from the “explicit politicization” of the Commission on Human Rights. The effect of “implicit politicization” is that the absence of specific action requirements weakens the quality of a considerable number of recommendations and lessens their practical significance.

The weakness of review is highlighted when the UPR encounters powerful states like China. The fact that more than 70% of recommendations to China have low action levels indicates the strength of review on China should be improved further. Undoubtedly, there is a gap between China’s active support and engagement with the UPR and China’s moderate responses to recommendations. For China, however, these are not contradictory. China positively supported and participated in the capacity building and operation of the UPR, which is based on recognition of its value, but it does not necessarily follow that China will approve and accept all the conclusions of the review. Practically, during the review process, China responded to and offered recommendations according to its established policies. China is not inclined to offer specific action recommendations to other countries or to accept specific action recommendations. The political logic behind this is China is neither willing to intervene through human rights mechanisms in other countries’ human rights issues, nor does it wish to subject its human rights policies to significant UPR interference. This approach reflects the political principle of non-interference and the Chinese philosophy: “Do not impose on others what you do not wish for yourself.”¹⁹⁵

195. Confucius, *The Analects of Confucius* (论语·卫灵公, Lun Yu, Wei Linggong) (己所不欲, 勿施于人, Ji Suo Bu Yu, Wu Shi Yu Ren”).