

Shifting Power and Human Rights Diplomacy

China

Edited by David Ismangil, Karen van der Schaaf & Stijn Deklerck



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Introduction

For decades, the foreign policy of the People's Republic of China (China) was centred around the maxim 'biding one's time and hiding one's capacities' (*taoguang yanghui*). Deng Xiaoping first coined the term during a time when China was facing serious domestic difficulties and tremendous pressures from the West as a result of the Tiananmen crackdown in 1989 (Chen & Wang 2011). Taken as a guiding principle by successive leaders, 'keeping a low profile' dominated China's diplomatic endeavours during the years to come. While China became a major trading partner for many other countries, it did not seek a dominating role on the global political front, and was careful not to taut a 'Beijing Consensus' to replace the 'Washington Consensus'.

As China's economy grew, so did its realization that fulfilling domestic needs demanded a more activist global strategy, as well as its confidence to take center stage in global affairs. During the (late) 2000s, both Western observers and Chinese experts were already discussing a change in China's overall foreign policy approaches. Yet it wasn't until Xi Jinping came to power in 2012 that China's new global assertiveness and aspirations fully matured.

Today, China overtly seeks to promote a "new type of international relations" in which China will "play its part as a major and responsible country" and "take an active part in reforming and developing the global governance system" (Xi 2017a). China does so at a time when the post-World War II liberal international order is in a general state of disarray, and when Western countries are primarily preoccupied by disruptions such as Brexit, Trump, and populism. As such, there is a distinct window of opportunity for China to become a leading reformer of global governance, and the Chinese government is keen to take advantage of this.

As Matthieu Burnay identifies in this volume, at the heart of the current transitional times through which governments, transnational actors and individual citizens have to navigate, lies a deep contestation of the interlinked and interdependent norms of human rights, democracy and the rule of law. At times when the content, practice and future of these norms is far from assured within liberal democracies, it is crucial to understand how illiberal states shape the discourse surrounding these same norms at the national and international level. While China is not the only illiberal state worth considering in this regard, it is definitely the most influential and assertive illiberal actor currently

(re)shaping international norms and standards. With its growing power and influence, China is increasingly transforming the structure and dynamics of global governance in important ways. This raises urgent and inescapable questions for countries and societies around the world. Moreover, how to engage China on human rights has become an increasingly urgent question amidst the stellar rise of the country as a global superpower.

China assertively promotes its ‘home-grown’ positions on the rule of law and human rights, forcefully resisting calls to respect the internationally accepted system of universal, binding and enforceable human rights norms and law. China furthermore conducts its own version of human rights activism to reshape global norms, throughout which it doesn’t hesitate to use and expand its influence in terms of hard and soft power.

Calling for increased protection of human rights within China is notoriously difficult and propels increasingly strident reactions from the Chinese government. A recent example (discussed in the essay of Eva Pils) demonstrates China’s current savviness in countering international critiques: when a group of 22 countries wrote a letter to the UN in July 2019, sharply criticizing China for the running of ‘re-education camps’ and other policies violating human rights in the Xinjiang region, a group of 37 countries wrote a letter to praise China for these same practices.

Addressing human rights violations by China outside of its territory is fraught with considerable hurdles as well. China’s financial clout might be reason enough for countries to stay silent or even become complicit in human rights violations styled along ‘China model’ lines, and it has been using ‘sharp power’ tools to broaden its influence, confuse its critics and undermine the political system in democracies.

This volume focuses on China and its current and potential role in the international protection and promotion of human rights. The essays in this volume aim to enhance the strategizing and acting capabilities of human rights organizations, practitioners and other stakeholders by exploring and anticipating the consequences of current global power shifts for policy and governance. This volume unites twelve original essays by academic and civil society experts. Most essays include an analysis of Chinese visions on particular issues and themes, discuss how China is promoting its views and expanding its influence, and contain recommendations for relevant stakeholders. Yet for reasons of structure and clarity, the essays are loosely organized according to their focal points under three different headings.

‘Shaping the norms’ contains three essays that focus on tracing the Chinese visions and narratives that are (re)shaping international norms and standards relating to human

rights. 'Expanding influence' contains seven essays that explore the various ways in which China has been expanding and using its growing influence to affect discourse and practice on human rights. 'Engaging China' contains two essays that offer a series of strategizing options and recommendations for governments, diplomats, civil society organizations and other stakeholders to (dis)engage with China in order to uphold and strengthen the present human rights system of universal, binding and enforceable human rights norms and law.

Shaping the norms

'Shaping the norms' contains essays that focus on dissecting Chinese visions regarding policy and human rights, thus providing general insights into several core building blocks of China's growing contributions to global governance. They respectively discuss Chinese idea-forming and -promotion surrounding rule of law, human rights and state sovereignty.

Matthieu Burnay sheds light on the different ways in which China shapes the discourse on the rule of law at the national and international level. He indicates that the rule of law is a 'home-grown concept'. While its interdependent and interlinked relationship with human rights and democracy informs its universal nature, it is not defined by any legally binding international instrument, and leaves room for different definitions across time and geography. He describes the Chinese perspective on the rule of law as instrumental and non-liberal, informed by the centrality of the Communist Party in China's governance system. China's compliance with international law is then defined by the same instrumental take on which laws to apply where and when, if at all. Other countries, such as the United States, exhibit a similar selective compliance with international law. Yet what makes China different from other contemporary powers relates, among others, to China's activism in proposing an alternative discourse on international law, centred around power politics, sovereignty, and an alternative discourse on human rights.

China's alternative vision and discourse on human rights is further developed in the essay of **Chiahao Hsu** and **Titus C. Chen**. Hsu and Chen trace China's engagement with human rights from the 1980s onwards, distinguishing two different phases. During the first phase ('Human rights struggle', 1980–2000), China developed its own human rights discourse and built the fundamentals of its Chinese model on human rights (CMHR) to combat 'human rights diplomacy' which, note the authors, is perceived by Beijing as "a concerted effort by Western governments to smear China's international reputation and intervene in China's domestic affairs". The second phase ('The cultural turn') is characterized by 'human rights institutionalization' and saw the legalization and

codification of human rights. China further developed CMHR discourse and theory, which now rests on five fundamental principles: (Marxist) historical materialism, collectivism, sovereignism, culturalism, and statist developmentalism. The CMHR is thereby closely connected to the heavily promoted Chinese ideal of building a ‘community of common destiny for mankind’. Hsu and Chen note that this ideal emerges as a UN 2.0, where state (culture) sovereignty and non-interference are held as absolute, and where UN members can freely agree to disagree on human rights.

As outlined by several authors in this volume, China’s strong adherence to state sovereignty underlies its overall approach to international law and human rights. This is extensively explored in the essay of **Ryan Mitchell**, in which he charts the evolution of the Chinese view on sovereignty, and indicates how it structures China’s approach to human rights. China posits the sovereignty of the state as fundamental to a peaceful international order, to economic development, and to all other underlying political aims and agendas both national and global, including human rights. While China has indicated willingness to compromise on the absolute character of its sovereignty in the economic realm, it has steadily rejected such compromises in the area of human rights. Ryan Mitchell highlights the six ‘common human values’ that form key elements of this Chinese human rights vision: peace, development, fairness, justice, democracy, and freedom. These values are hierarchically ranked and mirror the absolute importance of state sovereignty. Within this logic, and as illustrated by China’s public justifications for its human rights violations in Xinjiang, rights like freedom of association and expression are easily sacrificed in the name of higher-ranked values such as peace and development. This human rights vision and approach clearly clashes with the universal and indivisible nature of human rights, and poses great difficulties in seeking dialogue with China over the infringements of civil and political rights.

Expanding influence

The essays of ‘Expanding influence’ trace China’s growing influence around the world and its rising impact and human rights implications. The essays explore China’s expanding clout in widely diverging realms such as UN human rights institutions and mechanisms, business and investment, development, climate action, media, the Internet and academia.

Sarah Brooks looks at Chinese actions within the UN Human Rights Council in order to highlight the different ways in which the Chinese government is attempting to remodel the global human rights architecture, and to undermine the independence and effectiveness of the international human rights system. Through anecdotes and quotes,

she illustrates how China employs coalition-building, ‘wordsmithing’, intimidation and punishments to attain its goals. Rather than forming an effective counter-voice, protectors of human rights from the UN and member states have fallen into ‘damage-control’. However, Brooks notes that the trend of increasing Chinese control over the UN and its impact on the human rights system could be bucked and ultimately overcome. Offering a series of incisive and concrete recommendations, she encourages governments who continue to see value in the UN human rights system to consider new approaches to buck the current trend, and this in close coordination with each other and with civil society stakeholders. She furthermore encourages NGOs to evaluate their current strategies, engaging in more strategic interactions and networks in their respective societies, across the Global South, and with independent Chinese academics, activists and thinkers.

Expanded international trade and investment relations have not led China to adapt to more liberal norms, writes **Pitman Potter**. Instead, the increase of China’s power and influence have enabled it to challenge established conventions, and to disseminate its ‘parochial human rights standards’ that prioritize state-led development and stability. In his essay, he analyses how China does this throughout its international economic relations. He examines China’s Belt and Road Initiative and the Asian Infrastructure Investment Bank as two examples of China’s international ‘human rights activism’, and indicates how this poses an intensifying challenge for the international human rights system. Potter calls for effective engagement from the international human rights community, and suggests several concrete steps to make a start in expressing joint resolve to curb China’s efforts to disseminate its authoritarian human rights orthodoxy and normalize its human rights conduct.

The ‘human rights activism’ conducted by China throughout its international economic relations is further explored in the essay of **Sophie Wintgens** and **Thierry Kellner**. Their essay investigates China’s track record in Latin America and the Caribbean (LAC), a region recently associated to the Belt and Road Initiative. Wintgens and Kellner chart China’s growing presence and influence in the region, developed under the general umbrella of what China labels ‘South-South cooperation’. They subsequently analyse how China’s activity is affecting LAC visions of human rights. They note how China has started to produce more standards to better regulate the activities of Chinese economic actors operating abroad, yet indicate that these do not impose legally enforceable obligations and are badly implemented in reality. The authors furthermore note that China has become more vocal in touting its own successful country model when it comes to achieving modernization. They indicate the susceptibility of various LAC countries to China’s authoritarian model, and point out worrying phenomena in this regard such as the expanding import of Chinese surveillance and control technologies.

Christina Sadeler discusses climate change as an area where China's contributions are vital towards achieving a sustainable future, and which features centrally among the issues marked for EU-China cooperation. In her essay, she traces China's climate achievements at home, comparing them with its actions abroad. China has achieved considerable progress on domestic environmental protection, yet conflicts between economic and environmental interests have a big influence on the degree and speed of climate action. And while China has positioned itself as a possible global environmental leader in recent years, Sadeler shows that China is (contributing to) increasing carbon footprints overseas. Sadeler notes that cooperation should not only address technical instruments or government dialogues on climate policies, but that "[h]igher standards and targets, more transparency, effective safeguards and more robust and binding national and international regulations are needed". She specifically points to the need for an effective alignment of the planning and financing of infrastructure investments such as the Belt and Road Initiative with the Paris Agreement targets, SDGs, and nationally determined contributions. In addition, she points to the need for a supportive environment enabling active participation of civil society groups and NGOs, and the need for the EU to use every opportunity to emphasize the important role civil society plays.

In his essay, **Cédric Alviani** describes how China is establishing a "new world media order" under its control to deter and prevent criticism. He marks the 2008 Beijing Olympic Games as a turning point, after which China decided to invest heavily into improving its international image and disseminating its views internationally. He indicates how China's push for a new world media order is motivated by its desire to address perceived imbalances created by a Western domination of global opinions, and how journalists are mainly seen as state propaganda auxiliaries within this new order. Alviani subsequently traces various ways in which China is establishing and imposing its new world media order, and he notes that democracies have finally started to wake up to this new and troubling reality. Showing several recent examples of governments, NGOs, and individuals that have taken concrete action against Chinese repressive influence, he indicates that it is not too late to take appropriate countermeasures to protect traditional roles of journalism, and gives a number of recommendations to various stakeholders.

Lokman Tsui and **Milan Ismangil** focus on Internet governance when discussing China's information control regime. They start with an overview of Beijing's vision of the Internet, highlighting how it emphasizes a critical and exclusive role for states in governing the Internet. This Chinese vision on 'Internet sovereignty' is consistent with China's overall view that communication and media are strictly tools to further its political agenda (see also Alviani), and harks back to China's strong adherence to state sovereignty in the fields of international law and human rights (see, a.o., Mitchell). It is in sharp contrast

however with the diverse and inclusive multi-stakeholder model of Internet governance that is globally dominant. Tsui and Ismangil argue that the Chinese Communist Party has shifted from a reactive to a proactive information control regime that also includes global propaganda and disinformation campaigns increasingly affecting the rights of individuals around the world. However, the authors warn against overstating the inevitability of Beijing's rise. They suggest that human rights organizations should focus more on strategically putting pressure on (Western) companies that do business in China. Even though this is far from evident in a world where a 'cyber Belt and Road' steadily expands China's influence, and where our lives are permeated by technological tools made by and in China, they see a fertile soil for human rights advocacy with companies that operate in societies valuing human rights.

Marina Svensson discusses China's growing global role in higher education and its implications for foreign universities and academic freedom worldwide. She starts out by giving an overview of the development of Chinese higher education, pointing out the relatively recent push for internationalization of Chinese universities and the full integration of education into China's overall soft power strategy to gain global influence. She subsequently discusses how political control is exercised over students and faculty in China, and points out the growing lack of academic freedom and the increasing repression of critical scholars. Highlighting China's importance as a global actor in higher education, she signals several developments, including the proliferation of Confucius Institutes as part of China's soft power strategy, the dependency of universities in the West on Chinese students, self-censorship among China scholars, and large-scale inter-university collaborations mainly funded by China. According to Svensson, a robust commitment to academic freedom could limit Chinese influence on higher education institutions in the West, yet the situation is complicated by the speeding commercialization of higher education. Moreover, countries with less-funded higher education, like many African countries, are even more receptive towards Chinese investments, and are more vulnerable towards an overarching Chinese impact on its educational (and other) institutions.

Engaging China

While many of the previous essays already outline concrete recommendations for human rights stakeholders to go beyond 'damage control' and adopt an integrated strategy to grapple with China's growing influence in human rights diplomacy, the following two essays contain more targeted insights into strategizing options for governments, diplomats, civil society organizations and others wishing to uphold and strengthen the present human rights system.

In an essay that touches upon many of the issues discussed within this volume, **Eva Pils** exposes the similarities between domestic and transnational modes of repression by the Chinese Communist Party, and thus offers a key strategizing insight for (liberal) actors trying to engage China on human rights. She indicates how domestic repression of civil society advocacy has long been ‘gradated’, with authorities inculcating in civil society communities the sense that they could operate and advocate their ideas as long as they did not cross a ‘red line’ separating what is tolerated from what is sensitive. This red line is not defined in legal terms, and the Party-State has no interest in defining it. It exists only in the minds of those who hope to stay safe or keep others safe, and is constantly shifting. After giving an overview of the effects of China’s rising influence on global engagement dynamics, Pils relates the ‘red line’ psychology to modes of transnational repression. Referring to the use of ‘sharp power’ by China, which exploits “an asymmetry between open liberal-democratic systems and closed authoritarian systems”, Pils highlights how this is a central insight for liberal democracies where transnational repression is seen in the areas of, among others, freedom of expression and associated rights. Giving several precise recommendations, she urges actors in democratic systems to remain focused on their own agency and responsibility, reject getting caught up with trying to act along the elusive ‘red lines’ set out by the Chinese government, and avoid complicity with transnational human rights violations.

In the concluding essay, **Joshua Rosenzweig** reflects on engagement and disengagement. In order to strengthen a system of universal human rights that is effectively capable of holding all states (including China) accountable, Rosenzweig argues for stakeholders to recalibrate and expand the ways in which they engage with China on human rights. In his essay, he starts by indicating how a forced false choice has been established between stakeholders’ approaches to interact with China on human rights. ‘Engagement’ approaches, traditionally seen as entailing pragmatic cooperation with Chinese counterparts to improve the environment for human rights protection, have been juxtaposed with more confrontational containment approaches of ‘naming and shaming’. Rosenzweig warns against this false choice. He argues that stakeholders need to adopt an expanded understanding of engagement with China on human rights, and accept that interactions with China need to be both constructive and critical. Rosenzweig indicates that it is not only the seriousness of China’s human rights violations and its continued attempts to weaken the existing human rights system that call for great urgency in developing new integrated approaches to engage China on human rights. China also needs to be part of building and enforcing effective new international rules and institutions in areas with major implications for human rights that have long been under-addressed (such as corporate activity and climate change) or that have recently emerged (such as artificial intelligence). The author has several recommendations for stakeholders. For Europe,

Rosenzweig indicates that a stronger commitment to internal (European) solidarity on China policy is required, and a clearer articulation of human rights obligations that China must acknowledge in order to further interaction on other issues. At the same time, he stresses that commitments to multilateral engagement need to be strengthened beyond European, trans-Atlantic or Global North actors, highlighting the importance of mobilizing local stakeholders in the Global South to engage with China on human rights.

The views expressed in the contributions that follow are those of the authors and do not necessarily reflect the positions of Amnesty International, its Dutch section or the Strategic Studies Team. The editors wish to thank Lars van Troost and Jeroen Teitler for their editorial assistance.

Matthieu Burnay

China's 'discourse power' and the rule of law at the national and international levels¹

China's increasing power to shape discourses at the international level influences the development of a consensus on the international rule of law. What makes China different from other contemporary powers primarily relates to its activism in shaping and making international law, as well as in silencing criticisms against its illiberal practices at home.

Introduction

This essay starts with the recognition that the post-World War II liberal international order is now at a stage of transition, not to say in a deep state of crisis.² At the heart of this new normal through which governments, transnational actors, as well as individual citizens have to navigate, lies a deep contestation of the interlinked and interdependent values of human rights, democracy, and the rule of law. In sharp contrast with the victorious claims that the end of the cold war marked the 'end of history' (Fukuyama 1992), the future of liberal values outside but also within liberal democracies appears to be uncertain. In the European Union (EU), the rule of law is increasingly under threat in a number of 'backsliding member states'³ in which the vox populi supposedly justifies policies and governance reforms that go against the very values upon which the European integration process has been based. In the United States, not one day passes without a tweet that reminds us of the fragile equilibrium between the executive, legislative and judicial power amid the rise of populism. In that context, it also appears crucial to understand how illiberal states now shape the discourse on the same values at the national and international level.

1 A number of arguments in this short essay are further developed in Burnay, M. (2018) *Chinese Perspectives on the International Rule of Law: Law and Politics in the One Party State*, Cheltenham: Edward Elgar Publishing, and Burnay, M., 'China and Global Governance: Towards a Low-Cost Global Legal Order?', submitted for publication.

2 On this debate, see Ikenberry (2018).

3 On rule of law backsliding in the European Union, see Kochenov et al. (2016).

The purpose of this essay is to shed light on the different ways in which China shapes the discourse on the rule of law at the national and international level. First, the essay will highlight the specificities of the rule of law which will be defined as a home-grown concept whose relationship with human rights and democracy informs its universal nature. Second, the essay will describe the evolving role played by the law in Chinese society since the beginning of the opening-up and reforms process, and how it informs China's discourse and commitment to the rule of law at the international level. The Chinese perspective will be described as instrumental and non-liberal. Third, the essay will highlight how China's increasing self-confidence and power to shape discourses at the international level, influence the development of a consensus on the international rule of law.

The rule of law and the international rule of law

It was amidst the termination of the cold war that the rule of law came back to the forefront of academic and policy debates. With the collapse of the Soviet Union, it was widely hoped that the rule of law would act as the main driving force behind the transformation of societies in Central and Eastern Europe into full-fledged democracies. At the United Nations level, the rule of law was reaffirmed at the 2005 World Summit as “essential for sustained economic growth, sustainable development and the eradication of poverty and hunger” and as a central part of the “universal and indivisible core values and principles of the United Nations” (UNGA 2005). In sharp contrast with human rights, whose components are clearly articulated in the Universal Declaration of Human Rights (UDHR), the rule of law is not defined by any legally binding international instrument. What could be primarily seen as a weakness can also appear as a strength, because the rule of law has the potential to create bridges between different legal traditions and jurisdictions.

In the absence of a universally agreed definition of the rule of law, the United Nations General Assembly (UNGA) adopted by consensus a Declaration on the Rule of Law at the National and International Levels ('the Declaration') in 2012, which shed light on the “diversity of national experiences in the area of the rule of law”. The Declaration also emphasized that the rule of law encompasses “common features founded on international norms and standards” (UNGA 2012: Para 10). With respect to this, the Declaration states that “human rights, the rule of law and democracy are interlinked and mutually reinforcing” (UNGA 2012: Para 5). The rule of law therefore constitutes a substantive value which entails a certain ideal of justice, informed by democratic processes, and the protection of human rights. This combination of diversity and universalism is best exemplified by the different rule of law traditions that coexist within the EU. The French

état de droit, the English *rule of law*, and the German *Rechtsstaat*, while being very much distinct, also share common features as emphasized in a 'Report on the Rule of Law' published by the Venice Commission (2011).

The question of the relationship between the rule of law and the international rule of law remains largely unanswered. It is nevertheless clear that it is hard to simply translate the rule of law as it has developed at the national level to the international level. The horizontal nature of the global governance system, based upon the sovereign equality between states, indeed stands in sharp contrast with the more vertical nature of the territorially defined nation state. In the words of the former UN Under-Secretary for Legal Affairs, Dr Hans Corell, the principle of the rule of law is nevertheless applicable to the relationship between states and should furthermore be in full compliance with international human rights standards (Corell 2001: 263). In practice, this commitment to the rule of law at the international level implies a commitment to international law and to equality in its application, as well as a genuine support for the adjudication of disputes at the international level.

In such a context, where the rule of law and the international rule of law are defined differently across time and geography, comparative research on the rule of law emerges as a necessary endeavour.⁴ The next section will analyse the evolving nature of the law in China, and how it informs China's discourse on the rule of law at the international level.

Chinese perspectives on the rule of law and the international rule of law

Far from the legal nihilism that characterized the Cultural Revolution, the transformation of the Chinese legal system has served as a major driver of China's opening and reforms initiated by Deng Xiaoping at the end of the 1970's. The idea was not only to provide the necessary legal certainty to attract foreign investments, but also to appease a society highly divided by a decade of mass mobilization and self-destruction. Throughout the period of opening and reforms, China adopted a series of new laws, increased the legal capacity of the Chinese judiciary, and raised awareness on the role the law can play to resolve disputes. Far from a normative commitment to a specific ideal of justice, the law primarily served as a useful instrument to support the formidable transformation of the state and help address the many challenges that emerged in that process. The growing role played by law in society led a number of authors to

4 In that sense, this essay is in line with the scholarship that interrogates the truly international nature of international law and calls for comparative approaches in the study of international law, see Roberts (2017).

highlight the scope and challenges for a full-fledged rule of law to emerge in China. The optimism of the early 2000s – based upon a belief that China was undertaking a “long march towards the rule of law” (see for instance Peerenboom 2002) – has nevertheless now been replaced by way more pessimistic descriptions of the evolution of the Chinese legal system. Despite continuous legal and judicial reforms, the Chinese legal and judicial system has been increasingly impacted by the centrality of the Party in China's governance system. According to Carl Minzner, the Party-State would be characterized by an “authoritarian revival” that marks the “end of an era” (Minzner 2018). In the legal sphere, the changing political wind has resulted in a shrinking space for rights advocacy and civil society organizations to operate: systemic rights violations can simply not be discussed publicly, nor be directly addressed by legislation or law enforcement (Pils 2018: 8). Some of the most controversial policies adopted recently, such as the establishment of detention centres for ‘re-education’ in the Xinjiang Region, are even illegal under Chinese law anyway (Clarke 2018).

The picture that emerges is one of a legal system of multiple speeds, in which the power of rules still plays a role in those areas that are no threat to the Party-State, while the rule of power remains predominant in all other areas.

This instrumental perspective on the rule of law at the national level is also to be found in the Chinese understanding of the rule of law at the international level. With China's progressive re-emergence as a global power, the Party-State has progressively departed from its original suspicion under Maoist rule that international law would be nothing but a bourgeois product. With the policy of opening and reforms, the rules-based international order, and the global governance system in which it is embedded, facilitated – and ultimately conditioned – China's economic growth and rising power on the international stage. It is in that context that China became a key member of the main international organizations and forums (such as the G20) and even emerged as an institution-builder in light of China's instrumental role as part of the BRICS and in the establishment of the Asian Infrastructure and Investment Bank (AIIB). China's accession to the World Trade Organization (WTO) did constitute an important milestone in that process. China's WTO membership not only required an in-depth transformation of domestic legislation, but it also forced China into a learning process of the highly complex rules and procedures governing the WTO and its Dispute Settlement Mechanism (DSM). Very far from China's active use of the WTO DSM, China's support for international adjudication has been way more limited in other areas of international law, as best exemplified by the vocal rejection of the jurisdiction of the arbitral tribunal on the South China Sea established by virtue of Annex VII of the United Nations Convention of the Law of the Sea (UNCLOS) (Ministry of Foreign Affairs of the People's Republic of China 2014).

This instrumental compliance with international law should not surprise anyone interested in global affairs. In that sense, the United States' compliance record with international law has also been described as selective at best or as corresponding to one of a 'rogue nation' at worst (Prestowitz 2003). What makes China different from other contemporary powers primarily relates to its activism in proposing an alternative discourse on international law, and also in silencing criticisms against its illiberal practices at home.

China's 'discourse power' and future prospects for the rule of law at the national and international level

It was at the occasion of the Fourth Plenum of the Chinese Communist Party that the Party-State emphasized its willingness to "[s]trengthen foreign-related legal work" and "[v]igorously participate in the formulation of international norms, promote the handling of foreign-related economic and social affairs according to the law, strengthen our country's discourse power and influence in international legal affairs, and use legal methods to safeguard our country's sovereignty, security and development interest" (CPC Central Committee 2014). In practice, the Plenum sent a signal to the rest of the international community that China is willing to enhance its 'discourse power' – a discourse can indeed be both an effect and an instrument of power. For China, this 'discourse power' would translate into a capacity to act as a norm-shaper and norm-maker, instead of as a more passive norm-taker.

For our discussion on the national and the international rule of law, China's growing activism in shaping and making international law has three characteristics which are worth to be emphasized.

First, China develops a vision of the international rule of law that is predominantly informed by power politics rather than the quest for clearly defined best practices or a more hypothetical ideal of global justice. The Party-State clearly understands that the United States' return towards a more isolationist foreign policy under the presidency of Donald Trump; the European focus on internal issues such as Brexit; as well as calls from the Global South to depart from a values-based international diplomacy, do present China with a momentum. In that context, China increasingly engages with the rest of the world on its own terms, through institutions and rules which do not constrain but reinforce China's economic and political model.

Second, China retains a very traditional understanding of sovereignty as the main cornerstone of public international law. Far from being supportive of the 'right to intervene'

or 'responsibility to protect', China remains a key advocate of sovereignty and non-intervention. With respect to this, President Xi Jinping (2014a) recalled at the occasion of the 60th anniversary of the 1955 Bandung Conference that "all countries should exercise their rights in accordance with the law, oppose bending international law, and reject any attempt to undermine, in the name of 'rule of law', other countries' legitimate rights and interests as well as peace and stability". China's stance on sovereignty and non-intervention has been particularly impactful within the United Nations Security Council, as best exemplified by the six vetoes against resolutions on the situation in Syria.

Third, China has become increasingly active in the promotion of an alternative discourse on human rights. Far from the solely defensive posture which characterized China's stance until very recently, the Party-State is now increasingly active in promoting its own understanding of human rights and silencing critiques against its own human rights records in the UN human rights system (Piccone 2018). China's activism in presenting an alternative discourse is well-illustrated with the adoption of the Beijing Declaration by the South-South Human Rights Forum in 2017 (Xinhua 2017a). One should note that the very denomination of the Forum is a reminder of existing diplomatic dialogues between countries from the South, which were instrumental for Beijing to forge its singular foreign policy identity during the cold war. At the heart of the Beijing Declaration is the idea that, in line with the Chinese experience, "human rights must and can only be advanced in accordance with the national conditions" (Xinhua 2017a: Art. 1). In addition, the Party-State has also been quite successful in silencing criticisms against its own human rights records, including in the context of the UN Human Rights Council. In that sense, China's investments preceding and following the establishment of the Belt and Road Initiative (BRI) have clearly provided the Party-State with a certain leverage. The EU was very much reminded of this when Greece used its veto right against a joint statement on China's human rights record to be delivered at the 35th session of the Human Rights Council in 2017 (Smith 2017).

To what extent is this alternative discourse appealing to other states and therefore likely to contribute to the emergence of a consensus on the international rule of law? The first answer to this question is that there is very limited evidence that China is genuinely active in exporting its own *model* outside China. The very existence of such a China *model* remains very much contested anyway, as illustrated by vivid debates on the 'Beijing Consensus' (Ramo 2004). The 'Beijing Consensus' has been described as a "myth" based upon a "misguided and inaccurate summary of China's actual reform experience" (Kennedy 2010: 461). While anti-Western rhetoric is clearly appealing in a number of regions of the world, China's alternative discourse remains nevertheless primarily informed by power politics and the protection of national interests. Diverging

interests tend therefore often to supersede the potential ideological convergence with other states, more particularly those from the global South. At the end of the day, the central question remains whether China can contribute to the development of a more inclusive and reciprocal version of international relations capable of addressing global inequalities. This contribution has clearly yet to materialize.

Conclusion

Despite the contestation coming from both the inside and the outside, the post-World War II liberal international order continues to be beneficial not only to Western liberal democracies but also to emerging countries such as China. This essay has highlighted how national and international law have been instrumental in the transformation of China into the second largest world economy. Now that China's reforms seem to be at a turning point, it is not as much the importance awarded to the law as conducive to the protection of China's interests that is likely to change, it is rather the substance of the norms adopted by China internally and promoted externally. Even if China's state-centric approach and strict emphasis on the principle of sovereignty leave a very limited space for civil society organizations to operate, the transformation of China's political landscape and foreign policy do require more than ever a permanent monitoring as well as innovative governance ideas.

The evolution of the Chinese vision on human rights

This essay offers a general overview of the evolution of China's vision on human rights and its impact on global norms and international human rights vocabulary. The authors argue that the Chinese Model of Human Rights theory consists of five major tenants: collectivism, historical materialism, sovereignism, statist-developmentalism, and cultural essentialism.

Introduction

Scholarly research on the politics of Chinese human rights finds that since the 1990s, the rights-as-threat conception is an abiding character of the People's Republic of China (PRC) government's international political discourse (Wan 2001). The conception characterizes the liberal ideas of an international human rights system as a destabilizing factor to the integrity of state sovereignty (Inboden & Chen 2012). Threat perception has led Beijing to wage international human rights 'struggles': justifying its human rights record on multilateral occasions, insisting on the non-intervention principle, and pushing back against what Beijing perceived as international human rights pressure (Foot 2000; Kinzelbach 2014; Nathan 2011). Meanwhile, the PRC government has promoted the right to national subsistence and the right to economic development as the most fundamental human rights (Svensson 2002).

This essay will examine the development and evolution of the key concepts of the Chinese model of human rights (henceforth: CMHR) discourse, as well as how they are articulated philosophically and politically in the domestic social and academic context in contemporary China.

Human rights struggle (1980-2000)

The efforts of international engagement of China's human rights practices went through different phases. In the first phase (1980-2000), China actively combated the 'human rights diplomacy', i.e., what Beijing perceived as a concerted effort by Western governments to smear China's international reputation and intervene in China's domestic

affairs. As China suffered greatly on the international stage from boycotts and embargoes in 1990s (the decade after the Tiananmen Square massacre), Beijing gradually learned to change the course of its discourse and developed a CMHR theory to defend against the Western human rights narrative. It is worth mentioning here that the word ‘theory’ in the vocabulary of the Chinese Communist Party (henceforth: CCP) is significant in that the Party “synthesizes successful experiences in practice into theories, uses these correct theories to guide new practices and incorporates effective principles and policies into Party and national system” (Xi 2014b: 9). The CCP’s ‘theories’ therefore are the infallible guiding principles of the state, but are also accumulative, gradually in the making.

To see the ‘theoretical’ transition and vocabulary change at work, an insider’s view is necessary. Based on the number of published journal articles on the subject of human rights in China between 1979 to 2008, Wang Maoching concludes that there are two peaks of ‘human rights studies’ in China: 1992 and 2004 (Wang 2010). Regarding the first peak, in 1992, Wang explains that the question China needed to solve at the time was how to cope with the challenge of Western ‘human rights’ values. The discussions were about whether China should continue to see human rights as ‘bourgeois privileges’ and reject them entirely, or to develop a counter-argument based on Marxist/socialist tradition.

The Deng Xiaoping Theory was the leading theory at the time. Deng famously declared: “What are human rights? What matters is: it’s how many people’s human rights? Is it the human rights of the few, or is it the rights of the majority, all citizens’ human rights? The so-called ‘human rights’ in the West are essentially a different matter from what we call human rights” (Deng 1993: 125). The undertone of Deng’s rebuke against ‘Western human rights’ is: (1) in using ‘human rights diplomacy’ against China, the Western countries had turned ‘human rights’ into the bourgeoisie’s ideological tool; (2) such actions and vocabularies of ‘freedom, democracy and human rights’ were essentially interfering in China’s state sovereignty and attempting to destabilize China and the rule of the CCP; and (3) as a late-developing socialist state, China had a different view and different concerns regarding human rights issues. The rights to subsistence and development were the principal human rights, and other rights such as civil and political rights were at best secondary. China’s objective therefore is to fight against international/external pressure on China to improve its human rights practices, that is, to conduct ‘human rights struggle’ (*renquan douzheng*) against the perceived foreign interference (Xiong 2013: 308-311).

In China's first ever official human rights white paper titled 'China's Human Rights Condition', published by the State Council Information Office (SCIO) in 1991, it reiterated the Dengist human rights principles, and concluded that "China sternly opposes any countries using human rights issues to promote their own values, ideologies, political standards, and developmental models, and uses human rights issues as excuses to interfere in other countries, especially developing countries' domestic sovereignty". The white paper further affirmed that China will staunchly and relentlessly continue to struggle against "hegemonism and superpower politics" (SCIO 1991).

While likening the Western human rights values to foreign invasion, the 1991 white paper also laid out the foundational principle of CMHR: "[F]or any country on the path to realize and protect human rights, it cannot deviate from its concrete national conditions (*guoching*), such as its history, economics, politics and culture; hence [human rights practices] must be confirmed and maintained by the sovereign state and through its domestic legislation of human rights institutions" (SCIO 1991). In other words, the implementation of human rights must be subjected to the jurisdiction of sovereign state government. Under no conditions can human rights (*renquan*) practices override state sovereignty (*zhuquan*) (Deng 1993: 348).

This discourse is a stark contrast to the idea of universal human rights, which assumes that each person's dignity and autonomy deserve to be respected and protected regardless of one's gender, religion, race or citizenship, and that everyone is entitled to be free from state arbitrariness. The CMHR theory indeed asserts a reversed relationship between state and individuals by subjecting human rights under state sovereignty and denying individual human rights. Instead, the CMHR theory dismisses the discourse of universal human rights as a parochial assertion of the Western values, and ranks it as merely one of many rival theories of human rights. More importantly, by relegating the universal human rights to a set of ideas originated from the Western social and political experiences, the CMHR also links human rights practices to a specific political/cultural context and invokes a discursive strategy of cultural relativism. Under this logic, imposing certain human rights standards to other countries is akin to imposing one's values on different cultures or civilizations. As we will see below, this cultural relativist defence will be fully developed in 21st century China.

The cultural turn (2000-)

The 1991 white paper on human rights marks a watershed in China's human rights discourse. It is the first attempt of a series of official engagements with the international community on human rights issues. Afterwards, the CCP government would regularly

publish human rights white papers, providing governmental research funding, and publicly promoting academic research on China's human rights agenda. The study of 'human rights' was no longer sensitive and eventually culminated into the second peak of human rights discourse in China.

In 2004, the sentence "the State respects and protects human rights" was officially approved by the National People's Congress and written into the Constitution of the People's Republic of China. Treating human rights as constitutional rights not only signifies the legalization and codification of human rights, but also indicates a major shift of human rights discourse in China: from 'human rights struggle' to 'human rights institutionalization'. With China's recent embrace of human rights discourse and active participation in the international human rights regimes, it became necessary to further theorize 'human rights' to justify China's unique path to human rights discourse. Since then, 'Human Rights Studies' in China have taken a more centralized and official advocacy approach to a wide array of academic institutes, universities and civil associations (Wang 2010).

With that being said, the 'human rights research' inside China was not exactly a cacophony of different theories and approaches on human rights philosophy. Rather, the foundational principles of state-sanctioned CMHR discourse are crystal clear. The three main pillars of the CMHR theory are: (1) collectivism: the protection of individual interests is subordinate to the imperatives of the collective interests; (2) historical materialism or 'scientific socialism': the history of the struggle for human rights is that of class struggles. To prevent the bourgeois monopoly of means of production under the disguising rhetoric of human rights, the ownership of the means of production must be firmly under the people's control (represented by the CCP) to ensure the promotion of livelihood and welfare of all the people: the right to subsistence; (3) sovereignty: sovereignty is the trump of all rights, and only the state/government can guarantee the protection and enforcement of rights. Conversely, when other countries use 'human rights diplomacy' to pressure China (or any other sovereign states), this is tantamount to the infringement of China's sovereignty (Feron 2015).

While these three principles are undoubtedly the foundations of the CMHR discourse, the search for more defining 'Chinese characteristics' goes deeper. Surely the disgraceful and shameful history of China being the subject of Western imperialism and colonialism still serves as the greatest motivation to defend against foreign interventions, but it is not an experience unique to China. It was at this juncture that China's soul-searching turned to the 'Chinese cultural essence' to define the 'Chinese-ness'. To quote a Chinese scholar: "[T]he Sinicization of Marxist human rights theory requires us to express in the

Chinese language, as well as the Chinese manner and the Chinese style. This makes Confucian culture occupy a special place in contemporary China's human rights practice and discourse construction" (Lin 2013).

It is well known that China's top political leaders are extremely careful in their public speeches, especially those made in major Party meetings and state visits. In a speech on human rights delivered in Cambridge University in 1999, Jiang Zemin, while closely following the Deng Xiaoping theories, quoted the Confucian idea that "the people are of the utmost importance in a state" (*minweigui*) to show that CMHR also values human dignity (Xiong 2013: 313). Similarly, Hu Jintao, the Chinese president succeeding Jiang Zemin, proposed the idea of a 'Harmonious World' (*hexie shijie*) during his second term and clearly articulated the concept in his report to the Eighteenth National Congress of the Communist Party of China. In President Xi Jinping's official report to the Nineteenth National Congress of the Communist Party of China, he proposed the concept of "A Community with a Shared Future of Mankind" (*renlei mingyun gongtongti*), in which he acknowledged that while civilizations are diverse and essentially different in their respective levels of economic development and in their worldviews, all peoples in the world share a common aspiration towards a new world where countries remain "harmonious while maintaining each member's differences" (*he'erbutong*) (Xi 2017a), a Confucian idea.

Following CCP leaders' vocabulary change, some pro-regime Chinese scholars, inspired by the Confucian philosophy, proposed the 'rights to harmony' which treasures each person's dignity based on the 'people-centered' (*minben*) view, and aims to fulfill people's needs to livelihood and welfare. Unlike the Western concept of human rights that was founded upon individualism and self-interest but disguised as a universal value, the CMHR theorists argue, the new model insists that human cultures are essentially different, and therefore does not wish to impose parochial norms on all states. On the contrary, it respects the autonomy of each culture and state while all mankind can collectively strive to reach a consensus on human rights norms (Xu 2008).

Based on this understanding, the CMHR theorists are willing to recognize the value of some elements of the Western human rights theory, such as the universal importance of the respect for human dignity, and to see them as compatible with the CMHR. According to this view, the Western paradigm of human rights, however, wrongly assumes that human rights can transcend state sovereignty and borders, and fails to recognize the ideological, historical and cultural differences between states. The Western model of human rights, according to its Chinese critics, are in fact interventionist and imperialistic ideas disguised as universal.

The statist-developmental approach to human rights

In addition to the four principles of the CMHR theory, namely, collectivism, historical materialism, sovereignism, and culturalism, recent studies on the CMHR also point out the most recent addition to the theory: a statist-developmental approach to human rights. Chen and Hsu (2018) show with empirical evidence that in recent years the CMHR discourse is closely connected with three dimensions of governmental functions: state provision of social welfare, state commitment to legality or rule-by-law, and state capacity in shaping global governance. Particularly in the Xi Jinping era, the Chinese government has highlighted state provisions of economic development and social welfare as the key criteria of progress in China's human rights practices. Based on the socialist, historical materialist understanding of the primacy of the rights to subsistence, the CCP, the vanguard party that represents the true interests of the people, is tasked with the responsibility to lift people out of poverty and further elevate the whole country into a well-to-do society. To achieve this historical landmark in the CCP's vision, the state and government must be fully entrusted with more ruling power and become all-powerful to secure social stability, ensure continuing economic growth, and restore the status of a respectable international power on the world stage comparable to the glorious dynasties of Han and Tang in ancient imperial China.

In China's latest version of a human rights white paper, published on 22 September 2019 by the State Council Information Office of the People's Republic of China, it reaffirmed several characteristics of the CMHR elaborated in this essay, such as the understanding of human rights as a "historical and developmental concept", the idea that "the rights to subsistence and developments are the primary rights", and that "human rights mean the integration of individual and collective rights". In addition, it officially confirmed the statist-developmental approach to human rights. As this white paper is clearly published in celebration of the 70th anniversary of the founding of the People's Republic of China, the document is titled "Seeking Happiness for People", which, as the white paper explains, is linked to the idea that "people's sense of gain, happiness and security is an important criterion for evaluating human rights" (SCIO 2019). By this standard, the achievements of human rights practices can only be judged by how well a government can perform these holistic and collective goals, regardless of how the policies are made and enforced. In other words, the mightier the state/government is, the better human rights will be implemented, and the happier the people will be.

Conclusion: 'Building a global community of shared future'?

With the CMHR theory becoming more full-fledged, China has been actively engaging

international human rights regimes, and even proactively sought to market and mainstream the Chinese model of national development as the new foundational norms of global governance for the advancement of human rights. The PRC leaders and diplomats have mobilized an international normative campaign to promote what Xi Jinping has referred to as the effort of ‘building a global community of shared future’ as an alternative guideline for international order (De Graaff & Van Apeldoorn 2018). Marketing the CMHR as new universal framework for the advancement of human rights has become a national interest to the PRC government (Lake 2017). According to China’s own account, “by March 2019, China had submitted 43 implementation reports on 27 occasions to these treaty bodies and received 26 reviews. China has conducted constructive dialogue with the relevant treaty bodies and adopted their suggestions in accordance with the actual conditions in China” (SCIO 2019).

The Chinese government now not only takes pride in the CMHR theory and frequently uses this narrative to defend its domestic human rights related practices, but also promotes it as an alternative human rights norm. It is crucial, in our view, to understand how this theory evolved and was constructed in order to engage a ‘constructive dialogue’ with this model, as China repeatedly encourages non-Chinese to do. By tracing the evolution of the CMHR theory, the authors have pinpointed five fundamental principles of the CMHR theory: (Marxist) historical materialism, collectivism, sovereignism, culturalism, and statist developmentalism.

According to this view, in socialist states, rights are never ‘natural’ or something each person is unconditionally entitled to; rather, they are hard-earned through political (class) struggles, and can only be preserved and implemented by the state. Adding a cultural essentialist argument, it further contends that the historical and cultural experiences are so different within each state, and that it is unfair to weigh the success of human rights practices on the same scale, especially not by a prejudiced foreign standard. It also suggests that rights can only be defined by members of the same sovereign state, not by external, ‘biased’ values and judgements. To disguise one’s parochial cultural/philosophical values as ‘universal’ and impose them on other states is equivalent to violating their sovereign rights. A state’s national culture, in other words, is an integral part of its sovereign rights and should be protected and insulated from the pollution of other states/cultures.

A fatal flaw of the CMHR theory here is that it assumes a perfect ‘fit’ between culture and state and treats cultures as if they are permanently static and immutable. It ignores the historical fact that cultural/linguistic boundaries almost never correspond to state territory in human history. It is clearly paradoxical that the Chinese government would

sternly execute the collectivist and statist measures to ‘harmonize’ political dissents and repress thriving domestic cultural diversities in the name of national security and development, while assuring to the international society that China will “uphold cultural diversity, communicate with and learn from other civilizations”. One can reasonably surmise that among the five characterizing principles of the CMHR theory, collectivism, historical materialism, and statist developmentalism are directed to domestic affairs, whereas the sovereignist and culturalist defence are specifically deployed to fend off external criticisms.

Essentially, the CMHR theory grafted a culturalist expression onto the traditional sovereignist international order to create a normative framework against the universal human rights discourse. In this picture, the CMHR theorists paint a rosier expression of a Hobbesian anarchical international order, where cultures/civilizations are locked into state borders and become the synonym of sovereign states. Rhetorically speaking, in the CMHR terminology, ‘cultural diversity’ stands for ‘different sovereign states’, and ‘constructive dialogues among civilizations’ means ‘diplomatic negotiations between nation-states’.

In this sense, the ideal of ‘building a global community of shared future’ is equivalent to building a UN 2.0 infrastructure, where the principles of state (culture) sovereignty and non-interference are held as absolute. In terms of human rights issues, the international human rights regimes, in this view, can only be a theater where member states freely agree to disagree, or are ‘harmonious while maintaining each member’s differences’ (*he’erbutong*).

Ryan Mitchell

The Chinese interpretation of sovereignty and its human rights implications

Among the five permanent members of the UN Security Council, the People's Republic of China (PRC) has often been the most committed to advocating a strict Westphalian conception of the rights and immunities of sovereign states. With occasional compromise, it continues to do so today. China's doctrine of sovereignty structures its approach to human rights both by sharply constraining the scope of enforcement and by shaping the hierarchy of rights themselves. Both positions have important implications for rights-holders and for the international community.

Introduction

In his 2019 New Year address, China's State Chairman and Communist Party General Secretary Xi Jinping stated that "no matter what tempestuous transformations the global situation undergoes, China's resolute faith in preserving state sovereignty and security will not change, and neither will China's sincerity and benevolence in preserving world peace and promoting mutual development" (Xinhua 2018a). He was reiterating a position long-championed by China's leaders that the sovereignty of the state is fundamental to a peaceful international order, to economic development, and indeed to all other underlying political aims and agendas both national and global. Often, this is expressed as a commitment to 'non-interference', as reiterated in regular statements by the Ministry of Foreign Affairs (MOFA) that "China unswervingly upholds the principle of non-interference in others' internal affairs" (see e.g. Ma 2009).

Although in practice China does at times involve itself in other states' 'internal affairs', and indeed has not invariably objected when other states or international institutions do so, it has been a more consistent defender of the principle of non-interference than most other states, including its fellow permanent Security Council members. China's views regarding the rights of sovereign states to be free from external interference notably go beyond the UN Charter Article 2.4 prohibition on unauthorized use of force, as well as beyond the customary international law prohibition on intervention that the International Court of Justice (ICJ 1986: para 205) has defined as requiring an "element of coercion". Instead, China routinely characterizes even mere commentary on its domestic policies as

unwelcome forms of interference. At the same time, it has accepted its own role as one of the ‘enforcers’ of the international legal system via UN Security Council resolutions intended to “maintain or restore international peace and security” under UN Charter Chapter VII. In recent years, however, it seems to have decisively rejected the idea that the ‘Responsibility to Protect’ (R2P) permits robust forms of humanitarian intervention.

Most likely with reasons stemming from its own turbulent modern history, China has tended to accept hierarchical forms of international law enforcement only when it views these as contributing to peace or economic development. Sovereignty can be limited by Chapter VII resolutions (over which China has veto power), or by arbitration within systems such as the World Trade Organization (WTO). However, it has declined to join the optional protocols to treaties such as the Convention Against Torture (CAT) empowering individual complaint mechanisms, and similarly eschewed participation in the International Criminal Court (ICC). Its relative openness to more limited forms of human rights monitoring via the Human Rights Council (HRC) and the Committee on Economic, Social and Cultural Rights (CESCR) reflects the view that these more collective, ‘recommendation’-based bodies do not jeopardize state sovereignty as do more invasive procedures. Meanwhile, China’s own human rights strategies display a clear prioritization of those rights, including social and economic as well as so-called ‘third generation’¹ or solidarity rights, that are least likely to imply confrontations with state authority and legitimacy, and a pattern of disregarding rights that it does view as potentially posing such conflicts.

Evolution of Chinese views on sovereignty

In many ways, modern China is itself the product of theories about sovereignty. Already by the late-19th century, imperial Chinese officials not only protested against foreign territorial encroachments as invasions of state sovereignty, but also used this term in their own internal communications.² Although the term now used to refer to ‘sovereignty’, *zhuquan* 主权, was itself first used in its modern context by an American missionary and educator in the employ of the Qing court (discussed in Svarverud 2007: 107-108), it swiftly became the byword for the core aim of multiple Chinese governments to maintain the state’s territorial borders and to regain control over all aspects of its domestic policy. Even as China began to participate in major international legislative activities such as the Hague Conferences of 1899 and 1907, leading Western theorists of international law

1 See different interpretations of such rights in de Vey Mestdagh (1981) and Alston (1982).

2 See, e.g. ‘Yang Shang Yu Zai Shanghai Sheli Saiqihui You Ai Zhongguo Zhuquan Ni Qing Quanzu You’, July 17, 1881. Academia Sinica, Institute of Modern History Archives, 01-27-009-01-050.

were still justifying practices such as the extraterritorial consular jurisdiction of Western states in China on the basis of the latter's 'half-civilized' status and regressive legal system (see Liszt 1915: 79).

Successive administrations all promised to overturn these negative appraisals of China, end unequal treaty obligations, and defend national autonomy. The rise and fall of these regimes was, in turn, significantly influenced by internal critiques and mass movements protesting their failures to do so, with the 1919 May Fourth Movement a quintessential example (see e.g. Wasserstrom 2019). In the century since, China has of course gone from being an actor often treated as peripheral to world order to one that shares the summit of the UN-centered international legal system with the United States, Russia, France and the United Kingdom. However, this has not been a smooth process of ascension. Chinese views on the importance of sovereignty were especially reinforced by the successive 'existential crises' of Japanese invasion, civil war, and the PRC's exclusion from the UN until 1971.

The PRC's early positions on international law issues were most explicitly articulated in the 'Five Principles of Peaceful Coexistence'. These Five Principles were first articulated in the Agreement on Trade and Intercourse between Tibet Region of China and India, signed in Beijing on 28 April 1954. They call for "mutual respect for each other's territorial integrity and sovereignty", "non-aggression", "non-interference in each other's internal affairs", "equality and cooperation for mutual benefit", and "peaceful co-existence" (Xinhua 2015). In its opposition to US-led actions in Korea, and other positions, the early PRC emphasized its view that, as the leading international law scholar Zhou Gengsheng put it in 1963: "the principle of sovereignty is the most fundamental principle of international law", and one which "excludes the possibility of limitation" (Zhou 1963: 21-22). The Cultural Revolution saw some tensions between state sovereignty and the goal of a global revolution, but no overall turn against the concept.

Following Mao's death in 1976 and the return to power of Deng Xiaoping and other pragmatic reformers by 1979, the People's Republic of China began to 'open up' and became increasingly active in joining multilateral treaties and institutions, while continuing to emphasize state sovereignty. Indeed, it was during this period that defending sovereignty for itself and other developing countries decisively replaced global revolution as the *raison d'être* of Chinese diplomacy. Notably, one of China's main ideological authorities over the past two decades, current Politburo Standing Committee member Wang Huning, rose into elite politics from a background as a leading theorist of sovereignty and

international relations.³ Wang combines a Marxist historical framework with a traditional Hobbesian understanding of sovereignty as state authority putting an end to the chaotic state of nature. He has also been deeply critical of how “hegemonic Western states had not restricted their own sovereignty in the slightest, [while] the negation of sovereignty that they advocate primarily targets states of the Third World” (Wang 1985: 45). In this view, the concept originally arose as a means for bourgeois nation-states to exert their independence from feudal power structures during the Early Modern period. Now, though, capitalists themselves had created a new network of international norms and institutions, including in the field of human rights, intended to constrain the autonomy of newly-emerging socialist states, who must thus insist upon defending their legal rights (Wang 1985). This position is closely reflected in China’s limited engagement with human rights institutions and in its posture towards other areas of international law.

State-led development as the vehicle of human rights progress

Since the early 1980s, China has especially pursued agreements that promised to contribute to its overriding ‘Reform Era’ aim of economic development. This has meant a particular willingness to engage internationally with regimes like those in the area of private international law, that are likely to help ensure or stabilize international investment and access to global markets.⁴ Some of China’s greatest concessions in terms of accepting external oversight or adjudication over its domestic policies have been made in connection with its entry into the WTO, which prompted major revisions to domestic legislation as well as acceptance of the organization’s dispute resolution system.⁵

During the same period, China has ratified a number of important human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1980, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1981, the CAT in 1988, and the ICESCR in 2001. It signed the International Covenant on Civil and Political Rights (ICCPR) in 1998, but has yet to ratify it. It has also been an active participant in the HRC since the latter’s founding in 2006, and in particular engages with the HRC’s five-yearly Universal Periodic Review (UPR) mechanism whereby foreign states and NGOs provide commentary and suggestions for human rights progress.

3 Wang’s influence is summarized in Patapan & Wang (2018).

4 A review of one key dimension of reforms in the early years of WTO accession is provided in Hung (2004).

5 China’s compliance with dispute settlement mechanisms in the WTO realm, while comparable with other member states, is not without obstacles. See, e.g. Zhang & Li (2014).

In all of these areas, however, China has proved less willing to compromise on the absolute character of its sovereignty than in the realm of economic agreements.⁶ In response to critiques made during its UPR sessions, for example, China has “rejected” large numbers of proposals on the basis that they constitute interference in its internal affairs. This has included legislative suggestions such as the abolition of the death penalty, as well as enforcement-based comments concerning protection of the rights and independence of legal counsel, due process of criminal suspects, or the elimination of longstanding practices of extrajudicial punishment such as the Re-education Through Labor (RTL) system (UNHRC 2018a). The last of these rejections is especially notable as it was made in 2013, shortly preceding Chinese authorities’ abolition of RTL at the end of the same year (Ahl 2015: 652-653). China’s protest thus seems more concerned with reasserting domestic jurisdiction, not with the substance of the recommendation.

Outside of the HRC, China’s engagement with human rights treaty bodies has shown a similar agenda in relation to its aim of preserving sovereignty. In particular, it has declined to accept optional protocols or resolutions creating individual complaint mechanisms for treaties including the CAT, CEDAW, CERD, and ICESCR. The committees created under these treaties are thus not empowered to hear individual complaints challenging Chinese policies and seeking determinations that they violate treaty obligations. Clearly, in Beijing’s eyes human rights (viewed as the rights of individuals to oblige certain state behaviour) continue to present a greater potential threat to China’s sovereignty than do (most) international economic norms.

This view is reflected in the way that the Communist Party has defined its own human rights goals. Following the inclusion of “human rights” in the PRC Constitution as amended in 2003, China has issued several white papers laying out its position that economic development, under state and Party leadership, is the key to realizing substantial improvement in human rights for the Chinese people. This has been reflected in, for example, the State Council Information Office’s (SCIO) 2005 White Paper on ‘China’s Peaceful Development Road’ (Xinhua 2005), as well as in the 2011 White Paper on ‘China’s Peaceful Development’, in China’s UPR submissions, and in other such contexts. The authorities pair sharp objections to external rights-based criticism with the claim that “the Chinese government always respects human rights and human values and works to meet the ever-growing material and cultural needs of the people and promote prosperity for all” (SCIO 2011).

6 For an overview of China’s approach to human rights treaty implementation through 2010, see Ahl (2010).

The idea that state-led ‘peaceful development’ is at the core of human rights progress is not merely implied in China’s responses to international monitors. For example, in comments greeting Chinese events to celebrate World Human Rights Day 2018, marking the 70th anniversary of the signing of the Universal Declaration of Human Rights, Xi Jinping asserted that “the happy life of the people is the greatest human right” (Xinhua 2018b). This was followed by listing a set of values that “China’s people wish to uphold”, as the key elements of China’s human rights vision. These are “the common human values of peace, development, fairness, justice, democracy, and freedom” (Xinhua 2018b). In line with the standard practice for official policy and ideology formulations, these values are ranked in order of importance.

These six ‘common human values’ have also been proclaimed in a number of other official statements and international forums. They were first announced as a formula in Xi Jinping’s speech at the 70th Session of the UN General Assembly on September 28, 2015 (Xi 2015). As a 2019 *People’s Daily* article reprinted by the official Party ideological journal *Seeking Truth* puts it, “the right to peace and the right to development are the human rights the world most desperately needs today” (Li 2019). World War II and other conflicts have shown that “without the right to peace and the right to development, other human rights cannot even be brought up” (People’s Daily 2019).

Ranking and relativizing rights

Many of China’s current positions on the definition and application of human rights, and especially on questions of enforcement, follow more or less logically from this ranking system with state-led ‘peaceful development’ as the highest value. Ratification and implementation of the ICCPR, for instance, is delayed until (supposedly) the socio-economic material base has been sufficiently established. This approach is also reflected in China’s international posture regarding enforcement doctrines such as the Responsibility to Protect (R2P), or the doctrine that ‘the international community’ as a whole then has a responsibility to protect individuals at risk of grave human rights violations committed or allowed by their governments (cf. Chandler 2004; Orford 2013).

In general, China firmly opposed Western initiatives for humanitarian intervention during the 1990s, except in the form of UNSC-approved peacekeeping efforts (in which it has greatly increased its participation since 2013) (Teitt 2011). While Chinese authorities have explained this newfound interest in peacekeeping operations as a way for China to contribute to the international community, some observers have also noted that it serves additional aims of promoting military training and professionalization. Regardless of motives, China has demonstrated that it does not view sovereignty as an absolute bar

to UNSC action. However, as the doctrine of R2P began to be elaborated following 2001, China has expressed serious concerns about its potential to undermine strict rules on the use of force under the UN Charter. In 2011 the Hu Jintao administration was nonetheless willing to permit limited intervention in Libya for the defence of civilians from regime attacks, under UNSC Resolution 1973. Although this potentially signalled an openness to supporting more activist interpretations of R2P, the subsequent transformation of the Libya intervention into a *de facto* regime change operation was viewed in highly negative terms. Since 2012, both China and Russia have consistently vetoed successive resolutions condemning or seeking action against the Syrian government over human rights abuses committed during its civil war.⁷ Thus, although China is still not necessarily opposed to multilateral coercive enforcement against states within certain prescribed boundaries, particularly over issues comprising threats to international peace and security, it has under Xi Jinping been clearer than ever in seeking to avoid any support for interventions on behalf of parties to internal conflicts.

As noted above, Chinese initiatives in promoting human rights both internationally and domestically tend to follow rather closely its six-part ranking of values. In forums such as the HRC, it has sponsored resolutions seeking to create funds that would assist in building state capacity for underdeveloped member states. At home, as well, the Xi administration has continued to place ever greater importance on the collective pursuit of peaceful and orderly development, including the call to “eliminate poverty” in China by 2020 (CGTN 2019).⁸ Great amounts of resources have been allocated to this campaign, which has seen significant successes in raising average incomes as well as basic quality-of-life indicators in some of the country’s poorest regions. In official statements on human rights progress, socio-economic factors such as rising wages and education levels take priority.

At the same time, state efforts characterized as ensuring ‘peaceful development’ can themselves give rise to serious infringements of lesser-ranked rights. The mass arbitrary detention and ‘re-education’ of Uyghurs and other predominantly Muslim groups in the Western region of Xinjiang since 2017, for instance, is consistently portrayed by the PRC government not only as a necessary *security* policy, but also as one contributing to the state’s *human rights* aims. In China’s 2018 UPR submission, it notes that its passage of a 2015 Counter-Terrorism Law and accompanying crackdown on ‘East Turkestan’ separatist forces has constituted a contribution to the defence of human rights including the “rights to life and liberty of person” (UNHRC 2018b).

7 See, e.g. UNSC Res. S/2011/612; S/2012/77; S/2012/538; S/2014/348.

8 For a key independent evaluation see UNHRC (2017c).

This echoed comments on the re-education campaign in Xinjiang like those of the region's governor, Shohrat Zakir, who had noted in October 2018 that the mass detention policies were oriented towards ensuring the “rights to life, health, property and development” for the region's inhabitants (Xinhua 2018c). More recently, in March 2019, China's State Council Information Office (SCIO) issued a more comprehensive rebuttal of critiques by the international human rights community. The SCIO states that not just terrorism, but also religious extremism in general, constitutes a “threat to social stability, economic development, and security”. In response, criminal prosecution is to be used for “a few leaders and core members of violent and terrorist gangs”, but for minor offenders the best approach is “rehabilitation” in the newly-established re-education centers, which “will increase their employability, expand their employment channels, and become more confident in life... demonstrat[ing] the humanitarian stance of the Chinese government” (Xinhua 2019a).

The Communist Party's justifications for its policies in Xinjiang demonstrate some of the paradoxes of its approach to human rights, and indicate the great difficulties facing international observers who seek dialogue over infringements of civil and political rights. Under the official understanding, the mass detention and ‘re-education’ of those ‘infected’ by religious extremist thinking is portrayed not just as an exceptional anti-terrorism policy, but as an aid in achieving state-led ‘peaceful development’. Because the sovereignty of the state is taken to be the *sine qua non* of achieving human rights, when that sovereignty is (portrayed as) being threatened, subsidiary rights like the freedoms of association, expression, and conscience, or rights associated with due process of law, can be ‘justifiably’ compromised in the name of the higher-ranked values. Individuals too insistent on their civil and political rights in such contexts, or external critics of the state's top-down modernization efforts, can also be dismissed as oppositional elements seeking to limit China's sovereignty.

Global impact and future prospects

The Chinese approach to human rights as a byproduct of state-led peaceful development, and the corresponding extreme emphasis on sovereignty, pose a challenge for those advocating more universalist visions of human rights norms or their enforcement. This is, of course, most obviously the case in regards to those advocating for human rights accountability within China itself – with many local activists detained or otherwise having their freedoms restricted, human rights lawyers having been disbarred, and heavy censorship against attempts to publicize cases of alleged violations. Also related are the strict limits placed on foreign NGOs, which have seen their activities within China significantly curtailed since the implementation of the Foreign NGO Law in 2017 (see Franceschini & Nesossi 2017).

Out of all of the possible knock-on effects of China's positions on rights and the state, its restrictions of independent activism and human rights advocacy may prove the most impactful abroad. Of course, China hardly has a monopoly on such policies. However, it is positioned as are few others to act as a 'norm-maker' in international institutions. Chinese efforts at the HRC to promote development as the fundamental issue in human rights, and also to restrict participation of NGOs in periodic review sessions,⁹ may inspire other states with similar inclinations to do the same. At the same time, at a practical level, the interstate cooperation that China promotes through its own multilateral institutions such as the Shanghai Cooperation Organization (SCO) allows for policy coordination with sympathetic partner governments to deal with issues, ranging from development efforts to counter-terrorism operations, based on its own preferred set of norms (Yuan 2010; Ambrosio 2008). The SCO, and other multilateral initiatives currently being promoted by the Xi administration, can reliably be counted on to advance a strict interpretation of the prerogatives of state sovereignty and the limits of international oversight.

Clearly, China's influence is growing markedly, both due to its own economic rise and to its increased involvement in international policy via existing institutions and its own Belt and Road Initiative (BRI), the Asian International Investment Bank (AIIB), and other such ventures. Human rights advocates must take China seriously as an exporter of norms, not just as a subject for analysis in light of existing legal standards. In particular, it may be important for human rights scholars and practitioners to reflect on how the Xi administration's developmentalism and 'poverty elimination' by a strong state with little independent oversight may be appealing to some in developing countries where social and economic rights issues have been downplayed amidst near exclusive focus on civil and political rights by Western states. They should also maintain awareness of trends promoted by Beijing to reduce the scope for NGOs and other civil society actors to monitor and call attention to human rights violations.

At the same time, advocates should not underestimate their own influence. Despite its insistence upon sovereignty, the Xi administration has (as noted above) indeed taken actions such as the elimination of the RTL system that was long the subject of international criticism. It has also been highly reluctant to visibly intervene even into major situations of protest and civil disobedience in Hong Kong, over which it exercises sovereignty under the 'One Country, Two Systems' framework. Moreover, major forms of international outreach such as the BRI depend for their success upon the openness of

9 Examples of such efforts are described in Human Rights Watch (2017).

foreign governments and markets to Chinese initiatives. Those concerned with specific policies such as the arbitrary detention and ‘re-education’ campaign in Xinjiang, may ultimately be able to bring about their reconsideration by Beijing by raising their perceived reputational, diplomatic and economic costs. In the long term, China is like all other governments affected by global public opinion – despite the constrained space for Chinese citizens themselves to engage in the formation of that opinion.

Sarah M. Brooks

'Feeling for stones':¹ how China found its footing at the UN's Human Rights Council

We live at a time when multilateralism is under attack. A global push for withdrawal from the international system has called into question both the content of international law, and the very relevance of the system itself. China has been increasing its control over the UN, imposing its own narrative on the international human rights system. However, it is not too late to buck this trend.

"The international community must work together to advance the global cause of human rights. However... naming and shaming, exerting public pressure, and double standards are still prevailing... We call upon all parties to carry out constructive dialogue and cooperation on human rights, work for the sound and sustainable development of the international human rights cause, and jointly build a community of shared future for human beings."

– Chinese Ambassador to the UN in Geneva Ma Zhaoxu (2017)

"Contempt is deepening for the principles and agreed law which the world began to lay down 70 years ago... the very basis of human rights principles, and the multilateral institutions which underpin the process of achieving those rights, are being undermined by a loosely attached coalition of chauvinistic nationalists."

– UN High Commissioner for Human Rights Zeid Ra'ad al Hussein (2018)

"To our dismay, China has managed to become the second largest economy in the world while hovering near the bottom of international rankings for human rights and democracy. It has, in essence, re-written the narrative... international norms are negotiable, rule of law is manipulated, human dignity is debased, democracy is abused, and justice is denied... regimes who violate rights are united and smugly resistant to change."

– Chinese lawyer and scholar Teng Biao (2018)

1 This refers to a famous quote by Deng Xiaoping, describing China's efforts toward market economic reforms in the 1980s. The full phrase is "crossing the river by feeling for stones" and implied an approach of cautious testing before continuing to move forward.

Introduction

With the retreat of traditional defenders of an international rules-based order, Chinese engagement has expanded to fill the void. Its increasingly public presence on the multi-lateral stage has drawn increased attention across the political spectrum: from critics, agnostics, pragmatists, and of course from domestic state-run media (Lynch & Groll 2017 and Cao 2019 are examples). Some have argued that the increased influence of the People's Republic of China (PRC, or China) both justifies and is justified by its increasing leadership role in global decision-making (Dawar 2018); others have warned that a UN 'with Chinese characteristics' could be disastrous for the long-term sustainability of multilateralism, specifically with regard to intergovernmental bodies on human rights, and – as much if not more importantly – for respect for human rights on the ground in China and elsewhere (Creutz 2019; Human Rights Watch 2017).

Such an initiative, however, is only possible because of important factors both within China and external to it. These have permitted the Chinese government under Xi Jinping – with virtually no meaningful resistance – to underwrite an illiberal coalition, undercut universality, and under-resource key actors within the UN, including its critical voices. The combined result is, ultimately, to undermine the independence and effectiveness of the international human rights system.

This essay will, through brief anecdotes or quotes, tell the story of some of the key elements of norm-setting behaviour by the PRC in the UN Human Rights Council during its most recent membership (2014-2019). The essay aims to demonstrate that these outcomes were the result of strategic engagement, evolving over time, that furthers Chinese ambitions to showcase their strengths while continuing to defend against their weaknesses. At the same time, it argues that these efforts also created an alternative narrative about the relationship between international human rights and the state in general and China in particular, one that – if unchecked – risks emboldening human rights abusers and silencing human rights advocates.

It is important to recognize that Xi's broader project of positioning China as a champion of multilateral institutions takes place far beyond the halls of the Palais des Nations in Geneva. There has been a growing body of research and reporting on the growing influence in other UN agencies and bodies, in the Asian region and in New York. The establishment of sinecures for Chinese senior officials – not unlike the gentlemen's agreements for leadership of agencies among Western states – is one example. But China also engages in regional diplomacy and bilateral trade, development assistance and investment projects; almost every official interaction is an opportunity to deploy

tactics and language, and reinforce this same narrative. One essay cannot do justice to the multiplicity of spaces and influences that contribute to advancing China's narrative, so this one rather suggests that the Human Rights Council is a microcosm, shaped by these broader dynamics and in turn, shaping future ones.

The success of this effort thus far has relied on preparation, political economy and a very real absence of pushback and increase in polarisation. Nonetheless, this does not mean that a global human rights architecture remade in China's image is a foregone conclusion. The essay concludes with reflections on how governments could approach their collaborations in the multilateral sphere both with each other, and with the PRC government itself. Collaborations that uphold human rights and centre universal values must, like China's own efforts, be both defensive and offensive, and should increasingly draw from the experiences and analyses of human rights defenders, academics, experts and others in the civil society community.

Coalition-building with Chinese characteristics

For years, the Chinese approach to multilateralism was to join, watch and wait. The expectations of 'alignment' that would come with accession to the WTO and signatory to human rights conventions were optimistic. But the rise of Xi Jinping has put China on a different course, albeit perhaps a similar destination – global leadership. Along the way, China has marshalled the collective efforts of a range of states to build an alternative narrative and, indeed, ideology, of the Council's work. Xi's desire for legitimacy as a multilateral leader (a desire, it is worth noting, which extends much more broadly than the ground of the Palais des Nations) is bolstered by these efforts.

The 'usual suspects' of the Like-minded Group, or LMG, continue to come to China's aid and assistance (for more, see Inboden 2019). At a March 2019 panel discussion highlighting violations against Uyghurs and other Turkic Muslims in Xinjiang, both Venezuela and Belarus came to the defence of China. The former accused the US of pursuing a political agenda and failing to recognize or respect China's sovereignty, in line with its 'neocolonialist and capitalist' agenda. The latter emphasized the importance of countering terrorism, praising China's model of prevention through 'vocational training'. In negotiations, language aligned with Chinese official discourse is not only proposed by the Chinese delegation, but by friendly countries like Iran, Singapore and Russia. This is a tactic that Western states have long used to ensure coordination and burden-sharing, but the shift to this approach as both defence and offence is a new trend in China's strategic engagement. Increasingly, they find ways of leading from behind.

Such backroom leadership has also been evident in New York. In smaller and more obscure governmental committees which hold the purse strings for UN budgets, rubberstamp Human Rights Council requests, and act as gatekeepers for rights groups and advocates, China has also found its supporters. India and Pakistan act as proxies in the NGO Committee, seeking to keep critics of human rights out regardless of where they're from or what they focus on – often repeating verbatim the questions posed by Chinese delegates regarding territorial issues and UN terminology (in other words, positions, statements or even footnotes relevant to Taiwan and Tibet) (Inboden 2019). China's minimal earmarked voluntary contributions to the OHCHR are dwarfed by the line items they – sometimes directly, and sometimes through Russia – seek to remove from peacekeeping missions' budgets (UNHRC 2018b and Lynch 2018). In fact, challenges to the establishment and funding of an independent expert on sexual orientation and gender identity were mounted by China, directly and indirectly, at multiple stages during negotiations in New York in 2016.

The ASEAN countries have also received consistent – and in this case, loud – support from China for rolling back efforts to monitor their rights records. Myanmar and Cambodia are the subject of longstanding resolutions in the Council, while the Philippines is increasingly on the Council's agenda due to the Duterte administration's war on drugs and on human rights defenders. China ensures that there is always at least one voice in the room loudly asserting sovereignty, and the importance of technical assistance and other UN engagement “with the agreement of the state concerned”. This has not changed the dynamics significantly – the resolution on Myanmar, for example, has strong support from Latin American states and, following the Rohingya crisis, from the Muslim majority countries. But it is an important political signal, and reinsures China against scrutiny for its practices domestically.

Cambodia, in return, made a statement in the most recent Council session that demonstrates this point. After thanking OHCHR for its work in the country, the delegation stated: “Selectivity, politicisation and interference into other states' domestic jurisdiction including the politicisation of the application of law of the Chinese government in Xinjiang province in dealing with terrorism, shall be avoided.”²

So in essence, China already benefitted from a near-certain majority through its leadership and participation in the LMG and its 'big brother'-like relationship to its

2 Statement of the delegation of Cambodia under Item 2 General Debate, 25 June 2019. Available on the Extranet of the UN Human Rights Council.

ASEAN neighbours. But to fully advance a leadership agenda, China needed to extend its influence and build its legitimacy.

With this in mind, China has begun a cautious courting of middle-income and developing states. Brazil, for example, found itself equally aligned with the US as with China over the period 2012–2014. Increasingly, however, positions at the Council grew to look more like those shared by the BRICS countries elsewhere. China's first resolution initiative was relatively non-contentious – in the wake of the Ebola crisis in West Africa, it focused on international cooperation in public health. However, a series of procedural and communication errors, as well as consternation about the relevance of the topic, meant that it failed to garner sufficient support (UNHRC 2015). Efforts to grow their base continued for nearly another year,³ before the establishment of a 'core group' on the issue, that included Brazil and South Africa, led to a success (see UNHRC 2016a).⁴ Subsequent thematic resolutions have shown consistent support by Brazil for China's efforts, although this has not always resulted in reciprocity (for example, in the case of Venezuela).

And finally, the Chinese government has gotten smart to the fact that Western states, those most likely to be critical of it, also have an interest in demonstrating that there is still space for cooperation. Most governments are not monolithic, and finding ways to work *with* China in the multilateral space is often seen as both strategic and as a way of pleasing parts of the government seeking a softer approach to the bilateral relationship.

In one example, the Danish government agreed to host a joint event with China, as well as Mexico and Kenya, to celebrate twenty years of the Beijing International Women's Conference.⁵ The same session, a joint statement signed by 24 members and observers of the Council in June, reasserted the importance of women's rights and equality – the group included, among others, Canada.⁶ The prerogative to cooperate was strong enough to outweigh the risks: governments worked with China *despite* the concerns raised over

3 After much back and forth, and extensive pushback from western diplomats, a Presidential Statement on the topic was adopted, and a joint statement on the topic read by Chinese Ambassador FU Cong in March 2016 reaffirmed general consensus from 46 governments, with support from EU and other Global North governments: Australia, Belgium, Cyprus, Denmark, France, Greece, New Zealand and Portugal. Full text of the joint statement is available at: http://www.china-un.ch/eng/dbtyw/rqrd_1/thsm/t1347404.htm.

4 The budgetary implications of this panel discussion, deemed 'duplicative' by the EU in its statement of position, were estimated at nearly 100'000 USD.

5 Noted in Bulletin of Informal meetings, 24 June 2015, accessible at: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/InformalMeetings.aspx>.

6 Full text available at: https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/29thSession/Oral-Statements/2_China_Like-minded-group_HR%20Women_PD_1.pdf.

the preceding months about the detention by Chinese authorities of five women's rights advocates on the eve of International Women's Day (Brooks 2015).⁷ Similar collaboration has taken place on, for example, digital rights and child protection with the government of Belgium – in the face of extensive reporting from the UN and civil society about the restrictions on freedom online.

Whether with the usual suspects, middle-income democratic states, and both well-intentioned or interest-driven delegations, the Chinese government has mobilized a range of tools to build coalitions in Geneva. This ultimately serves to ensure that it can meet its multiple objectives (favourable press coverage, passage of a resolution) – as well as its overall goal of visibility and credibility.

Waging wordsmithing: transforming universal norms

The first version of the March 2018 'win-win' resolution was almost laughable. The text had many grammatical errors, lacked clarity, made sweeping assertions, and – unusually – failed to indicate what was 'agreed language', or content that had already been negotiated. The first stage of the negotiations, when the Chinese drafters opened the floor for general comments, took nearly the full two hours, with delegations from all regional groups asking for further clarification on the origins of some text, on the order of some paragraphs, on the status of UN or specific definitions for certain terms – including the original title, 'Win-win'⁸ – and ultimately making clear that the primary concern was not technical, but rather issue with the overall aims and objectives of the resolution. The Chinese delegate chair, flanked by two or three of his junior colleagues for this and future negotiations, diligently took notes.

When a version of the resolution was tabled for adoption several days later, the text was nearly unrecognisable. It had been reassembled drawing, although not always directly, from existing texts. It made clear reference to key principles such as the universality of human rights and recognised the importance of civil society and other stakeholders (UNHRC 2018f). It represented a symbolic compromise, but the content remained deeply problematic.

7 For more on the original case see China Change (2016).

8 Following Chairman Xi Jinping's speech to the UN in January 2017 (full text: <https://america.cgtn.com/2017/01/18/full-text-of-xi-jinping-keynote-speech-at-the-united-nations-office-in-geneva>), formal statements extolling 'win-win' were delivered at the Council on 28 Feb 2017 by Liu Hua, and on 2 March 2017, 14 June 2017, 16 Sept 2017, 1 March 2018, and 14 Sept 2018 by Ambassadors Ma Zhaoxu and Yu Jianhua. The first draft of the resolution "stress[ed] that win-win cooperation is the only viable option in an increasingly interdependent, interrelated and integrated world where countries form a community of shared future".

Nonetheless, only one government (the U.S., in its last session before withdrawing from the Human Rights Council) called a vote and voted no.⁹ European States, as well as Japan and Australia, merely abstained, either because there had been “progress made” on the text or (more likely) because they “chose to avoid aggravating China in this particular case” (Piccone 2018).

In its efforts to encourage global acceptance, and even adaptation, of its own development model, the government of China has extensively used the United Nations. Such an approach of embracing overseas assistance and investment, encouraging international and specifically ‘South-South’ cooperation, is highly popular. China’s track record of alleviating extreme poverty on a massive scale – although not without its critics – has largely been praised by other governments and by the UN Secretary General as worthy of emulation. The overriding message China seeks to send is that respect for economic, social and cultural rights relies on development of the government’s capacity to deliver; and that civil and political rights are secondary to more fundamental issues like the right to life, or to food. There is a pragmatism here that many in the developing world appreciate, but that risks turning the human rights architecture on its head (for full discussion, see among other analysis: Worden 2017).

The Vienna Declaration and Programme of Action, a seminal document from 1993, adopts an approach that emphasizes that all human rights are “universal, indivisible and interdependent and interrelated”. In other words, there should be no hierarchy of rights, or effort to posit some as conditional on the respect of others. Building on this basis, the Chinese government has undertaken efforts to advance a body of Council work in the area of right to development that runs directly counter to this proposition. This approach – one which they seek to actively advance – posits a ‘right to development’ or ‘development’ as such as a prerequisite for the respect of human rights. According to a simplified version of this theory, a country could not be fairly criticized for failing to protect free speech for dissidents, if it could argue that its level of development was already too low to provide adequate education, healthcare or economic opportunity. In some contexts, this view justifies attacks on defenders of land and the environment, who may be villainized as ‘anti-development’ for their criticism of investment and development projects that ignore indigenous peoples’ views or that destroy the local environment. But at its core, the positioning of development as more fundamental than human rights is quite simply a means of redefining the scope and substance of international human rights law.

9 See U.S. statement at: <https://geneva.usmission.gov/2018/03/23/eov-on-mutually-beneficial-cooperation-l-36/> and vote count: https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/37thSession/Resolutions/A_HRC_37_L.36/Result%20of%20the%20vote.pdf

This move away from universality and towards cultural relativism is matched by a move towards privileging 'cooperation and dialogue' – and indirectly reinterpreting the Human Rights Council's mandate. This effort would eliminate a role for UN mechanisms in 'double standards and naming and shaming', and constrain these actors within the bounds of 'dialogue and cooperation' or 'technical assistance'. While clearly both are important, the efforts to shift the emphasis are clearly in China's interest, and also attract enough of both their cronies (who want to avoid scrutiny) and well-meaning developing countries (who may just want to increase the attention of the UN on technical matters, where they could use additional resources).

This 'wordsmithing' on development allows China to link its efforts to build bilateral ties around the world – increasingly eating into the small number of states who recognize Taiwan – to bigger aims that shape the multilateral architecture for development. Indeed the 2030 Agenda for Sustainable Development, a massive initiative agreed to by all UN states and adopted in 2015, explicitly references the desire to work toward "the pursuit of global development and of 'win-win' cooperation which can bring huge gains to all countries and all parts of the world" (UNGA 2015: para 18).

Many observers have noted that the texts seem somewhat anodyne – with the exception of early drafts, most of the language used is largely aligned with existing UN texts. This is one of the subtle ways in which China has sought to reshape the underlying principles of the UN, and in particular the role of human rights. Although the 'win-win' resolution described above was ultimately adopted by the Council, the EU delivered a clear list of concerns about the focus and value added of the resolution, laying bare the tensions that arose during the Chinese-led negotiations (UNHRC 2016b). A number of editorials appeared, highlighting other concerns about the Chinese model for development. As former High Commissioner for Human Rights Navi Pillay (2018) said: "Through its resolution, China seeks to downplay the need for scrutiny of the world's worst human rights violators, and to emphasise questionable cooperation and empty dialogue instead... I can't help but worry that in China's version of 'win-win,' we may all have something to lose."

Playing hardball: making intimidation a successful tactic

On what would turn out to be the last session of the Council for High Commissioner Zeid Ra'ad al Hussein, the Chinese ambassador to the UN in Geneva arrived early. Seated behind the nameplate, he delivered a statement "on behalf of the LMG" – a loose grouping of mostly authoritarian states that coordinate on positions in the UN, and especially on human rights issues – that pronounced much of the OHCHR's work to be "unacceptable or dissatisfactory" (Fu 2018).

The statement continued with a five-point plan, “underlin[ing] a few principles” that should guide the High Commissioner for Human Rights and his Office (Fu 2018). Taken objectively, it would have come off perhaps as simply heavy-handed posturing on procedural issues. Against the backdrop of clear frustration with Zeid’s tendency to be outspoken on human rights, it sounded rather like a shot across the bow.

Zeid announced that he would not pursue a second term as UN human rights chief just weeks later, which he explained at the time, and in interviews in the year since, as necessary to avoid “bending a knee in supplication” to the requests of powerful member states wanting to maintain impunity (Sengupta & Cumming-Bruce 2017).

The formal scolding described above was the culmination of a series of efforts to contain or to silence the UN human rights office, its chief and its staff. The year prior, the High Commissioner and his office had been exceptionally active on China. A formal statement cautioning China about its rights crackdown was released in February 2016, eliciting responses from the Chinese Ministry of Foreign Affairs describing “strong dissatisfaction and disagreement with [his] misleading remarks” (Ministry of Foreign Affairs of the PRC 2016). Just weeks later, the newly-appointed Deputy High Commissioner for Human Rights, Kate Gilmore, moderated an event with the Dalai Lama in Zeid’s stead (see below). And in the fall of that year High Commissioner Zeid delivered a statement at the award ceremony of the Martin Ennals Foundation, which had selected Uyghur scholar and advocate Ilham Tohti as their laureate. His remarks did not once mention the Chinese government, or even Tohti’s name,¹⁰ and yet the official response from the Chinese Ministry of Foreign Affairs pilloried him and his Office (Blanchard 2016). Some officials speculated that such a robust engagement on ‘sensitive’ issues exacerbated the challenges of passing a budget for human rights in New York, and ultimately doomed what would have been a signature reform process for the human rights office. A more cautious tone in the final years of his term, even when faced with the growing human rights crisis in Xinjiang, and a failure to meet with Chinese human rights activists directly seem to indicate that the High Commissioner may have learned the costs of speaking out on China.

So too, over time, has his office and other UN agencies. Staff in the UN and independent experts report insistent outreach, gentle warnings, and in at least one case a clear threat due to their public statements and engagement with NGOs. At the time of its quadrennial human rights review (the Universal Periodic Review, or UPR) in 2018, China was the one of the roughly 50 per cent of cases in which the UN provided limited

10 Full text, see Al Hussein (2016).

supplemental information. Although China hosts a UN Country Team – quite a large one, consisting of 24 UN agencies headed by the UN Development Programme – the findings and research reports of these agencies were not published per best practices, nor included in the consolidated UN report.¹¹ At the same time, the OHCHR removed, and then partially reinstated, a number of specific NGO reports from the official UPR documentation – allegedly for their political nature (Mudie 2018). The conservatism and caution of UN agencies and individual officials has hampered their ability to ensure information sharing and coherence across the UN, an important ambition envisioned in the signature 'Rights Up Front' initiative.¹²

Diplomats, too, were subject to various forms of 'punitive measures' for speaking out on China, most notably in a joint statement raising concerns about the overall situation in the country to the UN Human Rights Council in 2016 (Harper 2016). In 2016, the US and Canada organized a panel discussion with Nobel Peace Prize winners – including the Dalai Lama, spiritual leader of the Tibetan people. Informally, Canadian officials indicated that the pressure they faced due to that decision was one reason they did not sign on to the twelve-country joint statement. Norway nearly failed to sign on, joining only under great pressure from the other Nordic governments and an empowered US ambassador; they had faced six years of retaliation for the award of the Nobel Peace Prize to democracy activist Liu Xiaobo (Creutz 2019). At the same time, some other countries did not sign on out of concern about imperilling existing bilateral cooperation and dialogue; others, who did sign, seem to have faced at least the threat of trade retaliation.

The most recent example: an event hosted by the US, UK, the Netherlands and Germany aimed to highlight repressive and discriminatory policies, including allegations of mass detention, in Xinjiang. While many Europeans sent ambassadors or other senior staff, only a handful of non-Western states attended, some without nameplates. Most of the members of the Council – including many associated with the Organisation of Islamic Cooperation – did not show. Human Rights Watch and media reports later revealed that an official demarche had been circulated to Geneva diplomats, signed by Ambassador Yu Jianhua. It stated unequivocally that the event aimed to "interfere in China's domestic affairs" and requested that delegations not attend "in the interest of... bilateral relations and continued multilateral cooperation [with China]" (Yu 2019).

11 Information collected from OHCHR website: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

12 Launched by former Secretary General Ban Ki-moon, this initiative sought to 'mainstream' human rights, ensuring that development and security actors were also taking the work of the human rights system into account. It has languished under current Secretary General António Guterres.

In summary, by making targeted threats and slowly meting out punishments, the Chinese government has been able to gradually ensure that governments think twice about engagement that might irritate the Chinese government. In so doing, they have expanded the limits of what is considered 'infringements on national sovereignty', and driven a worrying tolerance of diplomatic bullying. Mere mention of a disputed territory (such using the term 'Tibet', as opposed to 'Tibetan Autonomous Region') is decried as unacceptable speech; as a result, and in order to avoid unnecessary points of order and delays, NGOs have been encouraged by UN officials to edit statements to meet these criteria. Including issues in China in any statement subjects UN rapporteurs and diplomatic delegations to tit-for-tat responses, allegations of 'double standards', and accusations that such speech is a violation of national (or, sometimes, 'judicial') sovereignty.

The Chinese delegation has learned two things during their two terms on the Council: first, to deliver the message more subtly. The number of points of order called by China in each session has decreased dramatically, while the number of 'rights of reply' has increased. These draw less attention, often happen at the end of the day, and send a clear diplomatic message without damaging the 'public relations' image. Second, and more worryingly, the Chinese government has learned that the appetite and capacity of other governments to match their lobbying efforts – whether through demarches, transactional diplomacy, veiled threats or actual diplomatic and economic impacts – is far from adequate to combat those efforts.

Conclusion and way forward: The best defence is a good offence

Ideally, this essay would highlight the way in which local groups, individually and collectively, are working to draw more attention to the Chinese government's behaviour. It is common in the UN system for activists to come to Council sessions, lobby diplomats from other governments and sometimes their own, about taking action. The Chinese activist and academic communities, inside and outside the country, have a very clear understanding of the politics that are behind official policy statements, and could play a key role in helping the international community understand how and when to encourage reform gently, or speak out publicly.

However, for many of the activists, such access is simply not an option. Chinese authorities have not relented in their efforts to quash dissent at home. In fact, in 2015 in response to an uptick in attention from the UN Special Procedures, and again in 2018 in light of its rights review, China actually clamped down even further on the ability of activists to attend UN meetings, provide testimony or engage with diplomats and officials. Available reports from the UN Secretary General covering the period from 2013 to 2018

indicate that China has consistently been among the worst violators (Miles 2018). These 'reprisals' cover the gamut, from low-level harassment (confiscation of UN publications, questions about trips abroad) to travel bans, detentions, criminal prosecutions and worse (Xia et al 2018). Chinese woman human rights defender Cao Shunli, who died in 2014 as a result of ill-treatment at the hands of officials detaining her for her efforts to engage with the UN, has become both a role model and a cautionary tale.¹³

Even for those working outside of China, the situation can be precarious. In addition to Chinese nationals, civil society organizations and human rights defenders abroad have also been caught in the crosshairs (Human Rights Watch 2017). In July 2018, a group of UN Special Procedures experts sent a formal letter to China regarding the efforts by Chinese authorities to expel Uyghur activist Dolkun Isa from UN premises and to strip the organization that accredited him to the conference of its status.¹⁴ They noted that the allegations against Isa were unsubstantiated, but could have a negative impact on his work, and requested China to respond with justifications for the attacks.

In summary, there are significant barriers to alternate narratives and authentic voices who might speak up. But the absence of civil society is hardly the reason for China's successes in past years. China has been able to secure these accomplishments – as seemingly slight as the inclusion of official slogans in agreed texts, and as deeply damaging as the failures of the Council to call for an investigation into 'possible crimes against humanity' in Xinjiang – because there has been no effective effort to stop them (Global Centre for the Responsibility to Protect et al. 2019).

Presumed protectors of champions of human rights, from both the UN and member states, have fallen into a trap of 'damage control', or worse, appear hypocritical when they criticize Chinese assertions of sovereignty in some contexts but mirror them in others. This is perhaps best illustrated by the struggles of the European Union and its member states to stand by its critiques of China when negotiating resolutions on, for example, the human rights of migrants. Such governments have managed to defeat or mitigate initiatives that confront, directly or indirectly, the Human Rights Council's role in shedding light on human rights violations. But they have largely failed to inspire or gain traction on positive narratives that support strengthening the monitoring mandate of the Council.

13 See OHCHR (2014). Also, upon the 5th anniversary of her death: OHCHR (2019).

14 The letter is available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunication-File?gId=23926>. The Chinese response to the Communication came in record time but was not available as of the time of writing.

The trend of increased Chinese control over the UN system is just that – a trend. Like any other trend, these behaviours can point generally in a certain direction – but that doesn't mean it is a certain outcome. To buck the trend, democratic governments and governments who continue to see value in the UN human rights system – and notably, not just governments of the Global North – will need to consider new and possibly uncomfortable approaches, in close coordination with each other and with civil society stakeholders. Similarly, campaigners and civil society groups will need to consider whether their formulas for making change continue to apply, or if there are new variables in the equation that will require new tools.

By way of conclusion, this essay offers some brief sketches of ideas for the diplomatic community to adopt – and adapt – in their daily practice and in both bilateral and multi-lateral discussions.

- Governments should continue to defend against efforts by China and its allies to water down existing agreed language, including in the context of mandates for UN experts and mechanisms, and to insert problematic and propagandistic language into UN documents. This requires better sharing of information within and across UN mechanisms¹⁵ – one of the earliest examples of China's concept of 'shared community' being adopted into UN text is actually in a resolution on economic, social and cultural rights adopted in 2017 (UNHRC 2017a). Governments should also share and prepare alternatives and responses to enable a broader and more successful effort to limit the re-use of this language. While this has occurred in some limited circumstances (the negotiations of the resolution on 'win-win' being a good example), the circle should be broadened beyond traditional intra-regional discussions.
- Similarly, more effective advocacy and organizing in the context of New York processes, especially in the context of the General Assembly's Fifth Committee (responsible for budgets), will be necessary to weaken the ability of China, Russia and others to hold hostage UN agencies and processes. The traditionally conservative approach of countries like the US and Japan to UN budgeting – exacerbated by explicit calls from within the Trump administration for 'de-funding' the UN – has created an uncomfortable alignment with the LMG that makes arguments to defend human rights themselves hypocritical at best, or indefensible at worst.
- Governments should carefully reconsider policies that foreground cooperation with

15 Also suggested in Creutz 2019.

China at the multilateral level, particularly as regards human rights. Multilateral cooperation as a 'deliverable' from bilateral human rights dialogues may appease policymakers who seek some area of positive or constructive engagement, but it ultimately represents little in terms of return on investment. For the Chinese side, such overtures contribute to their narrative of legitimacy and active involvement at the UN, bolstering arguments for continuing to advance foreign policy priorities in the multilateral space. While there may be good arguments to, for example, organize a joint side event at the Human Rights Council, it is incumbent on governments to view this as an opportunity to ask hard questions of their Chinese counterparts. Unfortunately, encouraged by aggressive Chinese posturing, the trend currently shows that such collaboration is understood as the opposite – as an excuse to preclude criticism of China's human rights record, whether private or public.

- China and others in the LMG undercut universality and advance notions of human rights protection subject to 'national conditions' or levels of development. But governments seeking to counter these efforts will struggle to craft a narrative that will effectively defeat this – China's political influence and the discursive power of language on the right to development are largely effective on developing and middle-income countries, democratic and autocratic alike. Instead, governments should consider reasserting alternative (as opposed to 'counter') narratives about the role and contributions of the international human rights framework. By way of example, China's increasing (and selective) use of UN Charter language to strengthen calls for the respect of sovereignty and territorial integrity could be countered by selective use of other provisions of the UN Charter.
- Defending universality, arguing for non-discrimination, and strengthening the benefits of systems like the UN Special Procedures or UN Treaty Bodies should not be seen as politicized – but they often are. Governments with the diplomatic resources and will to combat Chinese efforts to remake the system must be better at engaging with and bringing on board new allies, possibly around thematic issue of common interest. While there have been improvements in coordination, such efforts should be more inclusive – despite the potential for uncomfortable divergences of views on such issues as, for example, extraterritoriality or the existing 'right to development'.

In each of these approaches and efforts, collaboration with civil society, academics, expert analysts, and local actors including human rights defenders will be essential. Many of these groups are on the front line of meeting the existential challenges of Chinese ascendancy. It will, nonetheless, be equally important for these organizations to consider how best to evolve in this response and to continue engagement with governments.

First, international NGOs should be more strategic at engaging across their own civil societies and governments. Academic institutions and business associations have often been more positive about bilateral engagement with China, but increasingly are faced with rule of law and legal certainty concerns that may be cause for common ground with human rights groups. Ministries outside Foreign Affairs are also key. Although not typically accustomed to working with human rights groups, they have regular opportunities to engage with and either enable or challenge China in multilateral fora, in development assistance, and peace-building settings. At the international level, NGO tracking and monitoring of Chinese strategies, when done in conjunction with rights-respecting governments, can prevent erosion of international standards in obscure corners of the system, and thus protect the whole of the system from weakening. At the national or local level, it can also have a positive impact – in the case of Chinese intimidation overseas, for example, law enforcement agencies have a concrete role in protecting Chinese nationals within their borders, particularly if they are seeking asylum (Leicht & Richardson 2018).

At the same time, international (and, largely, Global North) NGOs should also be more intentional about reaching out to communities and civil societies outside their networks, and on their own terms. A good example was the impressive collaboration of groups in the Global South (including Latin America, Myanmar, and Indonesia) to submit the first ever set of reports and recommendations targeting the actions and need for accountability of Chinese business operations, in the framework of the UPR.¹⁶ These not only provided a much-needed perspective from affected communities, but also an approach and tone markedly more constructive than that of some from the US and Europe. In the future, such recommendations may prove more palatable to governments uneasy with Chinese government and state-owned enterprise practices, but also uneasy with more 'confrontational' bilateral ties.

Groups in the Global South, in turn, should seek out more expertise from independent Chinese academics, activists and thinkers. While the Chinese government has promoted limited exchanges between civil society, often through major diplomatic meetings, there could be significantly more and more high-quality exchange. This may – or may not – be facilitated by international NGOs who know the landscape and the language, but either way should prioritize building common understanding and solidarity between Chinese and other national-level groups. Such knowledge and engagement on what is happening

16 See reports by COICA, the Myanmar Alliance for Transparency and Accountability, FIAN International and others, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRCNSTakeholdersInfoS31.aspx>.

domestically in China could, potentially, help Global South groups nudge their own governments in a positive direction, encouraging more principled resistance to problematic Chinese proposals that water down human rights gains.

There is no guarantee that 'human rights with Chinese characteristics' will come to define the multilateralism of the twenty-first century. Rather, there is a wealth of possibility for alliances among those who want to strengthen the ability of the UN and other international actors to prevent atrocities, report on human rights concerns, advance accountability and realize justice for victims of violations. To succeed at both understanding and countering China's strategies at the UN, coordination, collaboration and collective action will be important; principled leadership – informed by smart research, positive framing and those who have committed their lives to advancing human rights in China – will be essential.

Pitman B. Potter

China's human rights activism in international economic relations¹

This essay addresses China's role in challenging UN human rights standards generally, and examines China's Belt and Road Initiative and Asian Infrastructure Investment Bank as examples of China's human rights activism in international economic relations.

Introduction

Human rights orthodoxy in the People's Republic of China prioritizes state-led development, informed by themes of Party leadership, conditionality of rights, and stability for economic growth (Potter 2017). Many observers had hoped that expanded international trade and investment relations following the PRC's accession to the GATT/WTO in 2001 would encourage China to adapt more fully to liberal norms of international economic law, with potential benefits for human rights policy and practice (Global Business Initiative on Human Rights 2015). Such hopes remain unfulfilled, however, as China's growing power and influence have enabled it to disseminate its parochial human rights standards internationally.

Challenging human rights standards

In 2013, China secured a seat on the UN Human Rights Council (UNHRC). The Council was created in 2006 (UNGA 2006) as a replacement for the former UN Commission on Human Rights, ostensibly to correct perceived deficiencies in the Commission's membership rules that allowed participation by states identified as human rights violators but in fact entrenching such participation (Spohr 2010). Through its membership on the UNHRC, China has challenged the content and potential impact of international human rights standards, appropriating their vernacular to defend its contrary human rights record and insulate itself from criticism (Sceats & Breslin 2012).

1 The essay is extracted and revised from Pitman B. Potter (2019) 'Human Rights and China's International Trade and Investment Relations', in: S. Biddulph and J. Rosenzweig (eds.) *Handbook on Human Rights in China*, Cheltenham: Edward Elgar, pp. 681-703. Used with permission. This essay forms part of the author's forthcoming book on China's international human rights activism.

At the UNHRC, China has relied on UN human rights principles on “impartiality, objectivity, and non-selectivity” (UNGA 2003) to insulate itself from human rights criticism – challenging efforts at promotion and protection of human rights for what China considers inappropriate political ends (Freedman 2013). China’s 2017 resolution to the UNHRC on ‘The Contribution of Development to the Enjoyment of All Human Rights’ (reissued in 2019) claimed that all human rights must be treated “in a fair and equal manner, on the same footing and with the same emphasis” (UNHRC 2017b; *Xinhua* 2019b), to justify China’s parochial human rights orthodoxy prioritizing development over other rights. China’s 2018 UNHRC resolution on “mutually beneficial cooperation” on human rights conflated accepted principles of universality and indivisibility as applied to human rights themselves with a call for tolerance, even acceptance, of abusive human rights practices by member states (UNHRC 2018c). For the twentieth anniversary of the 1999 UN Declaration on the ‘Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’ (UNGA), the PRC used its UNHRC position to deny recognition for human rights defenders in China (Worden 2018; McEvoy 2017). When the ‘Rights and Responsibility’ declaration was first enacted, China had worked to ensure that it made no mention of human rights defenders and omitted specifics of enforcing the declaration (Worden 2018).

China’s membership in the UNHRC exemplifies Beijing’s campaign of international human rights activism. Through its efforts to promote its human rights orthodoxy of state-led development, China works to normalize human rights abuses in the PRC and to legitimate the legal and policy framework that supports them. In addition to its activism at the UNHRC, the PRC challenges international human rights standards through foreign economic relations, where China’s influence is particularly significant. Regional development programmes such as the Belt and Road Initiative (BRI) and regional financing programmes through the Asian Infrastructure Investment Bank (AIIB) provide important opportunities for China to promote its human rights orthodoxy.

BRI: regional development subordinating human rights

The BRI is intended as an infrastructure investment initiative linking China with Europe and the many economies in between – primarily Central and South Asia, Africa, and the Mideast, but also Europe and potentially the Arctic (Hong Kong Trade and Development Council 2019a; Djankov & Miner 2016). The BRI emerged through China’s leadership in the Shanghai Cooperation Organization (SCO), but soon extended beyond the SCO’s Central Asia focus (Hong Kong Trade and Development Council 2019b). China has leveraged BRI relationships to promote policy positions on human rights that are favorable to the PRC (Ishii 2018).

The BRI is presented as a cooperative effort for integrating development strategies among BRI partners, grounded in PRC policy positions extolling state sovereignty and non-interference in internal affairs (NDRC et al. 2015: Section II.1). According to the 'Foundational Plan' for the BRI, cooperation priorities include policy coordination, facilities connectivity, unimpeded trade, financial integration, and people-to-people links (NDRC et al. 2015: Section IV), all of which have important human rights implications. 'Policy coordination' suggests efforts to reconcile development policies in partner economies with China's economic growth priorities marginalizing civil and political rights. The emphasis on 'facilities connectivity' as a priority area suggests that operational elements of local infrastructure programmes such as technical standards, engineering specs and communications networks should be integrated with the PRC practice. BRI priorities around 'unimpeded trade' focus on integration of trade and investment, improving division of labour and eliminating investment barriers – all of which have potential implications for regulatory measures in recipient economies affecting labour relations, environmental protection and other human rights. The BRI plan's reference to 'financial integration' raises the prospect of subordinating institutional structures of BRI borrowers to financial priorities of Chinese lenders (and their political implications), further limiting independence of local governments (Chellaney 2017). While the BRI plan's reference to 'people-to-people contacts' suggests potential civil society involvement, the plan treats this mainly as a public relations matter of winning support for the initiative. If China's domestic practices of education and indoctrination in the implementation of state policies are any guide (Eades 2016), BRI people-to-people links seem unlikely to generate significant civil society support for human rights protection. The impact of Chinese infrastructure development projects on human rights in labour relations, environmental protection and political expression has already been well documented (Ortiz 2015) and there is little reason to expect different outcomes from BRI projects.

China's prior history with development programmes in Asia and Africa suggest the likelihood of further human rights abuse under the BRI. Collusion with the former military junta in Myanmar (Corr 2016; Earthrights International 2011), disregard for environmental harm caused by Chinese projects in Laos and Cambodia (Hirsch 2002; Var 2016), and environmentally destructive behaviour in the South China Sea (Tiezzi 2016), all indicate the problematic human rights consequences of China's development programmes. In Africa, China's investment projects have suppressed labour rights (Breuker & Van Gardingen 2019), local development (Shaw 2011; Ofodile 2009) and environmental protection (Ascensão et al. 2018; Laurance 2017; Shinn 2016). China has enabled human rights abuses in Zimbabwe (Smith 2012; Business and Human Rights Resource Centre 2008), while PRC projects in the Sudan suggest a pattern of subordinating human rights to

resource development that seems unlikely to change in the BRI context (Besada 2016; Human Rights Watch 2003; Powell 2008).

The BRI programme echoes many features of China's Western Development Program (WDP). Drawing on WDP policies attempting to establish Xinjiang as a development hub for Central Asia, BRI aims to establish Xinjiang as "key transportation, trade, logistics, culture, science and education centre". (NDRC et al. 2015: Section VI). Human rights abuses attendant to China's development policies in Xinjiang are well known, including displacement of local Uyghur culture, disruption of traditional economic and commercial structures and practice, and encouraging in-migration of Han Chinese to the detriment of local people (Potter 2011). China's confinement of some 1.5 million of Xinjiang's Uyghur Muslims to 're-education' camps is further evidence of human rights abuses attendant to China's development policies (Maizland 2019; Human Rights Watch 2018). If the WDP experience in Xinjiang is any guide as official BRI pronouncements suggest, the prospects for human rights protections under the BRI seem dim indeed.

BRI operations have already given rise to significant human rights challenges. On Pakistan's BRI-invested M4 motorway and at Greece's BRI-invested port of Piraeus, China's problematic labour policies and practices are already evident, as labourers reported uncertain tenure, harsh working conditions, inadequate pay, late pay, and lack of effective unions (Breuker & Van Gardingen 2019). China's BRI investments in Zambia have come under critical scrutiny as examples of the predatory potential of Chinese investments when compared with international private funding (Lee 2018). Tanzania cancelled a PRC port project due to concerns over onerous finance conditions (Chambers 2019). While debate continues as to the extent of local skills development in recipient African economies under the BRI (Eom, Brautigam & Benabdallah 2018), China's limited commitment to human rights in host economies suggests continued challenges. The World Bank's preliminary assessment of BRI impacts noted the potential for poverty alleviation and income growth, but also cautioned that pervasive corruption remains a problem and that risks of environmental and social harm are significant (World Bank 2019).

AIIB: diminishing human rights in infrastructure development

The BRI initiative is buttressed by China's parallel AIIB initiative (Biukovic 2019; Lichtenstein 2018). The AIIB is presented as an alternative funding structure to the World Bank and the Asian Development Bank (ADB), generally dominated by the US and Japan respectively. While AIIB's some 74 members, and particularly the 30 non-regional

members (comprising some 26 per cent of voting shares) (AIIB 2019)² pose some restraint, China's influence is underscored by its 'essential governance role' as majority shareholder (Quayle & Gao 2018).

The AIIB's official statement on the role of law confirms that despite its status as an international organization constituted and governed by public international law, the bank does not possess general competence and may "only exercise those powers expressly or impliedly bestowed upon it by the Articles of Agreement" (AIIB, 'The Role of Law at AIIB': Section I.A). While the Articles of Agreement note the importance of social development, the term 'human rights' does not appear (AIIB, 'Articles of Agreement'). Rather, as depicted in the Articles, the AIIB's purposes focus on sustainable economic development, wealth creation, infrastructure connectivity, and regional cooperation. As listed in the Articles of Agreement, the AIIB's 'Functions' are:

- 1) to promote investment in the region of public and private capital for development purposes, in particular for development of infrastructure and other productive sectors;
- 2) to utilize the resources at its disposal for financing such development in the region, including those projects and programmes which will contribute most effectively to the harmonious economic growth of the region as a whole and having special regard to the needs of less developed members in the region;
- 3) to encourage private investment in projects, enterprises and activities contributing to economic development in the region, in particular in infrastructure and other productive sectors, and to supplement private investment when private capital is not available on reasonable terms and conditions;
- 4) to undertake such other activities and provide such other services as may further these functions. (AIIB, 'Articles of Agreement': Article 2.)

While terms like 'sustainable', 'development' and 'harmonious economic growth' admit to possible human rights implications, the absence of specific references to international human rights standards suggest that these are not of immediate importance to AIIB policies and programmes, even if they might possibly be satisfied over the long-term.

AIIB's 'Environmental and Social Framework' notes that social development and inclusion are critical for sound development and extends these to:

2 Consulted in August 2019.

“equity of opportunity and non-discrimination, by improving the access of poor, disadvantaged and disabled people to education, health, social protection, housing, environmental quality, infrastructure, affordable energy, water and sanitation, employment, financial services and productive assets. It also embraces action to remove barriers against vulnerable groups...” (AIIB 2016: Paragraph 8).

For all the merits of promoting such principles of inclusion, by limiting its commitment to “these human rights” (*Id.*), AIIB excludes civil and political rights such as the freedoms of expression, association and religious belief. Such selectivity is consistent with China’s human rights orthodoxy (SCIO 2012: Introduction). AIIB also defers to local conditions in matters of social development and inclusion: “For the Bank, inclusion means empowering people to participate in, and benefit from, the development process in a manner consistent with local conditions” (AIIB 2016: Paragraph 8).

The Environmental and Social Framework acknowledges the importance of ‘Free, Prior and Informed Consent’ (FPIC) in connection with projects affecting indigenous peoples, but notes that FPIC “does not require unanimity and may be achieved even when individuals or groups within or among these affected Indigenous Peoples explicitly disagree with support for the Project’, bowing to conclusions by client states and the provisions of local law in determining impacts on indigenous peoples (*Id.*: 21-22, 45). Such deference to local conditions is evident as well in AIIB’s reliance on environmental and social assessments by client states (*Id.*: 27). Deference to client state determinations on indigenous rights and environmental and social conditions echoes China’s human rights orthodoxy that local conditions constitute legitimate restrictions on human rights (SCIO 2012: Introduction). This has potential to bolster the authority of authoritarian governments in denying human rights protections to their citizens.

Links with PRC policy interests are underscored by AIIB’s ‘Operational Policy on International Relations’ that allows financing for projects in contentious areas of international waterways, disputed areas, *de facto* governments and UN Security Council Measures, subject to limits of transparency and the terms of the Articles of Agreement, and “so as not to prejudice the positions and interests of the country or countries concerned” (AIIB 2017: Section 1.1). AIIB funding can be directed to support development projects in international waterways if the bank is satisfied such projects will not have a Material Adverse Effect on other riparians (in the case of rivers) or littoral states (in the case of oceans and seas) and there are no objections from any other riparian/littoral states (*Id.*: Section 3.1). Subject to such conditions, AIIB funding can potentially be directed to support development projects in transnational waterways such as the Mekong and Salween (Nu) rivers (Bernstein 2017; Phillips 2016a; International Rivers 2012) and the

South China Sea (PBS NewsHour 2019); in disputed areas where development projects offer conflicting parties (including China) opportunities to bolster their claims (Roul (nd); Bender & Nudelman 2014); in regions such as Somalia and Libya, where the legal authority of government is disputed (van Essen 2012) and in states such as North Korea and Iran that are subject to UN sanctions for terrorism or human rights offenses. Thus, AIIB funding can potentially be used to support PRC diplomatic efforts in developing countries and regions where China's geo-strategic ambitions are paramount but where significant human rights concerns are endemic.

While many of the terms of AIIB's governing documents echo similar provisions governing the ADB and the World Bank, the difference between restraining liberal-minded neocolonial intrusion into the affairs of authoritarian clients and empowering a China-dominated institution to endorse authoritarian conduct is obvious. Concerns have already been raised about human rights impacts from AIIB projects (Rosenzweig 2016; Human Rights Watch 2016). Indeed, challenges to including human rights in AIIB policies and programmes were acknowledged by AIIB General Counsel Gerard Sanders:

"[T]he Bank will also wish to offer, for the critical consideration of others, new ways of thinking about difficult issues with which international organizations and the wider legal community must contend. Some of those issues will be recurrent, sometimes being seemingly intractable. Doubtless, as yet unknown challenges also lie ahead, about what role law does, can and ought to play in empowering and constraining international organizations and others in the pursuit of societal objectives" (Sanders 2018).

Few observers of international financial institutions would suggest that human rights are not among the recurrent and intractable challenges these institutions face, even as they attempt to direct their energies to matters of economic growth (Sarfaty 2012). Yet the AIIB's official statements suggest that human rights are neither a general priority nor an essential component of AIIB project governance.

Conclusion

China's international human rights activism grounded in an orthodoxy of state-led development has become increasingly apparent. Through its membership in the UNHRC, China has worked to displace international human rights standards in favour of its own priorities. As well, the PRC has used trade and investment relations through the BRI and AIIB to disseminate its human rights orthodoxy. This poses an important challenge for the international human rights system. Effective engagement by the international

human rights community, including international agencies and NGOs, will be essential. While international actors have neither the practical capacity nor the moral authority to dictate how China should govern itself, several concrete steps can be taken in response to China's exporting of its authoritarian orthodoxy on human rights, including, (a) Invite China publicly and repeatedly to affirm that fulsome protection of civil and political rights is essential to the protection of economic, social and cultural rights; (b) Enable the UN Working Group on Business and Human Rights to investigate and publicize human rights abuses attendant to China's BRI projects; (c) Encourage the AIIB to make public commitments of support for local human rights conditions – including civil and political rights – in client economies.

These efforts, while modest, would express the resolve of the international human rights community to curb China's efforts to disseminate its authoritarian human rights orthodoxy and normalize its human rights conduct. This can potentially affect China's policies and practice while also challenging other authoritarian regimes to improve their own recognition and enforcement of internationally recognized human rights standards. Clear and public resistance to the PRC's human rights activism can help strengthen human rights narratives in China and internationally, potentially leading to more effective protection of human rights themselves.

**China, Latin America, and human rights:
a worrying equation?**

With the rise of the Belt and Road Initiative (BRI), China has adopted many measures to regulate its companies' activities abroad to bring them more into line with local and international laws, rules, policies and practices. On the ground however, the practices observed in the activities of Chinese banks and companies are far from meeting the high standards Beijing claims to promote. While Latin American and Caribbean (LAC) countries derive economic benefits from their relations with China, the activities, presence and growing influence of the Chinese actor have also far less positive effects on human rights in the region...

Introduction

Over the past few years, with the worldwide expansion of the Belt and Road Initiative (BRI) launched by Xi Jinping in 2013, the People's Republic of China (China) has produced more standards to better regulate the activities of Chinese economic and commercial actors operating abroad, to be more in line with local and international laws, rules, policies and practices. However, many official documents regulating Chinese overseas activities do not impose legally enforceable obligations. In October 2017, the Chinese National Development and Reform Commission (NDRC) with other state and Chinese Communist Party bodies published a Memorandum of Cooperation designed to implement China's social credit system in the field of foreign economic cooperation. Under this mechanism, any Chinese entity operating abroad – which include those involved in overseas investment and foreign contracting, finance and trade under the BRI – is required to comply with relevant laws or regulations of the host country, international conventions and United Nations resolutions, and not to damage the reputation and interests of China, under penalties (NDRC et al. 2017a, 2017b). Enforcing overseas legal and governance requirements is in line with the recent publication by Chinese regulatory bodies and business associations of new guidelines, aimed at 'guiding' banks and companies to conduct due diligence in overseas activities in order to reduce social and environmental impacts.¹ This increasing normative production, which allows China to

1 This is for example the case of the following ones: the 2017 national guideline on overseas investment

officially position itself as a more responsible stakeholder, primarily addresses the need to reduce the risks to Chinese companies operating in developing countries along the new silk roads and to improve the image of Chinese investors.

Since its creation in March 2006, the UN Human Rights Council (UNHRC) regularly reminds China to respect its human rights obligations within the framework of its Universal Periodic Review (UPR). In recent years, and more with the publication in 2011 of Maastricht Principles,² China has received more and more recommendations of non-compliance with its extraterritorial obligations under international law. This is particularly true for the practices of Chinese banks and companies operating in African and Latin American developing countries, leading the UNHRC (2018d: 3) to recommend that China define “a comprehensive framework for ensuring explicitly respect and protection for human rights in international lending and outbound investment”. This recommendation was made during the third cycle of the UPR of China, held in November 2018 in Geneva, based on the observation of “adverse environmental, social and human rights impact on certain individuals and communities” caused by some “development projects supported by Chinese financial institutions”.

In Latin America and the Caribbean (LAC), where China has become an essential extra-regional economic actor in a context of widespread disillusionment towards the United States and other traditional powers (Wintgens 2019), more and more local voices are being raised against endemic corruption, erosion of the rule of law, and even violence, related to some Chinese practices. Several countries, such as Ecuador – where indigenous peoples in isolation are being threatened by operations of Chinese petroleum companies – and Peru – where Chinese companies dominate the mining sector –, particularly pointed out in this context the lack of commitment from China to the environment and its ignorance on the rights of the indigenous peoples living in their territories³ (UNHRC 2018a: 12). Their criticisms were part of the conclusions of a civil

addressing to both state-owned and private companies (SCPRC 2017); the NDRC regulations, that took effect in March 2018, calling on overseas Chinese investors to do business in good faith, respect local public order and good morals, fulfil their social responsibilities, pay attention to protecting the ecological environment and create a good image of themselves (NDRC 2017); a more recent multi-agency government guideline issued in December 2018, calling for fostering a culture of compliance by all Chinese companies operating overseas with local, national and international laws (NDRC et al. 2018).

2 'Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' summarise the extraterritorial obligations states have under international law. Details available at: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5B-downloadUId%5D=23.

3 Ecuador precisely recommended to China to “promote measures that ensure that development and infrastructure projects inside and outside its territory are fully consistent with human rights and respect the environment and the sustainability of natural resources, in line with applicable national and international law and

society contribution for the last cycle of the UPR of China produced in October 2018 by the Collective on Chinese financing and investments, human rights and environment (CICDHA).⁴ This report demonstrated that Chinese entities often fail to comply with the obligation to respect and protect human rights and recommended China, among others, to abandon projects that violate national laws and international instruments of human rights (CICDHA 2018: 4).

Against this background, the purpose of this essay is to identify the implications of China's policy towards Latin America and the Caribbean in the field of human rights. To this end, we start by analysing the main issues of China's labelled 'South-South cooperation' with Latin American countries from the beginning of the 2000s until the recent extension of the Belt and Road Initiative to this region (I). This regional overview is needed to better understand how Chinese companies' activities operating in LAC (II) and the increasing dissemination of China's development model to the region (III) can affect LAC visions of human rights. China, LAC, and human rights: is that a worrying equation?

I. China in Latin America and the Caribbean: an all-out action plan

China's engagement in Global South in the early 2000s took place in a context of opposition to US hegemony and a wave of South-South convergences proposing alternative visions and development models to the dominant Western system (OECD 2013: 43-44). In exchange for satisfying its national interests (access to the natural resources needed for its economic growth, search for new markets for its manufactured products, political support in regional and international forums, and struggle with Taiwan for diplomatic recognition), Beijing promised development aid and investment without political counterpart, contrary to the practices of traditional donors (Wintgens 2016: 158). This 'South-South' cooperation policy, which is officially based on the principles of mutual benefit, solidarity, mutual respect and non-interference in domestic affairs in accordance with some UN principles,⁵ was also China's gateway to LAC in the 2010s. Beijing's growing interest in the region was symbolized in 2008 by the publication of a

the commitments of the 2030 Agenda for Sustainable Development". Peru precisely recommended to China to "consider the establishment of a legal framework to guarantee that activities carried out by industries subject to its jurisdiction do not negatively impact human rights abroad" (UNHRC 2018a).

- 4 The CICDHA, integrated by 21 social organizations from Ecuador, Brazil, Argentina, Bolivia and Peru, has assessed eighteen financed and built projects by Chinese institutions, among which twelve are located in the Amazonian region, fifteen in indigenous territories, eleven in protected natural areas, and five in areas declared a World Heritage Site by the United Nations Educational, Scientific and Cultural Organization (UNESCO).
- 5 That is, the principles of respect for national sovereignty, national ownership and independence, equality, non-conditionality, non-interference in domestic affairs and mutual benefit, according to the UN General Assembly and the High-Level Committee on South-South Cooperation. For details see UNGA (2019).

first policy paper on LAC, a framework that was reinforced in 2016.⁶ Sometimes reduced to a “Commodities Consensus” (Svampa 2013), this all-out action plan has led to a growing but asymmetric interdependence between Beijing and LAC countries (Wintgens 2015).

Over the past fifteen years, China has considerably increased its presence in this region in many forms. At the political level, there has been an increase in high-level mutual visits (Xi Jinping has visited LAC four times since taking office in 2013) and bilateral relations have deepened through the establishment of “strategic partnership” (*zhanlüe huoban guanxi*) of various kinds with LAC countries. In the meantime, China became Permanent Observer to the Organization of American States (OAS) in 2004 and, in 2009, obtained its participation in the Inter-American Development Bank (IDB). Beijing has complemented bilateral relations with multilateral institutional dynamics. This is the case of the China-CELAC Cooperation Forum, an intergovernmental cooperation platform created in July 2014, which brings together every three years the 33 member countries of the Community of Latin American and Caribbean States (CELAC) and the Chinese Ministry of Foreign Affairs. Beyond bilateral agreements, multilateral plans and forums managed by Beijing are not only used to cultivate ‘South-South’ relations with LAC countries by still positioning itself as an extra-regional alternative to the traditional United States’ hegemony, but also, and above all, to converge LAC’s trade and investment agenda with China’s internal trade-related policy. Especially since the whole region was officially associated with the BRI during the first Forum held in Beijing in 2017 and many Latin-American countries have already signed a Memorandum of Understanding (MoU) with China under the BRI.⁷

In addition to these political relations, Beijing has also developed (low-intensity) traditional security ties with LAC countries. While China’s military presence is marginal compared to the more traditional actors in this field (United States and European countries), its links with LAC states are far from non-existent. In addition to arms sales, Beijing maintains regular high-level exchanges with Latin American military officials and promotes technology transfers.⁸

6 Beijing completed this framework until 2020 with the publication of its second white paper on relations with LAC in November 2016. Full text of China’s policy paper on Latin America and the Caribbean available at: http://english.gov.cn/archive/white_paper/2016/11/24/content_281475499069158.htm.

7 At the time of writing this essay, 19 Latin American countries have already signed a MoU with China under the BRI, with notable exceptions such as Brazil, Argentina, Mexico and Colombia.

8 China is one of the main satellite development platforms for LAC. In particular, it collaborates with countries such as Argentina, Bolivia, Venezuela, Ecuador, Nicaragua, and Brazil since the late 1980s, with which it has been cooperating within the framework of the CBERS (China-Brazil Earth Resources Satellite Programme) for the operation of remote sensing satellites.

Since the 2000s, however, Beijing has above all established itself as an essential commercial and financial partner for LAC, which has long been considered Washington's backyard. In 2005, Chile was the first Latin American state to sign a free trade agreement (FTA) with the People's Republic of China (PRC).⁹ The volume of trade (in goods) between China and LAC as a whole increased from negligible in 1990 to US\$ 10 billion in 2000, before rising to US\$ 266 billion in 2017 (ECLAC 2018). This is more than China's bilateral trade with Africa – US\$ 170 billion, according to MOFCOM (2018) – and equivalent to merchandise trade between the United States and LAC countries – US\$ 266 billion (US Census Bureau 2018). Thanks to the trade links established with its Latin American partners, Beijing has secured strategic resources (hydrocarbons, mineral resources, food production, etc.) as well as raw materials to supply its domestic consumption, and has opened new markets for its companies. But by raising global demand and prices for raw commodities, and by intensifying competition in the production of inexpensive manufactured goods, this 'China Boom' has also contributed to the phenomenon of deindustrialization and 'reprimarization' of Latin American countries' production and exports. The risks associated with deindustrialization are the loss of well-paying jobs in the manufacturing sector and the erosion of labour rights and working conditions. The growth of extractive industries, resulting from China's extensive demand for a handful of LAC commodities, can lead to increased conflicts with local communities and environmental degradation. In addition, China's trade policy has also contributed to the widening of local disparities and inequalities by promoting trade in certain sectors, such as soybean and agribusiness in Brazil (Wintgens 2013). This is also likely to happen in Panama, where China has a lot of interest in the maritime, logistic and financial sectors related to the Canal.¹⁰

Moreover, China has also become in recent years an important investor and a provider of capital in the form of loans and financial services for a growing number of LAC countries. In addition, Beijing almost doubled its lending to LAC countries at a time when Western development banks' financing to the subcontinent was gradually decreasing. The largest beneficiaries of these facilities are Venezuela (US\$ 67.2 billion), Brazil (US\$ 28.9 billion), Ecuador (US\$ 18.4 billion) and Argentina (US\$ 16.9 billion), that is, countries that for the most part had (or still have) difficulty borrowing on international capital markets. Argentina, for example, has had difficulty borrowing dollars on global capital markets since it defaulted on its debt in July 2014 and has faced shortages on a range of imported goods as a result (ECLAC 2018: 23). Signing a currency swap deal

9 Peru (2009) and Costa Rica (2010) also signed an FTA with China thereafter, and negotiations are underway with Colombia and Panama.

10 Interview conducted by Sophie Wintgens in Panama City in April 2019.

with China not only has led to an improvement of Argentina's financial condition by using loans as a relief measure against the weakening of foreign exchange reserves, but also opened the door to Chinese-originated investment and finance using the Yuan. However, managing liquidity issues with currency swap agreements is not without risk: it could help to perpetuate unsound fiscal and monetary policies or lead to greater (fears of) over-dependence on Chinese trade, investment and finance, often with less demanding conditions attached than those from developed countries (Arner & Soares 2016).

All these figures clearly demonstrate the power of Chinese economic and financial engagement in LAC, which appears as one more Global South area where China uses its economic levers to serve its geopolitical interests. Nevertheless, the ongoing exportation of Chinese-backed 'South-South cooperation' to LAC also depends on maintaining a positive vision of China as an extra-regional partner. According to *Latinobarómetro* 2018, China has succeeded in disseminating a favourable image of its activities and its growing multifaceted presence among public opinion in several LAC countries. However, in some countries the image of China is volatile, especially facing increasing cases of Chinese corporate-related environmental and human rights abuses. Therefore, China has expanded its soft power in the subcontinent using different tools: Confucius Institutes and classes established in LAC countries, development of cultural and educational cooperation, people-to-people diplomacy, and expansion of media aimed at a Spanish-speaking audience. China Today for example maintains two sites in Spanish (Barrios 2018). In addition, in some countries, Beijing is seeking to build on the potential relay of a relatively old Chinese diaspora to reinforce its influence. LAC is home to more than 1.8 million overseas Chinese, with the largest communities living in Peru, Brazil, Panama and Argentina (Poston & Wong 2016).

II. LAC countries facing Chinese companies' activities: beyond the promises, increasing concerns

Beyond official discourses and long-term promises, many obstacles impede the deepening of infrastructure activity by Chinese state-owned enterprises and banks in LAC within the framework of the BRI: the region's distance from Asia, its complex or taxing regulatory environments and bidding processes, further restrictions on capital outflows from China, etc. Several of the infrastructure projects that LAC governments have proposed to China for financing had previously been rejected or tabled by multilateral development banks in light of environmental and social risks (Ray, Gallagher & Sanborn 2018). This was the case with the Rosita dam in Bolivia, a China-backed project in the hydroelectric sector that is formally suspended since 2018 amid protests against its lack of prior

consultation¹¹ with affected local communities (Hinojosa 2018). Likewise, multiple failures of Chinese companies in meeting schedules while avoiding conflicts of interest have led to the cancellation of Chinese-backed investment projects. In Costa Rica, this was the case with the project aimed at renovating and expanding the national Petroleum Refining Company (Recope) located in the Caribbean port of Moín. Although it was a joint project, the objectives were somewhat different on either side: while Chinese investors wanted to transform Recope into a regional ‘mega-refinery’ with the aim of refining crude oil extracted in LAC (in particular in Venezuela) and then exporting it to China and the rest of Central America, the aim of the Costa Ricans was only to fulfil their national needs.¹²

In addition to economic concerns, China’s failure to respect the engagements it has taken when signing the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1997 and ratifying it in 2001 has exacerbated local complaints and conflicts, as well as repressive measures against opponents of the regimes in power. The above-mentioned CICDHA report precisely warned of “systematic violations” in all the studied projects managed by Chinese mining, oil and hydropower companies. Regarding the hydroelectric project of São Manoel in Brazil, operated by China Three Gorges, the report mentions for example that two sacred spaces of fundamental cultural value for the peoples Munduruku, Kayabi and Apiaka have been destroyed. In Ecuador, Chinese mining companies involved in the Mirador and San Carlos Panantza projects have engaged in irregular land acquisition practices (irregular purchases without consultation, arbitrary mining rights claims, civil proceedings against families without property titles, etc). These practices, carried out with the support of the security forces, have led to the displacement of a large number of indigenous families against their will (UNHRC 2018e). Likewise, in Nicaragua national security forces prevented rural communities and indigenous peoples from participating in peaceful protests against the construction of the inter-oceanic canal financed by the businessman Wang Jing through the Hong Kong Nicaragua Development Company. Indeed, the existence of the Canal Law (known as Law 840¹³) allows the government to legally stifle the right to challenge the project, and to expropriate land for it. As a direct consequence of this law, adopted in 2013, thousands of people living along the canal route face uncertainty and intimidation from the Ortega government, which has since then denied them any meaningful consultation on the impacts of the project.

11 The right to ‘prior consultation’ is one of the principles of the International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples. See Département des normes internationales du travail (2013).

12 Interview conducted by Sophie Wintgens in Costa Rica in August 2017.

13 Full text of Ley No. 840 available at: [http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/5eea6480fc3d-3d90062576e300504635/f1ecd8f640b8e6ce06257b8f005bae22/\\$FILE/Ley%20No.%20840.pdf](http://legislacion.asamblea.gob.ni/SILEG/Gacetas.nsf/5eea6480fc3d-3d90062576e300504635/f1ecd8f640b8e6ce06257b8f005bae22/$FILE/Ley%20No.%20840.pdf).

In addition to China's failure to adopt measures meeting its 'extraterritorial obligations' to protect rights in host countries, many LAC countries' particular approach to using Chinese companies and financing for its national development also raises multiple concerns. State's administration of sectors such as mining, petroleum, electricity, and telecommunications, and mixed track records of public contracting, raise questions about how Chinese funds are used to ensure the continuation of national development. Some LAC governments are weakening investment and other standards or disregarding existing regulations to attract Chinese investment or to facilitate trade. This is especially the case in Peru's mining sector regulations in which Chinese firms are quite active. In Bolivia, the nation's dream to be part of a 'central' route for a bi-oceanic highway and rail corridor spanning from Peru to Brazil has led the Morales government to more than double the national debt for domestic infrastructure projects, while using China as its principal contractor and financier (Ellis 2016). Chinese companies investing in LAC countries can also take advantage of the weakness of national laws and the complacency of local governments. Over the last fifteen years, for instance, China's growing interest in cocobolo wood¹⁴ has contributed to the deforestation of Panama's region of Darien (Nellemann 2016: 34).

Observing how Beijing is dealing with these kinds of practices, and with the overall difficulty of the Chinese companies in exercising due diligence in Latin American countries that has often led to cost overruns and project delays, also highlights China's growing influence on the Latin American political agenda. In Argentina, where two hydroelectric China-backed dams are being erected, progress in the project construction has been hampered many times since Electroingeniería partnered with China Gezhouba Group Company (CGGC) in 2013. After China Development Bank agreed to lend Argentina US\$ 4.7 billion to finance the construction of these dams in 2014, President Mauricio Macri put the project on hold pending an evaluation of the cost and environmental impact after taking office in December 2015. Indigenous people living in the area were not consulted during the process. In December 2016, the Supreme Court suspended the construction until the environmental impact assessment and public hearings were properly carried out and approved in 2017.¹⁵ Since then, although the project was recently questioned following corruption allegations against Electroingeniería's Vice President Gerardo Ferreyra (Politi 2018), Argentine's government and President Macri are praising

14 This high-quality wood is one of the most highly sought-after types in the Chinese luxury furniture market and the Panamanian National Assembly approved the export of this protected species in 2013 under unclear conditions (Bilbao 2019).

15 The judgement was delivered at a public hearing on 20 July 2017 in the Argentine Senate. Details available at: <http://www.senado.gov.ar/upload/23024.pdf>.

it publicly (MercoPress 2019). The hydropower dams agreement, in fact, contains a cross-default clause: this means that Chinese loans for upgrading the state-owned Belgrano Cargas freight railway line, or for the construction of two nuclear power plants, would be stopped in the event the dams project would be cancelled. In other words, achieving this project is now a key step toward unblocking and pushing forward other projects for which Argentina needs financing from China.

These examples not only demonstrate that the LAC region remains a challenging environment for Chinese investors, but also how China's finance capacity is becoming a powerful coercive tool in global affairs, especially in the case of asymmetrical relationships. That also means LAC countries that need China's financial windfall are kindly invited to endorse Chinese interests and enact Chinese practices. This kind of indirect conditionality can manipulate the cost-benefit calculations of LAC decision-makers through creating (positive and negative) incentives. Thus in Argentina, for instance, closer bilateral relations over the past decade have led to an increase in Chinese investment for key energy and transportation works, but the country authorized in return the awarding of public works without a prior bidding process and opened the door for Chinese labour, against the opinion of the Argentine Industrial Union. In that way, China managed to exploit its significant economic influence in Argentina to change Macri's agenda. This is one of the facets of its own 'development model' that China is disseminating in an increasing number of LAC countries, while the latter have so far been unable to develop a strategy to deal with China's assertive approach.

III. The less visible impacts of China's politico-economic development model on human rights in LAC

China's growing presence in LAC is also reflected in the less visible exportation of its politico-economic development model in this region. The increase in economic and trade exchanges with LAC countries is accompanied by the dissemination of a set of Chinese economic practices (norms, standards, regulations, etc.) and political visions (discourses, doctrines, etc.) to which they are invited to adhere in order to 'facilitate' a bilateral cooperation that they do not want to be excluded from (Wintgens & Aurégan 2019; Zacharie & Wintgens 2018). In other words, China's LAC partners who want to enjoy the US\$ 500 billion in trade and US\$ 250 billion in direct investment pledged by Xi Jinping, are invited to endorse the China-led globalization system.

The stakes of China's 'Belt and Road Initiative', which it is now extending to LAC countries, are threefold: trade competition, political issues, and legal aspects. While encouraging LAC policymakers to consider efficient alternatives to their low value-added,

export-driven development models, China is also favouring a strategy of free trade without restrictions such as labour and environmental rights, as well as direct investments and loans concentrated on the construction of energy and transportation infrastructure and on projects related to the extraction of natural resources (Wintgens 2017). China's strategy, however, is not limited to the financing and construction of infrastructures. Beyond these infrastructures, it aims to create a complete value chain that meets Chinese technical standards and competes with European and US standards. That means, politically, this strategy would put an end to a certain international marginalization of China and enable it to convert its unquestionable economic power into a political hold by a pre-eminent role on the world stage. Therefore, from a legal and institutional point of view, this strategy could also ensure that China emancipates itself from the extraterritoriality of United States laws it is currently subject to, without totally adhering to the global governance ordinary standards and principles (Wintgens 2019).

We can also observe a less visible diffusion process in the field of civil and political rights, in particular with regard to human rights. Since Xi Jinping came into power and launched the BRI, China is marshalling its diplomatic capabilities to shape the international human rights system more in its image. During the 19th Party Congress, in October 2017, Xi defended China's unique developmental path and for the first time explicitly positioned the country as an example to emulate: "the culture of socialism with Chinese characteristics has kept developing, blazing a new trail for other developing countries to achieve modernization. It offers a new option for other countries and nations who want to speed up their development while preserving their independence, and it offers Chinese wisdom and a Chinese approach to solving the problems facing mankind" (Xinhua 2017b). In December 2018, China published a white paper titled 'Progress in Human Rights over the 40 Years of Reform and Opening Up in China', in which it confirms the fact that its "successful model" based on "socialism with Chinese characteristic" can begin to be exported abroad, including when it comes to human rights (SCPRC 2018).

In reality, the PRC has promoted a so-called '*South-South cooperation on human rights*' since the 1990's. Under this umbrella, its objective is to spread its own interpretation of human rights. Beijing has promoted the 'right to development' (SCIO 2016), which puts priority on economic, social and cultural rights, but at the expense of civil and political rights. Through this policy, Beijing not only tries to directly counter Western criticism of its own human rights record, but also, more subtly, to strengthen its international position by promoting a model that is attractive to other states that are dissatisfied with Western criticism in this area (coalition building of like-minded states, a useful tool that can be used in international human rights fora). By disseminating worldwide its own interpretation of principles such as 'national sovereignty', 'non-interference

in internal affairs' or 'national security', China is in fact offering an alternative to the Western human rights paradigm. According to Ellis (2018), this was the case in Ecuador under the Correa administration, that leveraged China in order to pursue an alternative political and development path (a path independent of the US and traditional Western institutions). The Ecuadorian President, for example, expanded direct control of the media through the Superintendent of Information and Communication (Supercom), who prevented critical media coverage and facilitated censorship of independent voices on abuses by Chinese companies (Shullman 2019: 33). This positioning is thus aimed to strengthen Beijing's international status and position – including within international organizations dealing with the issue of human rights – but also its soft power and attractiveness as a partner, particularly for non-democratic countries or countries whose political regimes are under criticism from the West, such as Venezuela.

This policy weakens the international human rights regime. It offers undemocratic regimes the possibility, in order to escape Western criticism, to claim this Chinese interpretation. Interpretation supported, it should be recalled, by Beijing, which is a permanent member of the UNSC and can also provide these regimes with a useful diplomatic umbrella. Under the Xi Jinping administration, *South-South cooperation on human rights* has been pushed forward in bilateral relations, for example with Surinam in LAC (Xinhua 2017c). At a multilateral level, this more proactive role is particularly visible at the UNHRC, where China seeks to both “block international criticism” and “promote orthodox interpretations” of human rights in order to gain support of “like-minded” countries (Piccone 2018). The PRC has also put a new emphasis on this theme by organizing the *First Forum on South-South cooperation on human rights* in Beijing in December 2017. According to Xinhua (2017d), it brought together three hundred official attendees, including scholars and representatives from over seventy countries and international organizations. As mentioned by *The Diplomat*, “the timing as well as the theme of the forum further revealed Beijing's ambition to challenge Western norms and advocate for the China model” (Gao 2017). As Chen and Hsu (2018: 541) noted in a recent study, the PRC's promotion of *South–South cooperation* in terms of human rights shows “her intention to form an alliance to collectively resist Western human rights pressure by adopting an alternative human rights language, emphasizing economic development and championing the classical principle of state sovereignty”.

According to China's 2018 National Report submitted to the UNHRC (2018b: 2), “there is no universal road for the development of human rights in the world. As an important element in the economic and social development of each country, the cause of human rights must be promoted on the basis of the national conditions and the needs of the people of that country.” By viewing them in aspirational rather than legal terms, Xi can

more easily argue for priority to be placed on socio-economic rights and the right to development, as he did it in April 2019 during the second BRI meeting (Belt and Road Portal 2019). This pragmatic (and also relativistic) view of human rights – including the primacy of ‘Chinese specificities’ over liberal (universal) values –, which is being disseminated with China’s increasing presence in LAC, has an indirect impact in terms of political and civil rights.

We can observe this insidious phenomenon in a growing number of LAC countries where China is expanding sales of surveillance and control technologies. The China-Panama public safety cooperation, even at a still embryonic stage, has led to the installation of Huawei Technologies’ intelligent surveillance system in Colon to ‘secure’ the city and the associated free trade zone. After Panama abandoned Taiwan to establish diplomatic relations with China in June 2017, the Chinese company was recently awarded a contract for setting up a control system in the streets of the crime-ridden city of Colon, with facial recognition cameras linked to a data network, which are wired to government offices for defence, migration, the fire department and the ambulance service.¹⁶ This China-backed ‘Colon Secure City project’ reproduces in the city of Colon the mass surveillance system used by Beijing against its own population. Similar systems with facial or other recognition technologies also exist in other LAC countries, such as Mexico, Ecuador, Bolivia, Argentina, and more recently Uruguay, to which China donated more than two thousand surveillance cameras to improve control of its borders with Brazil and Argentina (Ellis 2019). Venezuela, with the help of Chinese telecommunications company ZTE, introduced its ‘fatherland card’ in 2016, an identity document human rights activists fear will be used for surveillance or to infringe on privacy (Carvalho 2019).

The transfers of such systems could have serious implications on human rights respect, especially in LAC countries that lack appropriate legislations and controls to limit privacy invasions and protect people against possible fraudulent private or institutional abuse. These technologies can be used to limit basic freedoms and to control, follow, harass and suppress political dissents in LAC countries with authoritarian or illiberal tendencies. A *New York Times* investigation published in April 2019 revealed it was already the case in Ecuador under President Raphael Correa (Mozur, Kessel & Chan 2019). For local human rights organizations seeking to oppose such monitoring systems, there is little recourse. As the *New York Times* noted, “Chinese companies operate with less scrutiny and regard for corporate social responsibility than their Western counterparts” (idem). Ecuadorian activists claim, for example, that while they have been successful

16 Interview conducted by Sophie Wintgens in Panama City in April 2019.

in working with civil society groups in Europe and America to oppose the sale of surveillance technologies, similar campaigns in China have not been possible. “We don’t have the ability to demand information from China – it’s really difficult”, said former Ecuadorian legislator Martha Roldós, quoted by the *New York Times*. The dissemination of such Chinese surveillance technologies in LAC could be a further weakening of democratic governance in the region. Moreover, in a context where many Latin Americans seem disillusioned by democracy and consider violence as one of their main concerns, these types of technologies, because of their supposed ‘effectiveness’,¹⁷ could gain widespread acceptance among LAC populations – again, this seems to be the case in Ecuador according to the *New York Times* investigation. It can also be used in political discourse to advance the idea that the ‘authoritarian model’ is more effective than liberal democracy. This is not good news for countries where the democratic tradition is recent and the temptation to resort to authoritarian forms of power still present. This trend could further weaken the democratic idea in a region where the decline in fundamental rights already reinforces mistrust in the authorities (low levels of participation in elections, etc.) and institutions (especially judicial systems) (Amnesty International 2018: 27). This is part of less visible impacts of a long-term process of worldwide dissemination of the Chinese development model and the authoritarian political vision Beijing sustains.

To conclude briefly, as we have tried to show in this short study, despite China’s official speeches and the efforts undertaken by the PRC that we highlighted at the beginning of this essay, Chinese development cooperation practices in Latin American and Caribbean countries are moving away from a number of United Nations principles for South-South cooperation (see UN 2019). In addition, countries in the region are competing for Chinese capital and investment to help them overcome the budget deficits and the economic, social and political effects that accompany this crisis. This is reflected in the adoption of mechanisms that encourage investment or different forms of incentives for business and the reduction of what governments, businesses and banks consider to be ‘obstacles’ to such investment, such as environmental and social protection standards, labour rights, rights of indigenous and tribal peoples, etc. These trends bode ill for the future of human rights in an already problematic region on this issue.

17 According to *Xinhua*, in Ecuador, the surveillance system – known as the ECU911 Integrated Security Service – had helped to bring down the country’s crime rate by 24 per cent since November 2016, Quoted in Mai (2018).

Christina Sadeler

Climate change as an area for EU-China cooperation?

The EU and China regularly reaffirm their intention to cooperate on climate change. However, what do China's climate politics look like? The essay assesses China's climate action at home and abroad and argues that impactful climate cooperation needs to aim for more transparency, more effective and binding regulations, stronger goals and more public participation, and to align domestic and overseas investment plans with the Paris Agreement.

Introduction

After the EU-China Summit in 2018, both parties jointly published the 'EU-China Leaders' Statement on Climate Change and Clean Energy' (European Commission 2018a). It is one of a number of statements and agreements of this kind on climate change, which have followed since the EU and China agreed on a Partnership on Climate Change back in 2005 (European Commission 2005). Since then, numerous joint statements with commitments to more climate protection were announced and a large number of cooperation projects were carried out. In its 2018 background questions and answers paper, the EU states that: "Achieving the Paris Agreement's long-term temperature goal [...] will depend largely on the questions of when China's emissions will peak, at which level, and how quickly emissions reductions will take place thereafter" (European Commission 2018b).

In the March 2019 'Joint Communication to the European Parliament, the European Council and the Council: EU-China – A strategic outlook', published by the European Commission (2019) together with the High Representative of the Union for Foreign Affairs and Security Policy, the EU defines its relationship with China in a straightforward language:

"China is, simultaneously, in different policy areas, a cooperation partner with whom the EU has closely aligned objectives, a negotiating partner with whom the EU needs to find a balance of interests, an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models of governance. This

requires a flexible and pragmatic whole-of-EU approach enabling a principled defence of interests and values. The tools and modalities of EU engagement with China should also be differentiated depending on the issues and policies at stake.”

Climate change is mentioned as one of the areas of cooperation for the EU. The paper aptly describes China’s multifaceted role in the climate protection arena:

“On climate change, China is at the same time the world’s largest carbon emitter and the largest investor in renewable energy. The EU welcomes the role of China as one of the main brokers of the Paris Agreement. At the same time, China is constructing coal-fired power stations in many countries; this undermines the global goals of the Paris Agreement. China is a strategic partner on climate change and the clean energy transition, with whom we need to continue developing a strong relationship, given the sheer size of its emissions (around 27 % of the global amount), which continue to rise. Our partnership is essential for the success of global climate action, clean energy transition efforts and ocean governance. A commitment by China to peak its emissions before 2030 would give new impetus to fighting climate change in line with the Paris Agreement and inspire action globally. In addition, the EU and China should strengthen their cooperation on sustainable finance, to channel private capital flows towards a more sustainable and climate-neutral economy.”

The related ‘Action point 2’ states: “In order to fight climate change more effectively, the EU calls on China to peak its emissions before 2030, in line with the goals of the Paris Agreement” (European Commission 2019).

Effective global climate protection cannot be achieved without China. Cooperating with China in this field is important, and both China and the EU must significantly increase their efforts for more climate protection, which will require raising political will on both sides.

This essay tries to give a brief overview of the latest signals China has sent to the international climate arena, and will look at China’s climate achievements at home and compare these to its actions abroad. For the global climate debate, one important question will be how fast China, as the world’s major coal producer and consumer, will not only further reduce its own coal share but also restrain itself from its current coal export path. At the end, a few examples will be detailed of different cooperation approaches on how to work with Chinese actors on some of the questions raised in this essay.

Global climate diplomacy – Two steps forward, one back?

In 2014 and 2015, China and the US eventually entered the stage of international climate policy together. In joint statements, they announced their respective efforts to combat climate change, as well as their commitment to work together on climate issues. The fact that the world's two largest CO₂ emitters were able to see eye to eye on this issue sent a positive signal to the world and was an important moment in the run-up to the climate negotiations in Paris.

When the American President Donald Trump announced in 2017 that the US would withdraw from the Paris Climate Agreement, all eyes were on China. Knowing how to use the international stage, Xi Jinping at the World Economic Forum in Davos in January 2017 spoke of the Paris Agreement as “a hard-won achievement” and “a responsibility we must assume for future generations” (Xi 2017b). Many observers were hoping China would take on the role as new international climate leader.

Around 2006, China became the country with the highest CO₂ emissions in the world, outdoing the US (Global Carbon Atlas 2019). In 2018 it accounted for almost 28 per cent of global CO₂ emissions. After China's emissions seemed to level off between 2014 and 2016, they rose again in 2017 and 2018 – together with China's increase in coal consumption since 2017. China is by far the world's largest coal producer and consumer. The sheer size of these figures makes any of China's climate ambitions important for global climate protection.

The fact that the Paris Climate Agreement is in place is an enormous global achievement. However, the national commitments made by each country so far are far from sufficient to reach the 2°C target, let alone 1.5°C. These also include China's nationally determined contributions (NDCs).¹ Climate Action Tracker classifies China's NDCs as “highly insufficient”, which means: “Commitments with this rating fall outside the fair share range and are not at all consistent with holding warming to below 2°C let alone with the Paris Agreement's stronger 1.5°C limit. If all government targets were in this range, warming would reach between 3°C and 4°C (Climate Action Tracker 2019).” A real climate leader would behave differently.

1 “NDCs embody efforts by each country to reduce national emissions and adapt to the impacts of climate change. The Paris Agreement (Article 4, paragraph 2) requires each Party to prepare, communicate and maintain successive nationally determined contributions (NDCs) that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.” UNFCCC (2019).

Now the world is eagerly awaiting signals for more ambitious Chinese climate targets. Targets in line with those to which countries have committed themselves in the Paris Agreement.

At the end of June 2019, after a meeting between the Foreign Ministers of China and France and the UN Secretary-General during the G20 summit in Osaka, France and China announced that “they reaffirmed their commitment to update their nationally determined contributions in a manner representing a progression beyond the current one and reflecting their highest possible ambitions, and to publish their long-term mid-century low greenhouse gas emissions development strategies by 2020 in the context of sustainable development” (UN Secretary-General 2019). Even if this language partly corresponds with the formulation in the Paris Agreement, the hopes or expectations that China will submit new, stronger targets to the UN next year are high. Also next year, domestic debates will increase up until the adoption of China’s next five-year plan (2021-2025) (Baxter & Yao 2019). It remains to be seen which climate-relevant indicators decision-makers will be able to agree upon, especially for the period after 2020 and 2030.

Shortly after the Osaka meeting, at the end of August, Li Gao, head of the climate change office at the Ministry of Ecology and Environment, already spoke to journalists at a press briefing in completely different terms. Reuters quoted him as follows: “External elements, such as the Sino-US trade war, have brought negative impacts and increasing uncertainties to the global economy, which has also made it more difficult for China to tackle climate change. [...] We have confidence to meet the (carbon emissions) commitment but very optimistic expectation would not fit China’s actual situation and the external elements it faces” (Xu & Stanway 2019). In addition, “Li also said China was still unable to meet a major requirement of the Paris climate agreement to compile a full annual carbon inventory that should be submitted to the United Nations, as the country lacked staff and resources. China’s last full inventory was for 2014” (Xu & Stanway 2019).

It is hardly surprising that the position paper of the Ministry of Ecology and Environment (2019) in the run-up to the special climate action summit in New York in September 2019, only spoke of the aim “to firmly implement the Paris Agreement”. New targets have not yet been announced.

Many expect that China will submit new targets next year. On the one hand, China is well on its way to achieving its current NDCs. But it certainly also wants to seize this opportunity on the international stage and present itself as a reliable partner in the fight for climate protection, especially in contrast to the US. The question will therefore

rather be whether these targets correspond to a level at which the 1.5-2°C target can still be achieved. There is the risk, however, that climate policy will not have the highest political priority, particularly because of the current slowdown in economic growth, as the Ministry of the Environment has already warned.

China's climate achievements

China's national climate policy has shown a number of achievements in recent years. The rapid expansion of renewable energies, as well as the reduction of coal energy in the overall energy mix in a relatively short time (from 72 per cent in 2008 to 58 per cent in 2018 (BP 2019)), have been impressive for a country of this size and in this stage of its development.

Many see the urgent need to improve extremely harmful air pollution as one of the main drivers of these developments, as it has already led to increasing dissatisfaction, especially among the well-educated urban population. At the same time, the leadership has realized that renewable energy is an important future technology with high growth potential. This also applies to the e-mobility sector. In addition to reducing air pollution, economic considerations play a key part as China wants to secure a pioneering role in these future technologies.

Which sources the electricity and raw materials are supposed to come from, has not yet been conclusively answered though. This will be crucial to objectively assess whether this strategy will actually have a positive climate effect. At present, however, there is still a great need for accurate and reliable data as well as transparent and complete supply chain information.

Further positive developments include the reduction in CO₂ emission intensity² and the resulting slowdown in the annual increase of CO₂ emissions, as well as the national emissions trading system (ETS) launched in 2017, which is planned to be operational from 2020. Although the ETS does not cover all key industries as originally announced in 2015, but only the energy sector, and almost no one sees the system as an effective instrument for emission reduction in the short term, it still has the potential to create a better CO₂ database. It remains to be seen, however, at what level the price will be set and whether such a market instrument in a predominantly state-controlled economy can actually change investment and business behaviour.

2 At the end of 2018 intensity was 45,8 per cent below 2005 level. According to China's NDC it shall decrease by 60-65 per cent until 2030 compared to 2005.

The fact that coal consumption declined between 2014 and 2016 was another success story. Some observers and experts were already speaking of China's coal peak and suddenly many regarded China as a positive example from which other countries could learn, especially against the background of the already significantly lower costs for renewable energies, which are thus becoming more and more competitive compared to the allegedly 'cheap coal'.

Since proclaiming the 'War against pollution' in 2013, a comprehensive political and legal framework for more effective environmental protection has been established, including laws, guidelines and action plans. The above-mentioned reduction in coal consumption and the expansion of renewables were thus achieved, environmental and emission standards for existing and new coal-fired power plants were significantly enhanced, and numerous old plants that could not meet these standards were closed. The approval procedures for new power plants were more strictly aligned with environmental criteria. In 2017, permits for a large number of planned coal-fired power plants (with a total capacity of 170 GW) that were already under construction or about to get the required licenses, were suspended (Shearer et al. 2019). In addition to environmental aspects, economic considerations certainly also played an important role, since the mainly state-owned coal sector suffers from massive excess capacities and losses.

All these measures have shown positive effects. The Chinese Minister for Ecology and Environment proclaimed in a press conference at the end of September 2019 that the air quality of many cities had improved significantly compared to 2013. At the same time, he acknowledged that air pollution remains a major challenge due to high emissions, and that further efforts are required (Hou 2019).

China's coal question is *the* crucial question in global climate protection. This is the reason why many are worried about the slight increase in coal consumption in 2017 and 2018. The fact that the construction of some of the power plants that were initially halted in 2017 seems to have been resumed, is not a very positive sign. As the Global Coal Plant Tracker reported: "A March 2019 report by the China Electricity Council proposed capping the country's coal power at 1,300 gigawatts (GW) in 2030, signaling that the industry body representing China's power sector is pushing for a large expansion of the country's coal fleet. The change would allow hundreds of new coal plants to be added, including plants that had been suspended under central government restrictions" (Shearer et al. 2019). It is not clear yet whether the central government will actually react positively to this initiative. Such reports, however, illustrate the conflicts of interest that play a role in deciding on the degree and speed of climate action.

Particularly against the background of the slowdown in economic growth and the uncertainties resulting from the current trade conflict with the US, environmental and climate goals could take a back seat in the ranking of political priorities.

China's increasing overseas coal footprint

In recent years, however, China has not only developed into a champion for renewable energies, but has also become one of the world's largest financiers and manufacturers of coal-fired power plants outside China.³ While many international financial institutions are slowly withdrawing from coal financing or have already done so, it is mainly China's national development banks (China Development Bank and Export-Import Bank of China) and major state-owned commercial banks that are financing new coal-fired power plants and related infrastructure outside China (Kong & Gallagher 2019).

Studies show that China is involved in the financing of a quarter of all coal-fired power plants currently under development outside China (Brown & Buckley 2019). And a large proportion of Chinese bank loans for energy projects in 'Belt and Road Initiative (BRI) countries' went into fossil energy between 2014 and 2017 (Zhou et al. 2018).

According to the report 'China at a Crossroads' by Shearer, Brown & Buckley (2019) for the Institute for Energy Economics and Financial Analysis (IEEFA), Bangladesh, Vietnam, Pakistan and Indonesia belong to the countries "with the most coal-fired capacity supported by Chinese finance" in Asia, even if a large part of the funding so far only constitutes 'proposed' and not yet 'committed' Chinese finance. Bangladesh leads the list of largest proposed finance, while Indonesia leads in committed funding.

The example of Bangladesh illustrates the many problems associated with coal. The already high level of air pollution in the country would continue to deteriorate and there is a risk that Bangladesh's Sundarbans mangrove forest could be put on UNESCO's List of World Heritage in Danger (Leonard 2019). In addition, the country is dependent on coal imports and a broad expansion of its coal energy would create major foreign dependencies and economic risks from price fluctuations (Nicholas 2019). Furthermore, there are calculations that indicate that the predicted energy and electricity demand for the next few years is too high and that there is even a risk of a surplus of electricity being produced if all new coal-fired capacity currently planned would be constructed. These risks do not only exist in Bangladesh, but also in other Asian countries (Li & Wang 2019).

3 Apart from China, also Japan and South Korea are big coal financiers.

China is actively financing new coal-fired power plants not only in Asia, but also in Europe. According to a report by the CEE Bankwatch Network (2019), three coal-fired power plants were made possible with Chinese financing in Southeastern Europe, one in Serbia and two in Bosnia and Herzegovina. And there are plans for at least six new coal-fired power plants. Letters of intent have been signed for four new power plants in Bosnia and Herzegovina and two in the EU member states Romania and Greece. These plans, if realized, could weaken Europe's climate targets and make an ambitious common EU climate policy much more difficult.

This shows the gap between China's international climate rhetoric and its actual behaviour, as well as between the efforts China has made at the national level to enhance environmental protection and transform its energy system, and its actions abroad.

Without a consistent and binding alignment of the BRI, including the financial institutions responsible for its implementation, with the agreed goals of the Paris Climate Agreement, the UN sustainable development goals and the national NDCs of recipient countries, there is a risk that these countries will be set on the path of increasing emissions and coal dependency for years to come and that the internationally agreed 1.5-2°C target will become impossible (Hilton 2019).

Based on its own development experience and existing know-how and technology, China has the potential and also the responsibility to support the recipient countries in sustainable development with lower CO₂ emissions. This will only be possible, however, with a holistic decarbonization approach to BRI, as shown for example in a recent study by Tsinghua University Center for Finance and Development et al. (2019).

More than just climate risks

In addition to the climate policy aspects, megaprojects, especially in the energy sector, entail high ecological, social and human rights risks. And there are already many reports about controversial Chinese investment projects, which often show similar problems and underlying causes (see Wang & Zadek 2016; Huang 2016).

Required environmental impact assessments, for example, are often inadequate or incomplete. Serious environmental pollution and/or damage to ecosystems can be the result (see e.g. Papik 2019; Inkey 2019). In many countries, resistance to coal-fired power plants either planned or under construction is increasing, given the associated health

and climate risks.⁴ Case studies show that affected communities and other stakeholders are rarely sufficiently involved in the preliminary stages of project decisions. Deals are often made between governments and detailed information is missing. And with necessary resettlement measures, there have been cases in which people lose their livelihoods, which cannot always be offset by compensation payments, even if they are made properly. Indigenous rural communities are particularly vulnerable (Hui & Bermudez Lievano 2019).

Of course, such problems do not only occur with Chinese investment projects and not every Chinese project is problematic. Compared to other international investors, however, many case studies have shown that the level of intransparency is often higher, the willingness of Chinese companies, financial institutions and other responsible or relevant institutions to communicate with affected communities is significantly lower, and there is a lack of effective accountability and grievance mechanisms through which the communities can assert their rights (see Bridgeman Fields 2019; Friends of the Earth & BankTrack 2014).

The Lamu coal-fired power plant in Kenya is just one example where local groups tried to address their concerns over negative social and environmental impacts of the planned plant. According to the case documented by Accountability Counsel, a US NGO that works with affected communities, the environmental license of the project has eventually been invalidated in June 2019 for lack of effective public participation. The case also exemplarily shows the non-responsiveness of the involved Chinese bank and Chinese government (Accountability Counsel 2019). In a report by Friends of the Earth US and BankTrack (2014) on 'Assessing the Implementation of China's Green Credit Guidelines Overseas', seven case studies were analysed, all showing similar observations.

Globally there is a pressing need for infrastructure development. As described above, however, especially megaprojects bear high risks. In its joint report 'The Other Infrastructure Gap: Sustainability', the Office of the United Nations High Commissioner for Human Rights and the Heinrich Böll Stiftung (2018) advocate for "integrating human rights and environmental dimensions of sustainability explicitly within mega-infrastructure plans and projects, as well as the cost of failing to do so". It also states that "early attention to human rights risks in infrastructure projects can help to avoid social conflict and costly delays and overruns, improve project decision making, design and benefits, and facilitate the social license to operate". Especially with regard to Chinese stakeholders, this remains a huge task however.

4 See for instance Greenpeace Southeast Asia (2018), RFA's Lao Service (2019), McVeigh (2019), and Bank-watch Network (2019).

Gaps in the regulation of China's overseas engagement

At the beginning of the 2000s, the Chinese leadership announced its 'Going Out Strategy'. It was the starting signal for state-owned and soon also private companies to look for investment and trading opportunities abroad, to secure access to raw materials and to open up new sales markets. When Xi Jinping proclaimed his 'One Belt, One Road' (BRI) in 2013, it was in a way also a logical continuation and intensification of the strategy that already started years before. Although it can no longer only be understood from an economic point of view, but has a much broader dimension and meaning, its effects – whether positive or negative – will be global.⁵

State rhetoric stresses that the BRI shall be 'green' and 'sustainable'. However, as outlined above, there is no alignment with the goals of the Paris Agreement or the national climate targets of recipient countries (Zhou et al. 2018). The current coal boom outside China can be seen as an immediate effect.

Since the beginning of the 'Going Out Strategy' and the launch of the BRI, there has been a growing regulatory framework which regulates Chinese foreign investments. A range of political and financial guidelines, industrial and sector specific initiatives, as well as international coalitions or platforms are meant to make the BRI and China's outward foreign investments more sustainable. These include, for example, the 'Guidance on Promoting Green Belt and Road',⁶ 'The Belt and Road Ecological and Environmental Cooperation Plan',⁷ the 'BRI International Green Development Coalition',⁸ the 'Green Investment Principles for the Belt and Road',⁹ as well as the 'Green Credit Guidelines'¹⁰ already published in 2012, various sector-specific due diligence guidelines,¹¹ and the recommendations of the Green Finance Committee for the development of Green Finance to guide investments in low-carbon areas. The figures¹² nevertheless speak a different language, as described above.

5 In this essay the question is not so much how BRI should be assessed with regard to its geopolitical, economic and military implications. The focus lies more on the question of ecological, climate and social impacts.

6 Available at: <https://eng.yidaiyilu.gov.cn/zchj/qwfb/12479.htm>.

7 Available at: <https://eng.yidaiyilu.gov.cn/zchj/qwfb/13392.htm>.

8 Available at: <http://eng.greenbr.org.cn/icfgd/>.

9 More information available at: <http://greenfinanceinitiative.org/city-london-corporation-works-china-green-belt-road-initiative/>.

10 Available at: <http://www.cbirc.gov.cn/web2019/english/ybEnDocView/7FB627CCEB26412C91F4A4B14F-2F8ABC/1.html>.

11 E.g. CCCMC Due Diligence Guidelines for Responsible Mining.

12 With regard to accurate numbers related to the BRI, official data or information about what counts as a BRI project, what are loans, what are direct investments, which financial institute is involved etc. are missing. To date there is no official and complete project list, only some international academic databases, e.g. at Boston University.

The governance system and regulatory framework, which has been significantly expanded in recent years, is still relatively weak and its implementation and enforcement in most cases remain voluntary. The policy guidelines that regulate China's outward foreign investment are inconsistent with the domestic investment guidelines. In addition, companies and investors are only urged to comply with the laws and standards of the respective recipient countries. And there are no effective enforcement mechanisms against those companies or banks in the event of non-compliance. These were the findings of an in-depth analysis of the policies that govern China's overseas development finance by Kelly Sims Gallagher and Qi Qi from Tufts University (Gallagher & Qi 2018).¹³ Especially in countries with inadequate laws or weak enforcement institutions, this is far from sufficient and can cause some of the conflicts described above.

In addition, China's coal exports are also driven by its national interests. According to a study by Kong and Gallagher (2019), coal exports are a way of reducing existing massive excess capacities in the sector and at the same time coincide with the strategy of making China's own economic system more sustainable. The study rebuts the often heard argument that coal investment is necessary for faster access to electricity in the receiving countries. At the same time, the conclusion that China would systematically outsource its dirty industries should also not be made too quickly, according to the authors.

Different approaches for cooperation

While most countries have phased out their development cooperation with China, they have developed new climate cooperation approaches. There are bilateral climate partnerships, as the one between the EU and China mentioned above, that include among other things political and academic dialogues, technical support (e.g. on ETS) and research cooperation. Also, multi-stakeholder platforms have been established, particularly focusing on the BRI's sustainability impacts. More recently countries are trying to find ways for so-called 'trilateral cooperation', i.e. cooperating with China in a third country.

There are also plenty of activities carried out by civil society organizations and think tanks trying to shed light on the situations on the ground where investments take place. They gather reliable information and data in an often non-transparent environment, they provide profound analysis of developments, and they make those community voices heard that are often missing in official statements and formats.

13 See also Geall (2018).

For civil society groups inside China, within their very limited space, they are in different ways trying to engage with academic, state and business actors to push for more ambitious actions, to improve and strengthen policies, to demand environmental and climate information disclosure, to build capacity and to provide space for discussions, also with international actors. However, since the new law that manages activities of international NGOs in China has taken effect in 2017, cooperation between international NGOs and Chinese civil society has been made much more difficult. Every joint activity inside China, for example, needs to get approved. Control and scrutiny as well as bureaucratic burdens have significantly increased. Here, the EU should stand up for enabling those exchanges and cooperation. And international NGOs should look for new ways of engaging with and supporting Chinese groups, e.g. through providing more institutional funding for organizations which are strong at conducting their own research and advocacy, or through supporting their participation in international meetings.

In a time of urgently needed climate actions, in addition to the commitments of states cooperating on climate change, also actions by these different actors should be enhanced from both sides. And the EU should use every opportunity to emphasize the important role civil society plays, and should stand up for an environment that enables and encourages exchanges.

Conclusion

Given the sheer size of China's emissions domestically and its ever-growing environmental footprint overseas, the EU rightly cooperates with China on climate change. It has also rightly acknowledged the positive role China played ahead of the Paris Agreement. However, in order to be able to achieve the 1.5°C or 2°C goal, the world now needs more ambitious climate targets, an immediate stop of new coal-fired power plants¹⁴ and an effective alignment of the planning and financing of infrastructure investments with the Paris Agreement targets and the Sustainable Development Goals. Instead of locking countries in a long-term pathway of high emission economies and energy systems, the EU and China should join forces and support low-carbon development of these countries. The EU also should push China to live up to international best practices, if it wants to be seen as a responsible global climate actor.

14 A recent report by Global Energy Monitor however concludes: "The central government through its National Energy Commission has signalled that coal plant building will likely continue into the country's 14th FYP, through 2025", see: Shearer, Yu & Nace (2019).

French President Emmanuel Macron, during his state visit to China at the beginning of November 2019, has again stood up for strong EU-China climate cooperation. During a press conference, he said that he hopes the summit in 2020 “can achieve very concrete results on this topic” (Farand 2019). However, whether China agrees to an EU-China climate agreement will depend on whether the EU itself can present a more ambitious climate plan, and on how China ranks climate within its other political and economic priorities.

Cooperation on climate change, however, should not only address technical instruments and solutions or government dialogues on climate policies. Higher standards and targets, more transparency, effective safeguards and more robust and binding national and international regulations are needed, as well as a supportive environment for enabling active participation of civil society groups and NGOs. Lastly, cooperating with China on climate change issues must not mean that addressing inherent social and human rights problems within China will fall behind among the priorities of EU-China relations. In fact, human rights should be included in every field of EU-China relations.

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China's pursuit of a 'new world media order' threatens press freedom

China, ranked 177 out of 180 in the 2019 World Press Freedom Index compiled by Reporters Without Borders (RSF), is expanding its hold beyond its borders in order to impose its 'ideologically correct' vocabulary, deterring any criticism of itself and covering up the darker chapters in its history. Less well known than the Belt and Road Initiative, but just as ambitious, this project poses a threat to press freedom throughout the world. The strategy deployed by the Chinese state to achieve its goals includes: modernizing its international TV broadcasting, buying extensive amounts of advertising in international media, infiltrating foreign media, and also employing blackmail, intimidation and harassment on a massive scale. The values of tolerance and openness that characterize liberal democracies give Beijing considerable freedom to operate and makes it difficult to react against these threats.

Introduction: A decade of media expansion

China ranked 177th out of 180 countries and territories in the 2019 World Press Freedom Index compiled by Reporters Without Borders (RSF). At least 115 journalists and bloggers are in prison in China for collecting or circulating information censored by the Chinese Communist Party. A system of hi-tech censorship restricts the news and information available to China's 850 million Internet users, while a sophisticated propaganda and surveillance apparatus places additional constraints on their ability to inform themselves freely.

President Xi Jinping is forthright about being an enemy of democracy, universal values, human rights and press freedom. He has succeeded in imposing his totalitarian vision on his own country and is now seeking to extend it beyond China's borders. Beijing, which over the course of the last decade has expanded its media presence worldwide, now actively seeks to establish a 'new world media order' under its control, an order in which journalists are nothing more than state propaganda auxiliaries.

The Chinese regime is lavishing money on modernizing its international TV broadcasting, investing in foreign media outlets, buying vast amounts of advertising in the

international media, and inviting journalists from all over the world on all-expense-paid visits to China. Beijing even organizes its own international events as a way of promoting its repressive vision of information and no longer hesitates to use harassment and intimidation to impose its 'ideologically correct' vocabulary and to cover up the darker chapters in its history.

This expansion – the scale of which is still hard to gauge – poses a direct threat not only to the media but also to democracies and journalism around the world, thereby threatening the ability of citizens everywhere to freely choose their destiny.

Chinese media's entry into the 21st Century

Chinese attempts to communicate in foreign languages certainly did not begin yesterday, but for a long time they were at the very best laboured and clumsy. When China was opening up to the outside world in 1981, it launched an English-language newspaper, *China Daily*. Five years later, state-owned CCTV began an English-language news programme, but another fourteen years went by before it turned into a full 24-hour news channel.

It was in 2008 that things began to change rapidly for China's international image. The Beijing Olympic Games, which were supposed to celebrate China's economic success, were also utilized by the regime's opponents to get their voices heard. This was a humiliation for the Chinese regime, which thereafter decided to invest massively in improving its international image and disseminating its views internationally.

A decade later, this investment is already paying off. The scale of China's international media presence has increased dramatically. China Global Television Network now has six channels of which five are 24-hour TV news channels. CGTN has around 10,000 employees in a total of seventy bureaus, and broadcasts in at least 140 countries. China Radio International (CRI) has also expanded its reach globally, broadcasting in a record number of 65 languages from more than seventy stations abroad.

The Chinese print media are now big-league players as well: the English-language *China Daily*, which has special issues for the Americas, Europe and Asia, claims to have a daily print run of 900,000 copies and a combined total of 150 million readers. Even the state news agency Xinhua, once mocked for its austerity, has made significant inroads abroad with more than 56 million Facebook subscribers outside China and 12 million Twitter followers.

Imposing a 'new world media order'

Although China likes to present itself as a peaceful country that focuses on trade and is guided by the principle of fairness, the regime's discourse paradoxically reflects a paranoid vision in which the nation is the victim of persecution by 'hostile forces' from Western countries that feel threatened by China's success and as a consequence use their media to try to sully China's image.

Li Congjun, who used to head the state news agency Xinhua and is now a member of the Chinese Communist Party's Central Committee, developed the concept of a 'new world media order' in an op-ed published in 2011 in the *Wall Street Journal* (Li 2011). As "global opinions are still dominated by Western media outlets" and China's ability to make its own voice heard "fails to match its international standing" (Blanchard 2013), Li advocated the creation of a "new world media order" to address the imbalance.

Li Congjun also called on the media to become "an active force for promoting social progress" (Li 2011), rather than fulfilling their role as watchdog for respect of the rule of law, individual freedoms and human rights. China in this regard has made its stance clear on the form of 'journalism' it would like to practice. Journalism should be defined by the government, and work for the benefit of the government. This dangerous 'new world media order' is what China now exports throughout the world.

International media events 'made in China'

One of the methods used by China to try to establish a 'new world media order' is through international media events. As China realized that it had little influence over the main international events where the Internet and the media are traditionally debated, such as the World Summits on the Information Society (WSIS), organized by a UN agency, or the privately-funded Web Summit and World News Media Congress, the Chinese authorities decided to organize their own international events where they could promote their authoritarian vision of the news media.

The World Media Summit was therefore created in 2009 and is entirely designed, organized and funded by the Chinese state news agency Xinhua. These summits provide China with an opportunity to promote concepts such as 'positive reporting' and helped to legitimize its state media by allowing their leaders to debate on equal terms with the international media.

In 2014, China launched the World Internet Conference (WIC), an annual event organized

in the resort town of Wuzhen, Zhejiang province, by the Cyberspace Administration of China (CAC), the agency that controls China's Internet. Behind the WIC's official goal, which is to debate Internet governance, China is aiming to promote the concept of cyber sovereignty, according to which every government is free to manage the Internet as it sees fit within its own borders – a concept that opens the way to all kinds of abuses, especially in authoritarian countries.

Since 2016, China has also been organizing the annual BRICS Media Summits for news organizations from the five emerging national economies known as the BRICS (Brazil, Russia, India, China and South Africa). This has allowed Beijing to influence media regulations and practices in the other four countries, as well as providing additional opportunities to denounce Western media hegemony and calling for 'imbalances' to be corrected.

Training foreign journalists: 'a charm offensive'

Additionally, China has upped the ante through initiating its own journalist training programmes for foreigners. Beijing spares no expenses to please journalists from emerging countries in order to be understood and liked. Undoubtedly, the most popular programme is the one inviting journalists from the Indian subcontinent, Southeast Asia and Africa for a 10-month visit, all-expense-paid, with the undisguised aim of generating favourable press coverage. More than one hundred journalists a year have reportedly received this treatment since the programme began in 2016.

Inviting journalists on trips is not necessarily a reprehensible practice; many governments do so in an attempt to improve their image. Yet, in China's case, journalists are chosen not by their editors but by the Chinese embassy and therefore are screened by the Party instead of their presence being based on journalistic merit. The conditions are clear: they must promise to 'tell the China story well' and even portray its authoritarian regime as a democracy and an international creator of peace (RSF 2019). The invited journalists were given lectures on using the 'correct vocabulary' when portraying news from China, in order to promote a more positive global view of China, among many other attempts to reeducate them. These guests are not, however, allowed to move around freely during their stay, and inquisitive reporters are often given less time on discussions.

The international promotion of the Belt and Road Initiative, aiming at reinforcing China's commercial and political influence, is also furthering attempts to get positive media coverage around the world. Chinese state media, led by news agency Xinhua, TV broadcaster CGTN and China Radio International, have formed the Belt and Road News Alliance, which groups 72 media in 42 countries. A special course, called the Dongfang

Scholarship Programme, has been created to train journalists in 'language elements' specific to the project – in other words, to get journalists from countries involved in the project to 'speak the same language' as that used in Chinese propaganda.

Infiltrating Western Media: 'Trojan Horse Policy'

China's reshaping of its international image does not stop with propagandist international conferences and training programmes. With the help of advertorials and targeted advertisements, Beijing is pursuing a Trojan horse policy in order to slip its propaganda into the foreign media. *China Watch*, which is entirely staffed by the English-language propaganda newspaper *China Daily*, claims to have a circulation of 4 million copies, and is printed as a free insert in around thirty prestigious international dailies read by many executives and influencers. *China Watch* provides Beijing with significant potential financial leverage over the media organizations that distribute it.

In an effort to reach a broader public internationally, Beijing has also begun implementing an ambitious buying programme of the foreign media it regards as strategic. This acquisition policy is coordinated by the United Front Work Department (UFWD), a Communist Party branch that oversees financial transfers to foreign media outlets.

Beijing's influence reach is especially far in Chinese-language media outside China. The 50 million Chinese abroad, half of whom are in Asia, were traditionally very critical of the Communist regime. After the Tiananmen Square massacre in June 1989, which triggered a wave of outrage in the diaspora media, Beijing realized that these hindered its image-control strategy and started buying them up, one by one, while at the same time developing new outlets of its own.

Disinformation and harassment: 'sharp power'

Unlike 'soft power', a term that implies relations that are mutually beneficial, China makes excessive use of its 'sharp power', a set of aggressive practices that include disinformation and harassment.

In the last few years, the Taiwanese government and media have exposed many examples of Chinese disinformation campaigns targeting the island on a wide range of subjects, including pension reform and the validity of a Taiwanese passport abroad. Although Taiwan has always been the primary focus of these disinformation campaigns, Beijing has also targeted other countries with a large population of ethnic Chinese, most notably Singapore.

China's diplomatic missions are another source of pressure on freedom of information in democracies. Some of China's ambassadors have no qualms about openly denigrating journalists or demanding the right of reply when they think they can claim – and they often do – that a newspaper article has 'hurt the feelings of 1.4 billion Chinese people'; an outrageous claim given that 97 per cent of China's 850 million Internet users have no access to foreign media because of censorship.

The newspaper *The Australian* reported in 2017 that Apple stopped advertising in *Vision China Times* and the *Epoch Times*, two Chinese-language publications based outside China, because of political pressure from Beijing. *Vision China Times'* owner Don Ma said ten of his advertisers had been threatened by Chinese officials to get them to stop placing ads in the newspaper. In Canada, journalists complain of similar pressure from Chinese diplomatic circles.

The harassment sometimes takes more threatening or violent forms, displaying gangster-like characteristics. In Australia, Charles Sturt University academic Clive Hamilton reported in 2017 that, due to fear of Chinese reprisals, the publishing house Allen & Unwin had cancelled plans to publish his book, entitled *Silent Invasion*, about Chinese Communist Party activities in Australia. Anne-Marie Brady, an academic at the University of Canterbury in Christchurch, New Zealand, reported in November 2018 that she had been the target of a series of presumed harassment attempts after she published an article about China's political influence activities in New Zealand.

Beijing also uses blackmail and intimidation to silence dissidents, including beyond its borders. US-based journalists from Radio Free Asia's Uyghur-language services reported in 2018 that the Chinese authorities had arrested dozens of their relatives in China. There is also the notorious case of Gui Minhai, a Chinese-born Swedish publisher who was kidnapped in Thailand in 2015 and was still detained in China as of January 2020.

Banning media until compliant: 'Commercial Blackmail'

Banning international businesses until they comply with Chinese restrictive and repressive policies is another aggressive tactic that is employed by Beijing. Facebook and Twitter both have been blocked since 2009. In March 2010, Google shut down the Chinese version of its search engine following cyberattacks on the Gmail accounts of Chinese dissidents and human rights activists. Without Google to compete with, Baidu became China's market leader within a few years.

Access to China's online market, the world's leading market with a fifth of the world's

Internet users, henceforth became an instrument of commercial blackmail. To get started in China in 2014, the professional networking site LinkedIn was forced to integrate the same censorship criteria into its messaging as those used in Sina Weibo and WeChat. Other apps whose encryption methods do not permit cooperation with China's censorship methods were blacklisted. These included Instagram in 2014, and Skype and WhatsApp in 2017.

The Californian tech giant Apple – which is very dependent on China, having many of its subcontractors based there and with the Chinese market generating 20 per cent of its revenue – has also been forced to make many concessions in order 'to comply with China's cybersecurity law'. In July 2017, its Chinese app store stopped selling several VPN apps, which are often used to circumvent censorship and surveillance, while the accounts of all subscribers to Apple's iCloud China services were moved to servers in China in early 2018.

Facebook has tried everything possible, so far without success, to re-enter the Chinese market from which it was banned in 2009. In July 2018, it tried to open a subsidiary called Facebook Technology in the city of Hangzhou, however the authorities refused permission at the last minute. Despite being banned in China, the social network platform is increasingly dependent on the Chinese market. According to a report by equity research company Pivotal Research in 2018, no less than 10 per cent of Facebook's income, or about 5 billion dollars (4.2 billion euros), comes from Chinese advertisers.

Censorship has now been extended not only to internationally respected scientific and academic publishers but also to the international media. Britain's *Guardian* newspaper tried to launch a Chinese-language website in 2009 but gave up after it was blocked. *The New York Times* and Bloomberg were both blocked in 2012 when they published the findings of investigations into the fortune amassed by the families of respectively the then Premier Wen Jiabao, a man of modest origins, and the then Vice President Xi Jinping, who was already tipped as President Hu Jintao's successor. *The Wall Street Journal*, which has had a Chinese-language site since 2002, was blocked in November 2013 for a similar motive.

Censorship and surveillance: 'successful exports'

Not content with banning international media from its borders, China is also actively exporting its repressive censorship and surveillance tools around the globe. Baidu, China's leading search engine and currently the number two in the world, has tried several times to enter foreign markets such as Japan, Brazil and Egypt, so far with little

success. Nonetheless, in 2014 Baidu won a somewhat significant victory in the United States when a US federal court in the southern district of New York ruled that deleting items from its search results was not illegal, and equal to exercising a form of 'editorial judgement'.

WeChat, the instant messaging app launched by Chinese tech giant Tencent in 2011, has had more international success with more than 1 billion subscribers, and counts 10 per cent (100 million) accounts outside China, mainly in Southeast Asia. In a 2016 Amnesty International ranking of consumer messaging apps according to how well they protect online privacy, WeChat came last, with a score of 0 out of 100, as it does not provide end-to-end encryption and has all contents potentially accessible by the Chinese authorities. In November 2017, Tencent invested no less than 2 billion US dollars (1.76 billion euros) in the US multimedia messaging and photo-sharing app Snapchat, increasing its capital share to 12 per cent.

The Chinese telecom equipment and consumer electronics manufacturer Huawei holds 15 per cent of the world's smartphone market. Huawei is also complicit in the repression of the Uyghurs in the Xinjiang province, through helping the security officers in the province analyse and process data on their citizens, essentially using the province as a research lab for its surveillance products. Huawei has also been accused of installing a 'backdoor' in some of its products that allows secret access to data, and of providing its surveillance technologies to the Iranian regime. In November 2018, Huawei also launched a 'Smart City Solution', an urban population surveillance service reportedly sold to more than 120 cities in forty countries, including some cities in Europe, such as Duisburg in Germany, as well as the region of Sardinia in Italy.¹

Repressive regulations are also successfully exported. Ranked 175th out of 180 countries in RSF's World Press Freedom Index, Vietnam adopted a 'cybersecurity' law in June 2018 that radically tightens the government's grip on the domestic Internet and that was prepared in close cooperation with Chinese officials. Thailand, Cambodia, as well as various African countries are in the process of adopting similar legislation as a result of their partnerships with Beijing.

1 Slide 8 in 'Huawei Smart City Overview Presentation' (2018) showcases the 'improved' surveillance system with facial recognitions and 'big data' analysis, available at: <https://e.huawei.com/en/material/industry/smartcity/02ad4d5ab608492ea24659ec667f04bd>.

Conclusion: democracies have to react

It has taken a long time, but democracies are finally acknowledging the danger they are in by giving Beijing a free rein to gradually take control of their media and thereby extending its influence over public opinion. Governments are trying to take countermeasures, but they have so far fallen short of what is needed. China's investment capacities combined with its authoritarianism allows it to pursue a long-term strategy, while democracies are often divided and limited to short-term measures.

Some countries try to make media companies identify their shareholders for the public to know where its news is coming from and to be more aware of disinformation dangers. In September 2018, the American Department of Justice ordered Xinhua and CGTN to register as foreign agents, which means they would have to identify themselves as such in all the content they publish or broadcast. This requirement had already been imposed on the Russian government-funded TV network RT (previously known as Russia Today). Sharing similar concerns, the Australian parliament approved a Foreign Influence Transparency law in June 2018, under which foreign state media will have to register as entities acting on behalf of 'foreign principals' and Australian media will have to clearly identify any content they publish that comes from foreign state media. This stop-gap measure, however, is controversial, as it is liable to abuse by governments who are able to use this act to silence or oppose organizations that are critical to them.

Some leading media outlets are trying to diminish China's repressive influence by producing their own Chinese-language content, targeting not so much China's market, from which they will most likely be banned, but instead the domestic market, where the Chinese-speaking diaspora constitutes a promising niche market. By doing so they also aim to reduce the pro-Beijing media's influence and recover former readers.

With the help of media outlets and NGOs, whistleblowers can also act as a counterweight. In August 2018, the world was stunned to learn that Google – which pulled out of the Chinese market in 2010 to avoid complying with state censorship – was secretly preparing to re-enter it with a censored search engine code-named 'Dragonfly'. Many human rights organizations, including RSF, managed to have the project suspended.

Another possible way of combating Chinese state media's influence is to draw attention to illegal content. Peter Humphrey, a British private investigator and former journalist, filed a complaint with British broadcast media regulator Ofcom (Office of Communications) against Chinese state TV broadcaster CCTV/CGTN in November 2018, calling for its license to operate in the UK to be revoked because it broadcasted the confession he was forced to make in China in 2013.

To counter China's 'new world media order', RSF also launched two projects in 2018 with the aim of protecting and promoting journalistic freedom, independence and pluralism, and reliable news and information worldwide. One is the Journalism Trust Initiative (JTI), which aims to create a journalistic quality label. The other is the initiative on Information and Democracy, a political process designed to reinforce the key role that journalism plays in democracies.

RSF has also listed recommendations on how to deal with China's dangerous 'new world media order'. Some key points for democratic governments include requiring Chinese media to be completely transparent about their shareholders and their sources of funding, including advertising, to encourage and support the presence of independent Chinese-language media. Journalists are recommended to avoid using technological resources that are linked to the Chinese authorities, notify RSF of any China-related abuses present in their reporting, and take care to avoid using expressions designed to conceal certain realities when referring to China. Media outlets are advised to refuse all censorship and surveillance requests, and refuse to disseminate propaganda content.

As global awareness continues to increase regarding the dangers of China's 'new world media order', it is certainly not too late to take appropriate countermeasures to protect the traditional role of journalism as a watchdog protecting the rule of law, individual freedoms and human rights, and prevent it from becoming just another name for state propaganda.

Beijing: from reactive to proactive global information control

Beijing is keen to argue that the world does not have to fear a China that is growing more powerful. However, a closer look reveals that in the past decade, Beijing has been seeking to intensify, expand and export its information control regime across borders, in a coordinated and consistent effort, through a mix of censorship, surveillance and disinformation campaigns, in order to influence and shape public opinion worldwide.

Introduction

In 2017, Google's Sundar Pichai and Apple's Tim Cook both attended the fourth annual edition of the 'international' Internet conference in Wuzhen. In the keynote speech, Cook emphasized how Beijing shares Apple's vision of "developing a digital economy for openness and shared benefits". In this essay, we raise critical questions about Beijing's 'open vision' for the Internet. As Beijing is courting the world's largest technology companies, it has been simultaneously nurturing its own Internet technology companies while also developing infrastructures that enable and empower the authoritarian regime of the Chinese Communist Party, repressing and oppressing digital rights everywhere, not just in China.

We argue that the Party has shifted from a reactive to a proactive information control regime. While their information control regime earlier was largely confined to censoring speech within its own borders, it is now increasingly affecting the rights of individuals around the world. In addition, it has expanded its initial regime that consists of censorship and surveillance efforts, to a more proactive regime that also includes global propaganda and disinformation campaigns. Understanding these developments are key for understanding the future of human rights. This essay will discuss these changes and discuss the implications for human rights. We will discuss these changes based on the three pillars of China's information control regime: censorship, surveillance and disinformation. We start with an overview of Beijing's vision of the Internet and the important role of information control in it.

Information control

What does information control mean in the context of the Chinese Communist Party, and what is their aim? Historically, the Party sees communication and media strictly as a tool to further its political agenda. The Party is the arbiter of what people are allowed to see and the media are the mouthpieces (Schurmann 1971). It is in this context that we need to understand how Beijing has long been seeking to control the flow of information inside China, with the Great Firewall as perhaps its most famous metaphor. This information control regime was initially based on censorship, and as the Internet developed, Beijing incorporated extensive and expansive surveillance practices into it. In the past decade, Beijing has made massive changes in its information control strategies and policies, and these changes in turn have significant implications for human rights worldwide, as Beijing is seeking to expand its vision of the Internet to the rest of the world.

John Gilmore, founder of the Electronic Frontier Foundation, a digital rights organization, once said: “[T]he Internet treats censorship as damage and routes around it” (Elmer-Dewitt 1993). In hindsight, it would be easy to deride this comment for its technological optimism and naiveté. At its advent, many (Western) academics and politicians hypothesized that the Internet would be a democratizing force, and that it would lead to the demise of the information control regime of the Party (Laidlaw 2015). After all, the Internet is technologically and structurally different from previous media technologies: its decentralized structure and its borderless nature would make it hard if not impossible for the Party to maintain its censorship regime.

So why was the Party even interested in the Internet initially? Why would they willingly bring in a technology that had the potential to be a trojan horse? Again, the historical and cultural context provides some answers. The Party remembers and realizes that lagging behind in technological advancements is what led to the historical decline of China. The Opium Wars and the ‘Century of Humiliation’ are still remembered strongly as historical wrongs (Gries 2004). The Party believes that for China to regain its rightful position in the world, it needs to develop, embrace and lead with new technologies. However, rather than relying on ‘Western developments’, they wish to appropriate the technology in a way that adheres to ‘Chinese values’. We are now starting to see how this vision is shaping up and what that future looks like.

The following quote from an 2019 article titled ‘Sovereignty in Cyberspace’ encapsulates Beijing’s ideological vision of the Internet: “States should join efforts in consolidating broad consensus and contributing wisdom and strength, so as to build a peaceful, secure, open, cooperative, and orderly cyberspace” (China Institute of Contemporary

International Relations 2019). This quote highlights the critical and exclusive role Beijing sees for states in governing the Internet and is in sharp contrast with the diverse and inclusive multi-stakeholder model of Internet governance that the rest of the world promotes. The multi-stakeholder model of Internet governance includes not only states, but also actors from industry, academia, and civil society as key participants.

The Internet can not only be utilized as a passive tool of control and containment; instead, Beijing has been clever in adopting it for its own information control efforts. The question is no longer whether the Party can reactively censor the Internet, but increasingly also how the Party is proactively using it to extend and expand its censorship, surveillance and disinformation practices. Historically, the main focus and target of Beijing's information control regime was its own citizens. However, it is extending and expanding its scope beyond the Chinese borders. In short, the Chinese information control regime is growing from an initial domestic to an eventual global affair. It has further shifted its approach from reactive to proactive, defensive to offensive.

Internet sovereignty versus the multi-stakeholder model

The Internet is governed based on a multi-stakeholder model. This means that Internet governance aims to be open, transparent, and inclusive and that it serves as an inclusive apparatus which allows everyone, not just states, to participate on equal footing. The model advocates for and operates on transparent consensus-based decision making, and anyone with some technical know-how can become involved in the institutions and organizations that govern the Internet. The OECD, the UN General Assembly and the Council of Europe have favoured the multi-stakeholder model approach for Internet governance in official addresses. In recent years, however, Beijing has called for a change in the governing of the Internet, one that supposedly has the sovereignty of the state at its core, but that really is about giving the state sole and exclusive power over the Internet, as opposed to the more inclusive approach of the multi-stakeholder model.

These two views about how the Internet should be governed are incompatible with each other. That said, there is a legitimate question in how Internet governance can be more inclusive, especially when it comes to including voices from the developing world. In 2015, Shen Yi, a professor at Fudan University, argued that Internet governance currently is dominated by "developed nations" (North America and Europe) with Asia, Africa and South America being kept "on the margins of global internet governance" (Bandurski 2015). Beijing, playing into these frustrations, has been promoting its alternative vision to the developing world through different economic programmes. For example, governments of countries such as Vietnam, Uganda and Tanzania (Bailey 2017; Dave 2018;

Tabeta 2019) have shown interest in Beijing's vision of the Internet, especially with its emphasis on social 'stability' and economic growth (Agence France-Presse 2019). Vietnam, for example, has been tightening its Internet control laws in 2019, with some critics saying they have been modelled after China. Meanwhile the Tanzanian Deputy Minister of Communications said the following regarding Internet governance: "Our Chinese friends have managed to block such media in their country and replaced them with their homegrown sites that are safe, constructive and popular. We aren't there yet, but while we are still using these platforms we should guard against their misuse" (Woodhams 2019). As Beijing's vision of the Internet grows in influence around the world, it is therefore paramount that we understand this vision better and examine its implications for human rights worldwide.

Since 2013, the Chinese Communist Party under Chairman Xi Jinping has stepped up and tightened its ideological control across all major institutions in Chinese society, including that of the Internet. Not only are cultural institutions under increasing scrutiny, but universities, social life and corporations are feeling the pressure of an intensified information control regime as well. Under Xi, a Party directive is that Internet media should "spread positive information, uphold the correct political direction, and guide public opinion and values towards the right direction" (Xinhua 2018d). Similarly, a leading Party journal in 2017 stated that "online positive publicity must become bigger and stronger, so that the Party's ideas always become the strongest voice in cyberspace" (New America 2017). Recently major tech companies have strengthened their ties with the Party to curry favour with a regime that has become increasingly controlling and repressive. By drawing major tech companies such as Tencent into its sphere of influence, the Party can shape and control information flow both within and outside China (Bandurski 2018a). These issues of control and censorship are often framed in terms of cybersecurity, national sovereignty, social harmony, corruption and civic or spiritual values, rather than censorship or information control.

But why does Beijing even make the argument of 'Internet sovereignty'? Relying on 'sovereignty' as a political strategy allows Beijing to strongly state that other governments should not interfere in the domestic politics of China, especially when other governments are criticizing Beijing's track record on human rights. In theory, this would also suggest that Beijing has incentive to (appear to) not interfere in the domestic politics of other countries, because 'sovereignty' cuts both ways: we don't interfere with you, and you should not interfere with us. However, in recent years, what we have seen is that Beijing's information control regime of censorship, surveillance and disinformation is increasingly expanding and infringing upon other countries' sovereignty (Zetter 2018). For example, in the past decade, the list of hacking attempts that originate from China

is long. It includes attempts targeting businesses and government institutions in Europe or the United States, such as ‘Operation Aurora’ that targeted over thirty international companies in 2010, including Adobe, Google and Morgan Stanley. Or ‘Operation Ghostnet’ in 2009 that targeted foreign ministries, embassies and other government offices. In 2016 there was the massive hack of the Office of Personnel Management of the United States government, and more recently, in 2019, the network security of Amnesty International in Hong Kong was compromised.

Censorship: from national to international

A 2010 white paper details Beijing’s stance towards Internet development in China: “The Chinese government has from the outset abided by law-based administration of the Internet and endeavoured to create a healthy and harmonious Internet environment.” It further notes that China is prepared to work with other countries who are interested in furthering these goals towards a law-based Internet. It claims that Chinese citizens have “fully enjoyed freedom of speech on the Internet” as protected by the Chinese constitution (Xinhua 2010). Beijing has consistently framed its information control efforts as ‘proper management’ of public opinion and the development of a ‘safe and prosperous’ Internet that brings economic benefits to the people (Pan 2018; Mueller 2011). Over time, the denial of censorship made way for the rhetoric of ‘Internet sovereignty’. The basic argument of ‘Internet sovereignty’ is that each country should have the power to regulate the Internet according to their local laws, and that other countries should not interfere with this. In other words, Beijing argues it is within its rights to censor the Internet as it sees fit. Beijing’s stance towards Internet censorship has become more brazen overtime, from initial blanket denial that it practices censorship, to admitting, defending and legitimizing its censorship regime, based on the idea of ‘Internet sovereignty’.

Under Xi, Beijing has become more proactive in its enactment of censorship, both domestically and internationally. Again, the goal posts are shifting. From initial denial, to the legitimization of its censorship within its own borders under the label of ‘Internet sovereignty’, to censorship that now is extraterritorial as long as Beijing feels it ‘threatens national sovereignty’. For example, Beijing severely criticized Daryl Morey, the General Manager of the Houston Rockets, an NBA basketball team, when in October 2019 he tweeted: “Fight for freedom, stand with Hong Kong”. Beijing argued that: “We believe that no comments challenging national sovereignty and social stability fall within the scope of freedom of expression” (Deb 2019). Beijing used its economic leverage to put pressure on the NBA and Morey, and his tweet eventually was deleted (Palmer & Allen-Ebrahimian 2018). More everyday examples are found elsewhere. For example,

Beijing pressured international airline companies such as Qantas, British Airways, Air France and Air Canada (and many more) to phrase Taiwan as a province of China, rather than as an independent country. This falls in line with the policing of language when it comes to Chinese sovereignty (which is defined in a very broad manner). Something as simple as liking a tweet or quoting the Dalai Lama can cause ire with the Chinese government, leading to companies such as Christian Dior, Dolce & Gabbana, Versace, Coach, Calvin Klein, Swarovski, the Marriott hotel chain, Audi and Mercedes-Benz to officially apologize to China (Osburn 2019).

In addition to economic pressure, a more technical form of censorship that Beijing uses with great effectiveness is to target foreign websites through DDOS attacks. A DDOS attack targets a specific website and overloads it with traffic so that the website becomes inaccessible. Beijing has used this to target websites of organizations such as independent media organizations in Hong Kong, the Chinese *New York Times*, websites that make censorship circumvention possible, Telegram, which is used in the Hong Kong protests, and even public opinion poll websites in Hong Kong.

A more structural and legal form of censorship is the cybersecurity law from 2017 that requires international foreign companies to store data locally within China, giving Beijing even more leverage over international companies. For example, Apple was forced to set up a data centre in Guizhou, China. In 2019, Apple was subsequently pressured to remove an app from its app store that provided real time data on the Hong Kong protests, including data showing the location of where police has been active.

In addition to increasing pressure on international foreign organizations and companies, Beijing has also been further cleaning house inside its own borders: it announced increased liability for group chat moderators, on top of liability for Internet service providers, network providers, Internet platforms and so on. In doing so, it creates and institutionalizes a culture of self-censorship, where one is incentivized to not only censor one's own speech, but also to censor and practice surveillance on each other. Other measures that show Beijing is serious about information control under Xi is the banning of 'unlicensed' VPNs, making it even more difficult to circumvent censorship or protect one's identity and privacy. Last but not least, censorship is increasingly also expanding to offline areas: news reports show that police have been knocking on people's doors to pressure them into deleting their tweets (Shih 2019).

Surveillance: not just Chinese citizens

Beijing practiced surveillance on its own citizens even long before the Internet. The rise of surveillance capitalism, and the re-engineering of the Internet to catch and capture personal data, made it possible for Beijing to use the Internet to monitor and control its own citizens, and increasingly also Chinese overseas. In addition, as we argued earlier in the essay, many hacking attempts on major international businesses but also foreign governments originate from China, with the goal to not only steal valuable intellectual property, but also to enable surveillance. At the same time, Beijing will consistently portray itself as the victim while maintaining its own innocence. For example, in 2014, Hong Lei, a spokesperson of the Foreign Ministry stated: “China opposes and severely cracks down on all forms of cyber-hacking. Some US internet security firms turn a blind eye to the threat posed by the US to other countries through the internet and are bent on stirring things up by constantly talking about ‘China Internet Threat’. The so-called evidence they produce is untenable and not worth commenting” (Spencer 2014).

In addition, we also see that Beijing itself is becoming more aggressive, more proactive and more outspoken about its surveillance regime. Domestically, its surveillance regime is shifting to a more proactive approach: from limiting ‘undesirable behaviour’, to increasingly encouraging ‘desirable’ behaviour, as exemplified in the development of the social credit system. Beijing has been openly advocating, or has even been directly responsible for, the doxing of Hong Kong protesters and journalists; it has also released the personal information of a US envoy after it had met with Hong Kong activists (IChan & Blundy 2019). Internationally, there should be concern for surveillance, as Chinese software, hardware and Internet platforms continue to grow in influence, whether we are talking about Huawei building the next 5G infrastructure, or social media applications such as TikTok and WeChat, or payment systems such as Alipay. How these companies will handle personal data, from Chinese and international users, where they store these data, who will have access to them, are critical questions that currently have no clear answers.

Propaganda and disinformation

Propaganda and disinformation are highly sophisticated in targeting domestic audiences, but relatively underdeveloped in targeting international audiences at the moment of writing. However, the expectation is that these will become more sophisticated over time. Propaganda and disinformation targeting non-domestic audiences serve Beijing’s aim to shape the public discourse. This can range from relatively benign activities that resemble news, to more overt and sharper disinformation campaigns. For example, the China

Global Times network is a media outlet in English specifically meant for non-domestic audiences, that aims to help “tell the China story” to the rest of the world. This is a common discourse in Beijing rhetoric where its public diplomacy efforts center around the argument that the rest of the world is ‘simply’ misunderstanding Beijing. The more aggressive disinformation campaigns are often concerted and coordinated efforts targeting the major Internet platforms, including YouTube, Facebook and Twitter, who all in different degrees struggle to deal with astroturf accounts and bot networks that post pro-Beijing comments and harass those who are critical of Beijing (Gallagher 2019; Banjo 2019). The Internet platforms will remain a site of struggle for the foreseeable future: while the platforms are starting to take action against disinformation campaigns in general, including the ones initiated and coordinated by Beijing, they do so in different degrees. Twitter is relatively more proactive and assertive in this regard, whereas Facebook and YouTube lag behind. At the same time, the fact that the Internet platforms are (forced to become) more proactive in taking down content, also opens them up for abuse. For example, Western governments have been pressuring the Internet platforms to take more action against content that encourages terrorism, which the platforms have responded to by revising and expanding their Terms of Service agreements (ToS). However, this also means that Beijing is now able to flag content with the platforms, such as content that advocates independence for East Turkestan (Xinjiang), arguing that this content violates the platform’s ToS, which has led to the takedown of that content.

Conclusion

Beijing’s influence in controlling the global information flow is growing. This is in part the result of an expansion of its technologies and techniques across its borders, in part through abusing the openness of the global Internet platforms, and in part through relying on economic pressure due to its market size. The implications of this development for human rights are not pretty: we have seen a Beijing that has been more aggressive in asserting its information control regime not only inside but increasingly also outside Chinese borders, pressuring major businesses into doing its bidding, including Blizzard, the NBA and Apple, to just name a few. In addition, few governments so far have shown any willingness or appetite to stand up to Beijing, despite its horrendous track record on human rights.

However, it would be too easy to overstate the inevitability of Beijing’s rise. Much of this development depends on the strength of the Chinese economy, and there simply is not much reliable news that can correctly assess its current condition, let alone predict its future direction. Helping companies be more aware of the implications of relying on market access to China, or pressuring companies to move their production away from

China because of Beijing's human rights record, might be one way to put more pressure on Beijing to reform its human rights record.

We suggest that human rights organizations need to build experience and learn how to strategically put pressure on (Western) companies that do business in China. There is huge room for growth here. The time that it was just the Googles, the Facebooks and the Microsofts of the world that were affected by Beijing's human rights record is long gone. Instead, the list of companies that Beijing is trying to influence is growing longer each day: from airline companies, to luxury brands, to gaming companies such as Blizzard, to sports entertainment companies such as the NBA, there is seemingly no industry that is not affected by Chinese money in some way or another. At the same time, these companies operate in societies with governments that do at least pay lip service, and sometimes more than that, to human rights; this is rich and fertile soil for advocacy, one where human rights organizations have a lot of important advocacy work to do, and can thrive in.

In this context, it is worth observing how the ongoing trade war between the United States and China will affect Beijing's ability to continue its censorship, surveillance and disinformation practices both inside and outside China. In this context, it is also important to understand Beijing's Belt and Road Initiative: this 'cyber' belt and road allows Beijing to expand its economic influence and as such, increase its ability to shape and influence information flows. A finer point relates to how our lives are increasingly permeated by technological products, services and platforms made by and in China. And even if we decide to abstain from using them, if at all possible, many of our friends and colleagues who we communicate with might be using them, and thus potentially put our Internet safety, security and privacy at risk. To do business in China when it comes to the Internet, or information communication technology, after all means that you are (legally) required to allow and enable your data to be monitored by Beijing. To put this in contrast: whereas in the West there is a big recurring debate about law enforcement and the role and the future of encryption, and especially end-to-end encryption, with law enforcement arguing that there should be backdoors built in the encryption, the silence and the absence of this debate in China is deafening.

Marina Svensson

Chinese universities: restrictions on academic freedom and global implications

Charting Chinese academic development over the years, this essay discusses the internationalization of Chinese universities, and how education has become part of China's soft power strategy. It also addresses how political control is exercised over students and faculty, the lack of academic freedom, and repression of critical scholars, and it reflects on China's growing global role in higher education and the possible implications for foreign universities and academic freedom worldwide.

Higher education in China: a short history

Modern universities did not appear in China until the late 19th century when they were established with the support of Western educators. The oldest universities include Peking University, established in 1898, and Fudan University, established in 1905. In the 1920s and 1930s universities became hotbeds of political discussions, gathering intellectuals who were to leave a lasting mark on China's political development. The educator Cai Yuanpei was a strong supporter of the idea of academic freedom and recruited many distinguished scholars from across the political spectrum when he served as president of Peking University. Inspired by this open climate and enraged by the humiliating Versailles Treaty that transferred German concessions in China to Japan, students from Peking University took the lead in the May Fourth Movement in 1919 protesting this treaty. The movement was also part of a larger cultural movement that attacked traditional values and demanded individual freedoms, freedom of speech and democracy. During this period, new periodicals and translations of Western works helped spread new ideas, including Marxism. Foreign educators such as John Dewey, who were invited to give lectures at different universities, had a deep impact on the development of Chinese higher education. Students continued to be active in various political movements and many were recruited into the Chinese Communist Party (CCP) that was established in 1921. Scholars and students held different views and took different sides in the struggle between the Nationalist Party and the CCP, but the war against Japan radicalized many of them. After the CCP's victory, many scholars decided to stay in the mainland or returned from abroad in order to help develop the country.

After 1949, universities were nationalized and foreign educators left the country. Instead China turned to the Soviet Union and invited Soviet experts in different fields. Universities were now reorganized and stricter control over higher education was enforced together with ideological (re-)education of scholars and students. But for some time scholars enjoyed relative freedom and exhibited great belief in the CCP. All this changed with the Hundred Flowers Campaign when scholars, and others, were encouraged to speak up and identify problems in society. Mao Zedong quickly turned against his critics and hundreds of thousands lost their positions. Many were sent to labour camps where some spent up to twenty years before being rehabilitated. With the Cultural Revolution, that began in 1966, attacks on institutions of higher learning led to an even stronger politicization of education, the closing down of universities for some time, attacks on certain topics and fields of thought, persecution of scholars, and the sending of students and teachers to the countryside, while Red Guards and Revolutionary Committees took control. The enrolment of students was based on class background and revolutionary fervour rather than academic merits, and left a whole generation without proper education while also seriously harming China's scientific development.

Educational reform and internationalization: establishing world-class universities

The economic reform period initiated by Deng Xiaoping in the late 1970s involved restoring higher education institutions, reinstating professors, opening closed departments in for example law and anthropology, and rebuilding the exam system (*gaokao*). Realizing the need to catch up in science and technology, China also began to send students abroad. Since the 1980s, the Chinese government has invested massively in higher education and R&D, with the latter currently standing at 2.1 per cent of GDP. Whereas in 1949 there were only 181 universities, today there are some 3586 universities, and around 40 per cent of the age cohort attends university (quoted in Schulte 2019). In the 1990s, two successive policies launched by the Ministry of Education selected a number of universities for special investment and support. In 2003, nine top universities formed the C9 League, and in 2017 the Chinese government announced the Double World-Class University Project that seeks to establish 42 world-class research-driven universities and 465 disciplines (among 140 universities) by 2049. The Chinese state's investment is biased towards the natural sciences and the applied sciences in terms of funding and enrolment, showing that higher education policy is closely linked to China's efforts to modernize and become a leading knowledge economy and scientific power.

These strategic efforts are paying off and three of the C9 universities are now among the top one hundred on the Times Higher Education list. China is also scoring high in terms of scientific publications in the natural sciences, and is one of the leading countries when it

comes to patents and new technology such as AI. Through the China Scholarship Council, many PhD students and scholars are getting important training and experience abroad at the same time as many undergraduate students study abroad with private funds. In 2017 some 600.000 Chinese students went abroad to study, making the total number of students enrolled abroad that year 1.4 million (figures from the Chinese Ministry of Education quoted in D'Hooghe et al. 2018: 4). In order not to suffer from a brain drain, China in 2008 started the Thousand Talents programme to attract scholars back to the country. Chinese universities are also increasingly attractive for foreign teachers and researchers due to competitive salaries and impressive research facilities (e.g. D'Hooghe et al. 2018). Questions have however been raised whether the massive investment in higher education and hardware is sufficient for an innovative knowledge economy, or if indeed investments have led to break-through discoveries, at the same time as concerns are raised about plagiarism, corruption and unethical research (The Economist 2019; Schulte 2019).

Another striking development is the internationalization of Chinese universities. It is not only a question of hiring foreign teachers but also of developing English language programmes targeting foreign students, providing scholarships, organizing summer schools, and establishing joint programmes with foreign universities. Today some 440.000 foreign students are enrolled in Chinese universities (Altbach 2019). The number of African students have for example steadily increased since the late 1990s, and in 2016 some 62.000 African students were studying in China. The majority of them were studying medicine, the natural sciences, and engineering, apart from the Chinese language (Li 2018). Many of them are self-funded but there are also large numbers of students from African, as well as Asian, countries who receive Chinese scholarships. Scholarships have long been one part of Chinese aid programmes to African countries, and today also as part of the Belt and Road Initiative. Since the early 2010s, scholarships and investments in higher education have also come to be explicitly seen as part of China's soft power strategy, with the aim to create a more positive image of China and the Chinese political and economic development model. Chinese higher education is today very attractive to many African students who would not have the same opportunities at home. It is difficult to measure whether and how their experiences affect their view of China, but many are impressed with the economic development and scientific progress of the country (Li 2018).

There are more than one thousand Sino-foreign joint education ventures at the undergraduate level in China and nine joint venture universities (Sharma 2018). They however have to operate in a restrictive environment and accept the limits to academic freedom that exist in China. Chinese universities are also establishing branches abroad, mainly in Southeast Asia, and are involved in different educational cooperation projects as

part of the Belt and Road Initiative (e.g. D'Hooghe et al. 2018), which help strengthen China's presence and influence also in the field of higher education.

For foreign scholars interested in China, the reform period has meant new possibilities to stay in the country as students and visiting scholars, do fieldwork, and engage in collaboration with Chinese scholars, something that was not possible before, although many topics remain out of bounds. In recent years many scholars have reported difficulties, including with respect to access, at times having been denied a visa, leading to self-censorship in order not to put their Chinese colleagues and their own careers at risk (Chestnut Greitens & Truex 2018). Certain geographical areas are quite difficult to access for foreign researchers, including in particular the Xinjiang Uyghur Autonomous Region since 2014, which also severely limits the scope of critical and in-depth research about many aspects of the Chinese society. It is in the field of the humanities and social sciences that political control and restrictions are more strongly felt, whereas scholars in the natural sciences generally do not experience the same difficulties in their collaborations. This has created a gap in perception and understanding among different groups of foreign scholars and higher education institutions regarding the extent and impact of political control and restrictions on academic freedom.

Control over higher education: political education and ideological steering of research

Since 1949, the CCP has tried to maintain strict control over universities, although scholars and students have remained some of its most outspoken critics. The 1980s saw a strengthening of Chinese universities and a more open academic environment, growing enrolment of students, and an influx of foreign students and researchers. The legacy of May Fourth and the ideologically freer climate of the 1980s inspired students and gave rise to the 1989 democracy movement. Students then again took to the streets and voiced demands for greater freedom, independent student associations, and human rights. The movement was however brutally crushed and the Chinese state launched 'patriotic education' campaigns to offset the influx of Western ideas among students (Wang 2013; Yan 2014). Efforts to win the hearts and minds of teachers were also made by way of improving their financial situation and work conditions. The Chinese state has furthermore encouraged education and research in the hard sciences while keeping more control over the humanities and social sciences, and enrolment in the former is also much higher (Yan 2014).

The Higher Education Law in article 10 provides that the state "ensures the freedoms of scientific research, literary and artistic creation and other cultural activities in higher education institutions". However, institutions and individuals need to adhere to CCP

ideology, and the task for higher education is thus, on the one hand, to ensure political socialization of students through political education and control over teaching and textbooks, while, on the other hand, also promote critical thinking so as to advance innovation and research in order to become world-class universities (Du 2018). Chinese universities, like other administrative units, are governed dually by the administration and the CCP under what is called the Presidential Responsibility System under the Leadership of the University Party Committee (Wang 2013: 335). Control over faculty and students is exercised through party groups and so-called political counsellors who maintain close contacts with and control over students (Yan 2014). Other organizations involved in ideological work and political control include the Communist Youth League and the student union. In 2010, 11 per cent of university students were said to be members of the CCP (Yan 2014: 506). During politically sensitive periods, such as June Fourth, campuses are particularly closely monitored. Political control over universities and students however affects students and scholars differently depending on the geographical location of the university, so that universities in minority areas experience more control and repression.

Political education has always been an obligatory part of the university curricula and this was enforced and developed further after 1989 (Wang 2013; Yan 2014; Perry 2015; Du 2018; Scholars at Risk 2019). The obligatory courses normally include Marxist theory and the thinking of Chinese political leaders such as Mao Zedong, Deng Xiaoping, and in recent years also Xi Jinping, as well as more general topics related to what is called moral education. It is also worth noting that students in the humanities and social sciences have more hours of political education than students in the natural sciences (Yan 2014: 501). In recent years there has been a growing concern about the efficiency of political education among political leaders and educational authorities, despite the fact that students have not been very active politically since 1989. Under party secretary Xi Jinping there has been an ideological tightening and increased control of the university sector as part of the general repression affecting civil society and the media. In 2013, the so-called Document Number Nine, an internal document issued by the General Office of the CCP's Central Committee, was circulated to officials at different departments, including at universities (ChinaFile 2013). It lists seven taboo topics, i.e. constitutional democracy, universal values, civil society, neoliberalism, press freedom, 'historical nihilism', and questioning China's system and approach to socialism. These topics now have to be avoided in teaching and research. Since then, Xi Jinping has on a number of occasions called for stronger ideological guidance of students and demanded that universities become strongholds of the CCP, and also argued that teachers should help students "improve in ideological quality, political awareness, moral characteristics and humanistic quality" (Phillips 2016b), whereas teachers are subjected to evaluations on their "ideological performance" (Taber 2018).

The Ministry of Education has also emphasized the importance of Marxism and not using textbooks containing so-called Western values. In 2016, it announced that it intended to improve political education, and in May 2019 it unveiled a five-year training plan for teachers through a series of courses on Marxism and 'Xi Jinping thought', which they were expected to integrate into their own teaching (Mudie 2019b). Research funding is given to prioritized topics, and many sensitive topics, such as civil society, human rights, and social unrest, do not receive funding or only to the extent they are framed as helpful for political control and strengthening of government legitimacy. Scholars might also be disadvantaged in their careers or receive disciplinary punishments and even lose their jobs due to their views and research (Hao & Guo 2016; D'Hooghe et al. 2018; Scholars at Risk 2019). After the Ninth CCP Congress, in 2017, adopted Xi Jinping Thought on Socialism with Chinese Characteristics for the New Era, centres for the study of Xi Jinping Thought have been established at many universities and today research funding is also allocated for this purpose. In addition, there exist many restrictions related to publications, and censorship is common in academic publications as well as on the Internet, with negative implications for critical research.

Silencing debates and outspoken scholars: self-censorship, surveillance, and detention

For some time scholars were able to create open spaces at universities. They for example created saloons and public lecture series on social issues and legal developments, inviting outspoken intellectuals, lawyers and famous journalists to give talks. They organized screenings with independent documentary filmmakers, as well as involved students in different civil society and charity activities. Since 2013, universities' abilities to serve as a public space for critical debates have become much more restricted and many individuals are no longer invited to give lectures. Students involved in labour activism have been subjected to disciplinary actions or have even disappeared or were arrested (Yang 2019). In the recent, more restricted environment, scholars have also been disciplined and silenced and some have lost their jobs or went into exile (Phillips & Pilkington 2016). In the Xinjiang Uyghur Autonomous Region (XUAR) a very sinister development is taking place as some 300 scholars and students are among the reportedly one million people incarcerated in large internment camps (Uyghur Human Rights Project 2019). They include scholars in various fields, including music, ethnology, history, law, and medicine, who have been targeted because of their ethnic identity and commitment to their own culture.

There have always existed different bodies and institutional mechanisms, including Party committees and informants, monitoring students and teachers at Chinese universities. With new technologies new forms of monitoring and surveillance have also been

developed, including surveillance cameras in classrooms, and monitoring of students' social media use. The use of student informants who report on teachers has reportedly increased in recent years (Bandurski 2018b; Mudie 2019a). Through various means such as ideological education and pressure on teachers, use of student informants, ideologically decided research funding, censorship of publications, and control over promotion, it is possible for the CCP to force teachers to engage in self-censorship and steer their teaching and research away from sensitive topics (Hao & Guo 2016; D'Hooghe et al. 2018; Scholars at Risk 2019). This is more strongly felt in the humanities and social sciences. The situation however varies between universities and research has shown that in some cases teachers have ways to circumvent or ignore some of the restrictions while students, through passive resistance, might be impervious to political education (Du 2018).

Chinese influence on higher education abroad

China is today an important player in the global field of higher education. Many universities in the West are increasingly dependent on tuition-paying Chinese students and the China Scholarship Council funded PhD students. Many also receive support for language training through Confucius Institutes. The Confucius Institutes have grown worldwide since the first one was established in 2004, including in many Asian and African countries. They mainly focus on language teaching and cultural issues, but have come under criticism in several countries for presenting a very selective view of China, avoiding any critical topics, and being embedded in universities harming the independence of these universities (Redden 2019). A number of universities in the West have therefore in recent years closed their Confucius Institutes. It is obvious that the Confucius Institutes are part of China's soft power strategy and aim to stimulate interest in Chinese language and culture while avoiding problematic issues.

A growing number of universities in Western countries are either involved in joint ventures in China or have collaborations with Chinese universities. The fact that the Chinese government has a strong interest in research and collaboration in the natural sciences and medicine, and the financial means to support it, has also led to large-scale collaborations and financial dependencies in this field (D'Hooghe et al. 2018). In African countries, China's influence is much more direct in the form of investment in higher education facilities and training of African students (Li 2018).

In the last couple of years, warnings have been raised about China's growing global influence not only in the fields of politics and economics but also in the field of higher education (Benner et al. 2018; D'Hooghe et al. 2018; Diamond 2018; Scholars at Risk

2019). It has been reported that the People's Liberation Army (PLA) has sponsored Chinese students and scholars and that they might engage in intellectual property theft or espionage (e.g. Joske 2018). Another worrying phenomenon is that foreign publishing houses have engaged in self-censorship and succumbed to Chinese pressure to remove articles considered sensitive in order to have access to the Chinese market. The first known case was that of *The China Quarterly*, owned by Cambridge University Press, which removed hundreds of articles. The press later reversed the decision but since then it has been revealed that other publishers have succumbed to similar pressures (Loubere & Franceschini 2018). Another concern is the issue of self-censorship among scholars working on or in China, as well as among universities involved in collaboration projects (Chestnut Greitens & Truex 2018; Stone Fish 2018; Lloyd-Damnjanovic 2018). Finally, there is a growing concern about the Chinese government's control of Chinese students abroad as they can be subject to pressure and intimidations, asked to inform on each other, as well as be called upon to voice criticism if teachers/universities address what the Chinese government regards as sensitive topics (Redden 2018). In this way, the Chinese government could also threaten academic freedom and critical debates abroad. It is however important that Chinese students and scholars are not stigmatized and viewed with suspicion just because of their ethnicity and citizenship (Perlez 2019). Despite much reporting in the media, a recent study found no evidence of large-scale and concerted political influence on European higher education institutions, although more worrying signs and direct involvement have been reported from Australia, New Zealand and the US (D'Hooghe et al. 2018; Brady 2017; Lloyd-Damnjanovic 2018; Redden 2018; Scholars at Risk 2019).

Future trends and implications

China's emergence as a global superpower has also made it an important actor in higher education as a result of the country's high spending on R&D, use of higher education as a soft power tool, closer interaction with foreign universities, and, in many cases in the West, the latter's financial dependency on Chinese students. It is also obvious that the Chinese political and economic model, and Chinese investments, including in higher education, is winning support in many countries in Africa that are wary of Western critique of their human rights record.

There is an urgent need to more closely discuss China's higher education in the context of human rights and international affairs, as well as monitor the conditions for academic collaboration and educational exchange, and the implications for human rights both in China and abroad. In order to defend academic freedom and human rights there are several steps that foreign governments, universities, professional associations, and

individual scholars need to take. There have also recently been suggestions for how to better monitor academic exchange with China (e.g. D'Hooghe et al. 2018) and develop codes of ethics for these collaborations. Human Rights Watch and Scholars at Risk have for example suggested a code of conduct for universities, which entails speaking up on academic freedom, protecting Chinese students and scholars, and disclosing Chinese government funding (Human Rights Watch 2019; Scholars at Risk 2019). In this context it is worth remembering that a number of China's top universities, together with many foreign universities, are signatories to the Hefei Statement, adopted in 2013, that proclaims "the exercise of academic freedom by faculty ... without undue constraint." It furthermore regards "...tolerance, recognition and welcoming of competing views, perspectives, frameworks and positions as being necessary to support progress, along with a commitment to civil debate and discussion to advance understanding and produce new knowledge and technologies" (AAU et al. 2013). These and similar commitments need to be addressed in collaborations and MoUs, and more collective efforts have to be made by regional and international institutions to protect academic freedom globally. In certain areas with serious human rights implications, for example research and collaboration in the field of big data and AI, more vigilance and restrictions are needed (e.g. Harney 2019).

Given a growing awareness and debate within the academic community and among policymakers, and a robust commitment to academic freedom, China is not likely to have much influence on higher education institutions in the West. The situation is complex and uneven, however, since the commercialization of higher education makes many universities very vulnerable, and China's financial clout makes it a powerful player in many African countries.

Eva Pils

**Countering transnational repression:
what governments and civil society organizations
working on human rights and rule of law promotion
in China need to consider**

As China's influence is expanding, governments and civil society organizations engaging with China must better grasp the logic of Party-State repression that can make them complicit and develop strategies to avoid complicity.

Introduction

Some ten years ago, I suggested to a Western lawyer working with a large, foreign civil society organization running rule of law promotion programmes in China that he should meet some of the human rights lawyers I was conducting research on: a set of people working on Party-State injustices, issues at the very heart of the most serious human rights-based challenges to the system. He declined, explaining that although he was deeply interested in their work, meeting these individuals would be too risky – the authorities would be sure to notice it, and it might trigger tightened government monitoring and retaliation. If his organization was thought to collaborate with these radical system critics, it might even be forced to shut down its Beijing office.

I accepted this explanation. But I found it troubling. In the years since, the problem it captures has become more serious. To address this problem, we need to understand the logic of transnational repression. I do so here by discussing the authoritarian constraints affecting human rights and rule of law promotion in China, the problems of 'graduated repression' of domestic civil society, and the further effects of repression on transnational civil society and the international community.

The complexity of human rights and rule of law 'engagement'

Since Deng Xiaoping started the 'Reform and Opening' policies in the 1980s, a host of actors in liberal democracies – governments and NGOs, the media, researchers and their institutions, professionals in law firms, as well as business enterprises of all kinds – have developed ever closer ties with counterparts in China. Their interactions vary greatly,

depending on what objects they pursue, and in many cases, these objects are mixed. For example, universities ‘engaging’ in China may be doing so in quest of knowledge and exchange, but also be seeking out the opportunities of an uncharted higher education market.

An important subset of civil society actors has worked to disseminate the ideas, values and best practices of liberal democracies and of the rule of law.¹ They have played crucial roles in helping domestic civil society structures emerge in China (Spires 2012; Kellogg 2012; Spires 2018). While a few institutions such as the Ford Foundation had started engaging on these issues with Chinese counterparts already in the 1980s, the vast majority of such ventures date from the 1990s onward. They started after the watershed experience of June Fourth, 1989, which brought a decision by the Chinese leadership to continue with economic opening but shut down political reform.

From its inception in the 1990s, however, civil society engagement with China has occurred in the shadows of Party-State repression, because calls for certain kinds of human rights improvement, such as free speech secured by democracy and the separation of powers, have been treated as ‘subversive.’ Such engagement has also coincided with a kind of ‘human rights diplomacy’ in which some human rights violations were addressed as a concession to foreign governments – for example, when the government released political prisoners on the occasion of a western state visit – while the Chinese government used multiple ways to claim that its overall human rights record, assessed by international organizations and mechanisms, was improving (Kinzelbach 2014; Pils 2018), for example, because China “has lifted millions out of poverty” (Zwart 2016),² and to argue for a sequentialist understanding of human rights progress: address socio-economic issues first, and civil and political rights later.³

1 Examples for this include the American Bar Association’s Rule of Law.

2 “There can be no doubt that of all UN member states, China has been the most successful in guaranteeing the rights laid down in the [Universal] Declaration [of Human Rights]. Since its launch of reform and opening up, hundreds of millions of people have been lifted out of poverty... It is a huge accomplishment which ranks among the greatest human rights achievements of all time.” (Zwart 2016). It is of course true that Chinese society has become much wealthier. But this fact does not directly speak to the continued systematic violation of civil and political rights, unless it is claimed, as some scholars do, that authoritarianism may have been a necessary, causal factor enabling Chinese society to become more prosperous. The negative hypothesis sometimes implied in such claims is that a failure to repress calls for democracy with violence would have brought instability and lack of prosperity, a claim that officials of the system have on occasion endorsed (see Gilson & Milhaupt 2011; Lee 2019).

3 On the idea of sequentialism see Carothers (2009).

The logic of gradated domestic repression

The Party's conflicting stated goals – promoting rule of law reforms, while maintaining undivided power – meant on the one hand that it tolerated or even supported human rights promotion efforts it saw as relatively non-threatening, such as efforts to alleviate poverty, address education inequality, and help workers (as long as the workers did not organize to defend their rights collectively). On the other hand, it persecuted human rights advocacy it saw as politically subversive and continued to insist on its role as custodian of public discourse, using propaganda and censorship as it saw fit.

This created a sense that there was an important distinction, a red line, between 'sensitive' and 'non-sensitive' human rights work in China. Grasping this distinction could be seen as acquiring a basic, required form of political literacy, as it seemed to offer a way of 'engaging' while also staying safe and keeping others safe.

An NGO working on employment discrimination issues, for example, could work with Hepatitis B carriers relatively undisturbed, because the government wanted to overcome discrimination against this group. But working with HIV/Aids carriers was more 'sensitive' because in some contexts, the government was being blamed for having caused HIV infections, e.g. by contaminated blood transfusions. Working on discrimination against citizens officially classed as 'peasants' was in some ways even more challenging, because the classification system underpinning this discrimination rests on Party-State laws.⁴

Similarly, a criminal defence lawyer might find it challenging enough to work on a death penalty case with a client from whom a false confession has been extracted by torture, because exposing the torture meant accusing the torturers. But the challenges of this case paled in comparison to those of exposing systematic torture of 'Falun Gong' practitioners, as lawyer Gao Zhisheng discovered at great cost: having exposed such practices online, he was forcibly disappeared and brutally tortured himself. Gao was also ostracized by many of his colleagues, including some who were committed to the same goals as he. His colleagues reproached him for being too provocative – or too 'radical' (discussed in Pils 2007).

Domestic repression of civil society advocacy has long been 'gradated,' it has reflected the bifurcation of the sensitive and non-sensitive. Holding out the prospect of gradual improvement of human rights overall, the authorities have attempted to inculcate in

4 The fate of the NGO Yirenping is discussed e.g. by Fu (2014) and Webster (2011).

civil society communities the sense that they could operate and advocate their ideas, as long as they did not cross a ‘red line’ separating what was tolerated, non-sensitive and still safe from what was sensitive and hence dangerous and risked persecution.

Yet, this red line is not defined in legal terms. It exists only in the minds of those who hope to stay safe or keep others safe and who keep trying to extrapolate their position from what the authorities say and do. It is constantly shifting. The Party-State, of course, has no interest in defining it (Pils 2015). Perry Link’s famous image of “the anaconda in the chandelier” remains pertinent; it captures the unpredictability of the system’s always-latent violence (Link 2002).

The psychology of the red line does not, at least not necessarily, reflect self-interest. If, for example, an advocacy group instructs a co-worker that they must not take on ‘sensitive’ clients, this may be for the understandable purpose of shielding the entire group from persecution. Often, the desire to stay safe is motivated by ethically impeccable considerations of shared responsibility and caring concern for others. If participation in one ‘too sensitive’ signature campaign or collaboration with a ‘too radical’ rights defender might bring disastrous consequences for an entire, vulnerable NGO or research centre, ‘staying safe’ can seem like a reasonable and responsible option. Yet the psychology of the ‘red line’ becomes a tool to marginalize ‘sensitive’ causes and their advocates, and to trigger pre-emptive self-censorship among potential supporters.

Scholars have described this phenomenon as ‘gradated control’ as well as ‘relational’ repression (Deng & O’Brien 2013; Wu & Chan 2012). The desire to be ‘on the safe side’ means there must be a red line; but when one has decided to comply with demands for reasons perhaps best described as prudential, a nagging desire to validate that choice by denouncing the choices of others who have ventured further out often follows. Havel’s narrative of the greengrocer defensively “conceal[ing] from himself the low foundations of his obedience” captured this psychology well (Havel 1986).

Nobody struggling and on occasion failing to maintain independence in their advocacy and activism can be blamed. In the absence of legitimate political power and genuine political obligation, all these actors are operating under duress. Obedience may have (very) ‘low foundations’, but in light of the enormous threats of domestic repression, there is no obligation to resist (Hay 2011).

The effects of China's rising influence on the dynamics of global engagement

China's influence has expanded rapidly. Exchange, cooperation and engagement with China occur increasingly on the terms set by the Chinese Party-State or its agents which, for example, have in recent years intensified their control of Chinese academic institutions engaging with foreign counterparts. Not only, but perhaps most prominently when establishing Confucius Institutes (CI), foreign universities may face stringent requirements, reportedly including compliance with Chinese law, in accordance with CI policies, and non-disclosure of the terms of their engagement (Peterson 2017; Sander-son 2018). These terms of engagement put rights and freedoms central to the working of their host institutions at risk, and these host institutions, accordingly, are at risk of becoming complicit in repression.

The context in which interaction takes place is also increasingly shaped by China's global media presence. For example, the Chinese Party-State has successfully internationalized its media through the creation of ventures such as CGTN as CCTV's international arm, and through the co-optation of foreign media outlets. Its media organizations are reportedly able to offer employment to media professionals often struggling with problems like casualisation and low pay, a fact that further enhances their profile (Lim & Bergin 2018).

The Party-State has now also fully woken up to the opportunity it has to reshape rules of international law. In the wake of Xi Jinping's 'Belt and Road Initiative', pro-Party legal scholarship has begun to emphasize the Party's "dual mission" for the "rejuvenation of the Chinese nation", as well as the "shared future of humankind (*renlei mingyun gong-tongti*)", for which the Party under Xi Jinping envisages China's model of governance as what it calls the "China Solution (*Zhongguo fang'an*)" (Tian 2018). As president Xi put it in an April 2019 publication:

"China must go to the world and participate in international affairs as a responsible great country. It must get better at operationalising legal governance [fazhi]... As the global governance system is going through a critical period of adjustment and change, we must actively participate in the formulation of international rules and become participants, promoters and leaders in the process of global governance changes." (Xi 2019)

This statement characterizes external relations as a *struggle* in which law is a weapon, and reshaping 'global governance' is part of this struggle. The subtext to this passage is that the global order is to be reshaped in line with the principles of Party leadership

of the law used in China. Law is not absent from this governance scheme, but it is evidently not intended to limit the Party's power; rather, the primacy of the Party must become a part not only of domestic, but also of international law.

At the level of international institutions, China's rising power has enhanced its ability to influence decisions, for example, by UN institutions (Worden 2019). China's global influence is also exercised through its investment strategies, such as the 'Belt and Road Initiative', which has raised concerns about the creation of host country dependencies, for example as a result of large infrastructure projects in the context of which foreign countries become indebted to Chinese actors,⁵ and through new international organizations channelling China's influence. In the field of human rights monitoring, China's clout and its appeal to other autocratic regimes were demonstrated when in July 2019, a group of 37 countries issued a letter praising China for the running of 'vocational education and training centers' and other policies in the Uyghur Autonomous Region of Xinjiang, after a group of 22 countries had sharply criticized China for these practices. They are widely reported to involve coercive detention, torture and deaths in custody and a former UN Special Rapporteur has since characterized them as 'genocidal' (Putz 2019; Jeffries 2019).

The attempt to reshape governance at the global level has been particularly pronounced in the context of human rights norms. Examples include attempts to internationalize the Party-State's conception of 'human rights' in ways that weaken the existing international legal order. The December 2017 'Beijing Declaration' on human rights omits mentioning freedom of expression as a fundamental right and rejects what it calls 'politicization' of human rights issues (Xinhua 2017e). The world it envisages is a world in which the realization of human rights goals is left to the 'sovereign' decision of nation states subject neither to the compulsion of international rights norms constraining their powers, nor to the criticisms, denunciations and exposures of transnational civil society; it is a world of 'human rights' without human rights advocacy. A March 2018 motion to have a resolution on 'Win-Win Cooperation' passed by the Human Rights Council, similarly intended to leave the realization of human rights to governments (Chinese Mission to the United Nations Office at Geneva 2018). Overall, the Party-State propagates a state-centric view of human rights promotion that can dispense with the need for independent, bottom-up human rights advocacy, thus "mak[ing] the world a safer place for autocrats" (Cumming-Bruce 2018; see also Borger 2018). This state-centric account of 'human rights' is incompatible with the principles of public international law, yet it is propagated as superior.

5 A widely discussed example is Sri Lanka. See e.g. Perera (2018); Dennis (2017). See also Yu (2017).

The logic of transnational repression

As the world has globalized and China's economic and wider geopolitical influence has grown, novel dependencies have been constructed between domestic and Chinese actors. These have begun to shape not only the broader terms of interaction, as discussed in the previous section. In the twenty-first century, while we can leave China's national territory, we can no longer leave its sphere of influence, wherever we go. As a result, acts of repression can more easily travel across the borders of the Chinese legal-political system.

Human rights defenders and dissident exiles from China were among the first to notice this trend. For example, in 2013, human rights defender Cao Shunli was forcibly prevented from travelling to Geneva to participate in human rights NGO activities; in detention, she was denied proper medical treatment, and she died some months later from this neglect (Cao 2014). In 2014, after Teng Biao, a human rights scholar and lawyer now living in the US, gave a speech in Victoria Park, Hong Kong, on the anniversary of June Fourth, 1989, the regime stopped his wife and young daughter from leaving the country because they were "wanted in investigating a suspected case endangering national security". They had to leave, unofficially and dangerously, via the country's south-western border. After they had all moved to the US, Dr Teng continued receiving death threats aimed to stop him doing his work (Chao & Gooch 2018). In other cases, transnational repression has 'relational' features. The wife of Nobel Peace Prize laureate Liu Xiaobo, Liu Xia, for example, is being controlled remotely by the threats to her family, and as a result, she feels forced to weigh the consequences of what she says from her exile in Germany (Haski 2019).

The patterns of insidious influence 'over here', outside China, that characterize engagement with China more broadly, however, are not simply replications of control patterns 'over there' in China. It is only in China that the Party-State fully controls residents' liberty and security of person, for example. While during the decades of 'Reform and Opening' the system had adopted many improvements to protect this central right better, it has in some respects regressed over the last decade. For example, since 2012, it has seen the introduction of six-month incommunicado detention and the introduction of *liuzhi* detention in cases of investigation of official discipline violations.⁶ The human

6 The Criminal Procedure Law revision of 2012 introduced 'residential detention in a designated location' as a form of detention available, for example, in cases of suspected crimes against state security (section 71) (Cohen 2016). The introduction of the *liuzhi* mechanism under the 2018 Supervision Law meant that those investigated for a wide range of infractions could be 'retained for questioning.' The Supervision Law requires detainees under this system to 'answer questions truthfully' and makes no mention of a right of access to lawyers (The National People's Congress 2018).

rights violations entailed by these concerning deteriorations are limited to PRC territory; the Party-State cannot export them at will.

Yet, it has extended serious violations of liberty through a number of strategies. China has engaged in the unlawful cross-border abduction of people it wishes to hold for various reasons – examples have included abduction for the purpose of internment in Xinjiang, as well as the abduction of ‘wanted’ persons from the Hong Kong Special Administrative Region (Dorfman 2018). China has also assiduously negotiated bilateral extradition agreements with numerous countries, including France and Spain, and obtained individual extradition or deportation ‘success’ with even more, including Canada, New Zealand, and the United States (Eder & Lang 2017; Choo 2018).⁷ The fact that China has been able, in so many cases, to secure extradition agreements, one-off extradition, or repatriation by other means, is a concerning sign that governments are also vulnerable and at risk of becoming complicit in potentially very serious human rights violations.

It is probably in the realm of freedom of expression and associated rights that transnational repression has been most successful to date. Again, the methods of repression are in many ways dissimilar from those used domestically, as of course, the government cannot directly censor expression in other countries, and it can only punish ‘speech crimes’ transnationally in those rare cases when it succeeds in bringing the ‘perpetrators’ under the control of its criminal process. A few egregious examples have included the cases of the ‘Hong Kong booksellers’ abducted into PRC territory, clearly in retaliation for their publishing activities, and the case of Professor Feng Chongyi, a concerned legal scholar based at Sydney University, whom the authorities held and interrogated for some weeks “on suspicion of a crime” against national security, simply because he had been conducting research on domestic human rights defenders.

Because the regime in most cases cannot directly use coercive force to censor and (from its perspective) ‘manage’ public expression in transnational contexts, the psychology of the ‘red line’ becomes particularly important in these settings. It works not only against dissidents in exile as in the already mentioned cases of Teng Biao and Liu Xia. It has also proved very effective against other – individual and institutional – actors in liberal democracies, who may have mixed reasons for complying with pressure. In some cases, as when a publishing house complies with requests to censor its publication on request, the motivation seems to be purely or largely commercial self-interest. It seems that in

7 Deportation can serve as a means of overcoming unavailability of extradition.

these cases, the Party-State has a particularly easy game: its request to censor was promptly complied with in the famous cases of Cambridge University Press (CUP), for instance (The Economist 2017). However, where self-interest motivates self-censorship, the threat of reputational damage can reverse the decision, as it did in the case of CUP. In other cases, the motivation for compliance is mixed and includes concern for partners more vulnerable to the Party-State's fearful machinery of direct coercion and repression.

Political scientists have, especially since 2017, started discussing the rising role of authoritarian systems in liberal democracies as a matter of 'sharp power', 'authoritarian advance', and similar concepts.⁸ As theorists of 'sharp power' have pointed out, authoritarian influencing does not involve admiring support for the Party-State's mode of governance – it is not an exercise of 'soft power' in Joseph Nye's sense.⁹ Rather, as Walker & Ludwig argue, it exploits an asymmetry between open liberal-democratic systems and closed authoritarian systems, making democracies, in particular "the spheres of culture, academia, media and publishing", more vulnerable (Walker & Ludwig 2017: 6).

Yet, from the perspective of actors in democratic systems, it is very important that we remain focused on our agency and our responsibility. In many contexts of engagement with actors in China and other repressive systems, we have opportunities to avoid complicity with transnational human rights violations.

Conclusion: countering repression

The most central and important, yet also hard-to-accept insight urged by a comparison of domestic and transnational modes of CCP repression, is that they work in similar ways. If anything, transnational repression relies more heavily than its domestic counterpart on the psychology of the 'red line' – on self-limitations produced to 'stay safe' in situations of duress – and therefore, we need to accept that transnational repression works through actors in liberal democracies contributing, if involuntarily, to its expansion. How, then, to counter such repression and wider attempts to expand oppressive modes of governance beyond China's borders? States and civil society both have responsibilities.

At the level of states, it is important to strengthen efforts to resist China's influence, where it would lead to human rights violations. For example, Australia refrained from

8 See Walker & Ludwig (2017); Walker (2018); Benner et al. (2018); Godement & Vasselier (2017).

9 Nye classifies it as a form of hard power, see Nye (2018).

signing an extradition treaty with China, following a critical political debate (Smyth 2017), whereas in Sweden, a successful case was brought against the extradition of a corruption suspect; the decision of the Swedish Supreme Court in this case highlighted that countries under the European Convention of Human Rights may violate their obligations when extraditing people into the Chinese criminal process (Hermann 2019). States may also need to consider the options of travel bans and asset freezes to avoid providing support to individuals responsible for human rights violations in their home countries.¹⁰

At the level of civil society actors engaging with partners in China, we need to recognize the institutional and political constraints under which interlocutors and collaborators operate. Failure to understand the constraints that affect, say, an academic visitor or CSO partner result in implausible and potentially harmful expectations. In particular, we need to reject the illusion that potential repression of partners in China can be managed like other risks, if only we work out where the ‘red line’ is and stay away from ‘sensitive topics’ or ‘sensitive actors’, preferring only to interact with ‘safe’ partners on ‘safe’ topics. In order to address the problem of self-censorship, we should provide as much transparency as possible on the terms of engagement with Chinese partners (for example, by publishing agreements on university and research collaboration) and establish funding risk screening mechanisms with a view to avoiding financial dependencies from autocratic actors. There also needs to be a better understanding of how the Party-State envisions its own global role and position. To achieve this, we need to look beyond the propaganda for foreign consumption; we need to consider what China *does*, in addition to what it *says* about international human rights law.

10 On Magnitsky legislation in Europe, see e.g. Portela (2018).

Engaging China on human rights

Over the past decade, human rights strategy toward China has gone from being focused on conditions inside the country to a greater emphasis on China's influence beyond its borders. Under the current circumstances, we must strengthen commitments to multilateral engagement and ensure China is hearing human rights messages from the 'Global South'.

Introduction

The preceding essays lay out in detail the many facets of the evolving context in which both states and non-state actors interact with China on human rights issues. For roughly two decades, between June 4th, 1989 and the 2008 Beijing Olympics, international human rights concerns about China were focused on conditions inside the country. This focus, in combination with a set of assumptions about the transformative power of global capital, information technology and civil society development, contributed to a set of strategic choices aimed at gradually promoting change in China from within. To achieve this, it was widely believed, required pursuing a strategy of 'engagement'.

Over the past decade – and particularly since Xi Jinping's ascendance to power in 2012-2013 – additional focus has been directed at China's human rights influence beyond its borders. Just as in the previous phase, the current approach to China is shaped by the view of the country as an emerging 'great power', whose global influence as a competitor is surging at the same moment when many of the institutions of the global liberal world order are under strain. This has led many to conclude that earlier strategies of promoting reform from within are no longer adequate and that we now need to focus on countering China.

I contend, however, that the solution does not lie in a false choice between 'engagement' and containment. China poses a systemic challenge to international human rights and other global rules-based regimes. Survival of such systems in the face of this challenge necessitates expanding our understanding of 'engagement' and accepting that our interactions with China will have to be both constructive and critical. Furthermore,

we must strengthen commitments to multilateral engagement going beyond European, trans-Atlantic or 'Global North' actors. For a system of universal human rights to be capable of holding all states accountable, including China, we must work harder to ensure that China hears strong support for such a system coming from the 'Global South' as well.

What's wrong with 'engagement'?

In many accounts of how states and other actors interact with China on the subject of human rights, 'engagement' is often juxtaposed with a more confrontational approach commonly referred to as 'naming and shaming'. In this understanding, 'engaging' China entails working pragmatically together with Chinese counterparts to improve the environment for human rights protection in China. The hallmarks of this approach are things such as bilateral human rights dialogue, technical cooperation and capacity-building work. To 'name and shame', on the other hand, is to set down a marker designating China's behaviour as being outside the bounds of what is acceptable.

Proponents of 'engagement' thus understood have tended to shun public condemnation of certain Chinese behaviours or policies, because they believe that the Chinese response to criticism will inevitably threaten the ability to carry on with cooperation. This is obviously an advantage if you are a state pursuing trade, security or other interests with China, since these are much less likely to be jeopardized by human rights 'engagement'. It is also useful for non-governmental organizations whose effectiveness is measured by the number and results of cooperative ventures it can establish with Chinese partners.

The problem is that, when we adopt this understanding of engagement, we inevitably (albeit perhaps unintentionally) cede China the power to set the conditions under which interaction is allowed to continue. As Eva Pils points out in her essay above, the impact of China's implicit and shifting 'red lines' shapes the boundaries of what subjects, groups and individuals may be involved. With concern that Beijing may call a halt at any time if these lines are crossed, engagement can easily become an end in itself, rather than a means to achieving the goal of improved human rights protection. This risk grows when the prospects of such an objective are particularly distant.

Engagement and its (un)intended consequences

This type of 'engagement' with China on human rights was the furthest thing from most people's minds immediately after the bloody crackdown on protesters in Beijing and

other Chinese cities in 1989. Sanctions and attempts to pass condemnatory resolutions at the UN Human Rights Commission followed, but these were soon displaced in favour of bilateral human rights dialogue. Advocates of these dialogues considered them more constructive and productive than divisive, politicized fights over whether and how to condemn China. And China made some concessions by being more transparent about its treatment of prisoners, releasing a few for good measure at strategic moments and agreeing to talk about reforms to its penal and criminal justice systems.

With hindsight, it is easier to see how the dynamic between China and its dialogue partners began to shift as Beijing won the bid for the 2008 Olympics, China entered the WTO and the United States launched its calamitous 'Global War on Terror'. Meanwhile, China benefitted economically from expanding trade and access to markets and many of its dialogue partners benefitted as well. Nevertheless, it would be overly cynical to say that economic interests were entirely behind the shift toward dialogue and constructive engagement and away from more critical and confrontational approaches. Accelerating economic growth over the course of the 1990s and 2000s was accompanied by the kinds of social changes that encouraged the view that China could be transformed from the bottom up. Though the authorities launched repressive campaigns against democracy campaigners, Uyghur and Tibetan activists and Falun Gong practitioners during this period, space opened up over time for legal reform and formation of civic activism. China signed both human rights covenants and ratified the ICESCR. A clause proclaiming the state's role in protecting and respecting human rights was added to the constitution in 2004.

Meanwhile, media commercialization and the transformation of communication technologies created new space in which to develop new forms of sociability and solidarity, express grievances and expose wrongdoing, and demand accountability via rule of law and human rights. Even after the 2008 Beijing Olympics, when the authorities began tightening up the relative openness of the early Hu Jintao era, it was still possible for many to believe in a strategy of encouraging China's further global integration, economic growth, technological innovation and support for civil society and reform-minded members within the system.

And there is no question that this was in many respects a fruitful period in terms of reform and civil society growth. But instead of leading to a more open, participatory and rights-friendly political regime, the very progress achieved during this period led to a political retrenchment and backlash that has had serious consequences for human rights in China. Since taking the helm of the Chinese Communist Party in 2012, Xi Jinping has trampled upon the many green shoots of the prior decade and taken steps to prevent

them from re-emerging. The authorities cracked down on civil society activists like Xu Zhiyong and jailed or threatened hundreds of human rights lawyers. Tighter restrictions were placed on the Internet and media to ensure that critical voices were unable to reach a broad audience. Academia has come under considerable pressure to promote correct 'Marxist' thought and avoid discussion of 'universal values'. Chinese innovations in surveillance technology and artificial intelligence are being actively used to exert social control, and a comprehensive and broad portfolio of legislation has been put in place in the name of protecting 'national security'.

All of this has been a reaction to the perceived danger to the Chinese Communist Party's grip on power posed by an autonomous civil society capable of demanding justice and accountability from the government. Due to this retrenchment, it has become much harder to pursue many of the activities that had made up 'engagement' before 2013. Beijing looks with growing suspicion on outside efforts to promote 'colour revolutions' and has taken steps to defend itself by passing broadly worded legislation to protect 'secrets', exert more control over cyberspace and regulate interaction between international organizations and their Chinese partners. The result has been to channel what cooperation is allowed to remain away from grassroots organizations towards organizations with closer ties to the Party-State that facilitate tighter scrutiny and control over their activities.

The challenges are many

One theme that emerges from the preceding essays is the profound incompatibility between the idea of universally binding norms and institutions that underlies the international human rights system and the state-centred approach that China takes with respect to human rights and other areas of global governance. As Hsu and Chen show in their essay above, the Chinese Party-State has never embraced the liberal universalist view of human rights. Yet, in the last decades of the 20th century it was not uncommon to hope that China's increasing integration into international systems would be conducive to its 'socialization' and turn it into a stakeholder committed to preserving those systems.

Seen from today's vantage point, this optimism has largely gone unrewarded. As Mitchell makes clear, China has remained consistent in its aversion to any system of universal norms that potentially limits sovereign power. As Brooks and others have shown above, China now uses its position within the human rights system – in league with other states drawn to its side for ideological or material reasons – to push a development-first human rights agenda that threatens to upend the fundamental understanding of human

rights as a universal, integrated and indivisible set of norms. Meanwhile, China's coalition of allies helps to prevent the human rights system from holding it and other states accountable for violations of treaties that they have ratified.

Another theme of the discussion above is the effectiveness – or at least impact – of Chinese narratives. The essays by Alviani and Svensson describe China's efforts to enhance its global narrative power by establishing footholds in foreign media and universities. As Wintgens and Kellner note, this has had a particular impact in Latin America, where homegrown expertise and knowledge of China are limited. Where China effectively has the field to itself, it can deliver messages with very little competition. In places where critical views of China are more established, like Europe, North America and Australia, it is enough for China to find ways to encourage existing doubts about economic inequality and the effectiveness of democratic institutions. The objective of China's 'soft power' effort is therefore not always to produce more favourable opinion. Many Chinese narratives are pushed merely to sow doubt about and squeeze out other views – particularly other views about China.

The impact of this for human rights goes beyond China's efforts to promote its particular vision of human rights or gain support for ideas like the 'community of shared future for [hu]mankind'. China actively uses its global media influence to cover up serious violations of human rights, such as when it broadcasts videotaped confessions of suspects who have been coerced or tortured. Until leaks of official documents in November 2019 confirmed the brutal realities of China's systematic incarceration of more than 1 million Uyghurs and other members of predominantly Muslim ethnic groups in Xinjiang, China had enjoyed considerable control over explaining its policies as 'vocational training' that was widely welcomed and essential to ensuring the region's prosperity. Put simply, if China can convince enough of the world that there is no wrongdoing, then human rights become an ineffective vehicle for accountability.

More engagement, but different

The mere fact that past human rights 'engagement' has failed to prevent these developments in China does not necessarily mean that we should abandon all engagement in favour of containment or pivot automatically to a strategy of 'naming and shaming'. Instead, we need to start by revising our vocabulary and understand engagement in more neutral terms as any sort of interaction. This means you can have both 'constructive' engagement, aimed at achieving consensus, and 'critical' engagement, aimed at addressing areas of fundamental disagreement. This is important, because we need to normalize the expectation on all sides that, given the current state of affairs, we will

have both types of engagement with China and cannot shy away from areas where views diverge.

For Europe, particularly, this will require a stronger commitment to internal solidarity on China policy and speaking with one voice. Europe should make clear that China cannot expect ‘business as usual’, while it sets clear expectations on the fulfilment of human rights obligations by China as a condition for engagement on other issues.

There is great urgency to finding a new approach to engagement with China on human rights issues, and not only because of the seriousness of its domestic situation. Even as China attempts to shape the international rules-based order to its liking and weaken the human rights system as it presently exists, there is a need to set new norms and standards in a variety of areas with major implications for human rights. Some of these, like the impacts associated with corporate activity (see the essay by Potter) or the human rights impacts of climate change (see the essay by Sadeler), are urgent because they have been left relatively under-addressed for too long. Others, such as the harms associated with technologies of surveillance and artificial intelligence, are urgent because the pace of innovation strains our ability even to understand the risks they currently pose to human rights, let alone predict what risks may emerge in future.

The reality is that if we are going to make any progress at achieving human rights protection on fronts like these, we need China to be part of building and enforcing effective new international rules and institutions. Otherwise, any steps to regulate in these areas will suffer from the effects of an unlevel playing field. Chinese state and corporate activity, both inside and outside its borders, is deeply implicated in each of these problems – as are the activities of states and companies throughout the world. As in other human rights issues, China is *part of* the problem, not the problem itself. But given the degree to which China routinely rejects external constraints on its sovereignty, its willingness to be a constructive stakeholder in new systems remains an open question. Nevertheless, there appear to be few alternatives.

However, it will not be enough for those in the ‘Global North’ to make these commitments and take steps like the ones I have described. For one thing, China already has well-established narratives to dismiss criticism from the ‘usual suspects’ as hypocritical and sinister efforts to undermine China, interfere in its domestic affairs and prevent its rise as a global power. More than that, however, China’s success at leveraging trade, aid and investment into support from other countries has allowed it to outmanoeuvre critics at the United Nations and other international bodies (see the essay by Brooks). China’s leaders appear to assume that if they can count on the support of these countries’

leaders, who seem more than willing to speak the words China wants to hear if it means keeping the economic taps flowing, then the people of these countries will at least tacitly share the view that development and collective benefits should be prioritized over accountability and individual rights.

This is the reason human rights organizations like Amnesty International are increasingly looking for ways to mobilize local stakeholders in the ‘Global South’ to engage with and influence China on human rights. Slogans about ‘win-win’ cooperation and investment may sound nice, but the reality is that the kinds of mega-infrastructure projects touted by China’s Belt and Road Initiative almost always result in some people losing out – particularly if there are inadequate safeguards in place to mitigate potential harms to affected communities. Our goal should be to strengthen systems for human rights protection in cross-border investments generally, not preventing China in particular from making such investments.

With regional offices and national entities spread across the world, and in many of the regions where Chinese investment and other activity are already underway, Amnesty aims to reach out to local rights holders and civil society organizations and help equip them with the support, knowledge and tools to engage Chinese entities, negotiate their interests and protect their rights. To be effective and aligned with local civil society interests, voicing demands on core issues of transparency and consultation around Chinese activity must also support efforts to promote human rights in host countries, many of which have existing struggles with governance and accountability. We should also take care to acknowledge the positive benefits that development aid and investment in infrastructure can have for enhancing people’s lives and enabling them to enjoy their rights. Many of the challenges people are confronting as China’s influence spreads are not uniquely Chinese.

At the risk of tautology, the reality is that the only way to maintain international rules-based systems is to deepen and broaden the commitment to international rules-based systems. This will require real commitment from many more states to support these institutions and be accountable to these norms. It also means making a stronger case for the role that global norms and institutions can play in addressing the most serious problems people are facing today. These include addressing economic inequality, weak political accountability and the consequences of climate change. Unless we can make human rights relevant to problems like these, we will be hard-pressed to compete with the illiberal ‘solutions’ put forward by China or from populist politicians around the world.

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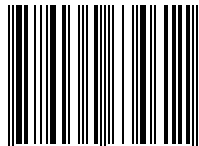
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