

# Human Rights in Europe-China Relations: Assessing European Normative Power Effectiveness

Zsuzsa Anna Ferenczy\*

PhD Candidate, Free University, Brussels  
Political Advisor, the European Parliament

## Abstract

Historically the Union has never excelled in hard power, nor struggled to gain leverage from its economic weight, but it has been widely acclaimed and self-acclaimed a normative power, an ideological power, a leader by example. Europe's normative identity originates in pursuing its normative power externally through its foreign policy. More importantly however, only by internally acting as a role model can Europe be considered a normative power. This paper argues that European normative power effectiveness in human rights in China remains limited. First, it claims that a conceptual divergence between Europe and China remains an important factor hampering effectiveness. The two sides embrace different values in their development; Europe insists on democracy, rule of law and human rights, and China on sovereignty and non-interference. Second, the paper maintains that Europe's fragmented foreign policy continues to present challenges in the pursuit of human rights, whereby its principled narrative is not followed through. As a result, difficulties persist in establishing effective European institutional coordination to put the narrative into practice, leading to fragmented policies that Beijing has exploited to its own benefit. Third, the paper claims that the series of crises within and beyond Europe's borders have put further pressure

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\* Zsuzsa Anna Ferenczy is a political advisor at the European Parliament and Phd candidate at Free University, Brussels. Her dissertation on European normative power effectiveness in Europe-China relations is expected to be published in 2017. Zsuzsa Anna is also expert consultant on China and North Korea at Human Rights Without Frontiers'. Email: [zsuzsaanna.ferenczy@europarl.europa.eu](mailto:zsuzsaanna.ferenczy@europarl.europa.eu)

on Europe's power of example, and therefore its ability to pursue human rights. In spite of these limitations however, the paper reveals that a principled European human rights narrative has gradually taken shape regarding China, with Europe's increasing role as an international actor, the result of the common efforts and contributions of European institutions.

### **Keywords**

European foreign policy, policy fragmentation, European External Action Service (EEAS), normative power, normative divergence, China, human rights

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“The fact that we live in an international society means that what we want and, in some ways, who we are, are shaped by the social norms, rules, understandings, and relationships we have with others. These social realities are as influential as material realities in determining behaviour. Indeed, they are what endow material realities with meaning and purpose. In political terms, it is these social realities that provide us with ends to which power and wealth can be used.”  
(Finnemore, 1996)

On Europe's role in the world, the 2016 Global Strategy for Foreign and Security Policy announced that a strong Union is one that ‘thinks strategically, shares a vision and acts together’. It proposed, *inter alia*, living up to the values that have inspired Europe's creation and development, including human rights.<sup>1</sup> The same year, European High Representative Federica Mogherini announced 2016 to be the year of human rights activism, for a more effective human rights policy under the banner #EU4HumanRights. ‘The EU has a longstanding commitment to the universal protection and promotion of human rights’, she declared.<sup>2</sup> Meanwhile, speaking on China's diplomacy and global role, Wang Yi, China's Foreign Minister said that ‘diplomacy is the extension of domestic affairs’.<sup>3</sup> China's diplomacy will therefore serve to build

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1 Shared Vision, Common Action: A Stronger Europe, A Global Strategy for the European Union's Foreign and Security Policy, June 2016, available at [https://europa.eu/globalstrategy/sites/globalstrategy/files/eugs\\_review\\_web.pdf](https://europa.eu/globalstrategy/sites/globalstrategy/files/eugs_review_web.pdf)

2 Mogherini kicks off human rights events, 15 March 2016, for more see [http://eeas.europa.eu/top\\_stories/2016/150316\\_eu4humanrights\\_en.htm](http://eeas.europa.eu/top_stories/2016/150316_eu4humanrights_en.htm)

3 A Changing China and Its Diplomacy, Speech by Foreign Minister Wang Yi at Centre for Strategic

a moderately prosperous society and to build China into a modern socialist country that is prosperous, strong, democratic, culturally advanced and harmonious by 2049. Achieving this, he explained, means defending China's legitimate national interests and fulfilling due international responsibilities. More importantly, China would never export its development model because 'every country has the right to choose a development path suited to its own conditions'.

These two visions on the future of diplomacy reveal very different aspirations. Europe places human rights high on its foreign affairs agenda, 'an outward and forward looking European foreign and security policy'.<sup>4</sup> China insists on making no outward claims for external norm projection, by presenting itself as a 'responsible power' that deserves respect and equal treatment from other powers (Chen, 2009: 12–13). The visions diverge, as Yang Jiechi, State Councilor of the People's Republic of China adequately suggested in 2016: 'China and Europe are different in development stage, ideology and social system'.<sup>5</sup> In light of these differences, this paper assesses the effectiveness of European normative power in human rights promotion in China. First it provides a brief description of the dynamics in European foreign policy and the role of the European institutions in engaging China, identifying the mechanisms by which it tries to influence China's attitude towards human rights. Second, it identifies the priorities Europe has committed itself regarding the issue. Third, it reviews the state of debate on Europe's record in pursuing these priorities. Fourth, it examines Europe's record in pursuing the priorities in the context of its fragmentation. The paper ends with findings on European normative power effectiveness in light of the implications of the Lisbon Treaty on foreign policy, and of Europe in current times of crisis.

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and International Studies, 26 February, available at [http://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/zyjh\\_665391/t1345211.shtml](http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1345211.shtml)

4 A Global Strategy for the European Union's Foreign and Security Policy, 2016, available at <http://europa.eu/globalstrategy/en/global-strategy-promote-citizens-interests>

5 China's Development and China-Europe cooperation: Sources of positive energy for the world, Speech by H.E. Yang Jiechi, State Councilor of the People's Republic of China at the French Institute of International Relations, 14 April 2016, available at [http://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/zyjh\\_665391/t1355580.shtml](http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1355580.shtml)

## Dynamics in European Foreign Policy and Human Rights

Historically the European Union has been widely acclaimed and self-acclaimed a normative power, an ideological power, an *idée force*, a leader by example (Manners, 2002: 235–258). Scholars define ideological power as the power of ideas, through which the power-sender's ideas penetrate and shape the will of the power-recipient (Galtung, 1973). Ian Manners has argued that in order to count as 'normative', an actor has to use normative justification rather than physical force or material incentives that can be seen as legitimate, has to engage in persuasive actions and have socializing impact and broad consequences in world politics (Manners, 2009). Europe's normative identity originates in pursuing its normative power externally through its foreign policy. Human rights, democracy and the rule of law are at the foundation of its external action as the Lisbon Treaty, with the launch of the European External Action Service (EEAS), Europe's diplomatic corps, has recently reconfirmed.<sup>6</sup> Europe's foreign policy vis-à-vis China is therefore designed in a way that enables and pursues projecting normative power through diplomacy, engagement and dialogue. Yet, this must reflect an equally normative agenda pursued internally. Only by acting as a role model can Europe be regarded as a legitimate and credible normative power. Thus, in the words of Ian Manners, the most important factor shaping the international role of the EU is not what it does or what it says, but what it *is*, a unique international entity (Manners, 2001).

Thomas Risse has pointed out that every great power in the history of international relations has tried to promote a certain set of values — from the Roman to the British empire, from the Soviet Union, which tried to promote communism on a global scale, to the USA, which countered it with its own vision of democracy and capitalism. What makes Europe's case interesting is that it started behaving like any other great power in this regard, even though its agency in foreign affairs has long been disputed (Risse, 2012: 87–95). Stephanie B. Anderson has argued that creating a distinct foreign policy identity is the whole point of the EU's efforts in external affairs (Anderson, 2008). Studying Europe's human rights policies and the interaction of the institutions involved in the process allows separating its core values — solid, permanent and unchanging as enshrined into law — from its motivations —

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6 Explaining the Treaty of Lisbon, Brussels, 1 December 2009, [http://europa.eu/rapid/press-release\\_MEMO-09-531\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-09-531_en.htm?locale=en)

fluid and changing desires to achieve different goals. The aspiration behind Europe's goal to strengthen its global role is at the same time material — to promote economic interests — and ideational — to contribute to a better world. What is more important in defining Europe as an international actor, is the willingness it shows and the capacity it has to implement policies. This determines its legitimacy and ultimately its credibility in holding up claims of global relevance. There is an often-noted gap between the EU's grandiose rhetoric as 'normative' and its practice of prioritizing geostrategic and security interests over democracy and human rights (Risse, 2012: 87–95). The 'capability-expectations gap' as conceptualized by Christopher Hill implies the discrepancy between the expectations the EU engenders and its limited ability to pursue the actual policies needed for fulfilling its envisaged roles in world politics (Hill, 1993: 305–328). This is in close connection with Europe's fragmented governance structure, implying tension between member states and institutions, adding pressure on foreign policy and making implementation all the more difficult.

The Lisbon Treaty aimed at strengthening Europe's adaptation capabilities to a changing world. Research suggests however that the setting up of the EEAS has revealed signs of back-tracking by member states over an effective implementation of the Lisbon Treaty in the external domain.<sup>7</sup> Strong resistance to efforts to improve European external action created the impression that the Union is condemned to live with some sort of permanent flaw in its foreign policy system (Vimont, 2015). Stefan Lehne has drawn attention to the implications of the euro crisis on the future development of Europe's foreign policy, arguing that if the Eurozone breaks up, foreign policy would simply be part of the collateral damage (Lehne, 2012). As long as dealing with the financial crisis consumes all of Europe's political energy, it is difficult to imagine the EU having the capacity to take any serious steps to raise its level of capability in order to meet expectations (Nielsen, 2013: 723–739). Internally the financial crisis has strengthened tendencies to focus on the 'national' as opposed to the 'European'. These reflections emphasize the serious implications of Europe's inherent fragmentation for its foreign policy, including its human rights policy.

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7 Upgrading the EU's role as global actor, Institutions, law and the restructuring of European diplomacy, Center for European Policy Studies, 2011, available at [http://www.epc.eu/documents/uploads/pub\\_1218\\_upgrading\\_the\\_eu\\_as\\_global\\_actor\\_e-version%5B1%5D.pdf](http://www.epc.eu/documents/uploads/pub_1218_upgrading_the_eu_as_global_actor_e-version%5B1%5D.pdf)

It is important to understand policy-making on a *European* level as a complex process bringing together — and against each other — different member states and institutions in a fluid interaction of divergent interests and priorities. The European Commission has the exclusive right of policy initiative, but has to work closely with the European Parliament and the Council. In foreign policy, the intergovernmental method rules, whereby national interests dictate individual priorities. The ultimate decision-making body is the Council, which comprises the heads of state and government, and meets four times a year to define policy principles. Even with the creation of the EEAS member states retain most of their sovereign rights and powers (Vimont, 2015). Individual priorities are then negotiated and built into European level policies, via consensus building.<sup>8</sup> In this process Europe's fragmentation is considered a structural factor leading to its lack of ambition as an international actor (Lehne, 2011). European foreign policy-making therefore remains a tightly controlled and rigid process. Thomas Risse has stressed, that in spite of the many indictments of Europe's foreign policy, there have been more than 1000 common strategies, common positions and joint actions under the Common Foreign and Security Policy (CFSP) since 1993 and more than 2000 foreign policy statements made by the EU Council and Presidency between 1995 and 2008 (Risse, 2012: 87–95).

To address the challenges of fragmentation, the EU High Representative has called for stronger Europe in her Global Strategy.<sup>9</sup> This is one aspect, among others, that the Lisbon Treaty intended to fix by reinforcing the community method and by strengthening institutions without hurting member states. The policy highly affected by these difficulties remains human rights. Their effective external promotion requires strong and consistent internal cooperation. Considering internal fragmentation, a European-level human rights policy towards China has proved to be difficult to implement. The EEAS represents the Union in relations with China. Elaborated under the guidance of the High Representative, and adopted by the Council, the Annual Report on Democracy and Human Rights presents an important pillar of the EU's human rights policy. The annual exercise sets out the efforts of the EU, through the High Representative, the EU Special Representative for Human

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8 Discussion with Wolfgang Pape, Brussels, 14 December, 2012

9 Shared Vision, Common Approach: A Stronger Europe, A Global Strategy for the European Union's Foreign and Security Policy, June 2016, available at [https://europa.eu/globalstrategy/sites/globalstrategy/files/eugs\\_review\\_web.pdf](https://europa.eu/globalstrategy/sites/globalstrategy/files/eugs_review_web.pdf)

Rights, and the EU global network of delegations, to promote the universality of human rights across the world.<sup>10</sup> This document is in line with the Action Plan on Human Rights and Democracy, adopted by the Council, and with its Strategic Framework on Human Rights and Democracy.<sup>11</sup> These core documents prescribe Europe's approach to China in human rights, reinforced by its Guidelines, Council Conclusions and strategy papers.

At the same time, the European Parliament prepares its own Annual Report on Democracy and Human Rights.<sup>12</sup> The High Representative, in her capacity as the Vice-President of the European Commission, has the role to promote the implementation of all these policies, with the close involvement of the European Parliament. In this spirit, the 2015–2019 Action Plan explicitly stresses that ‘it is important that the European institutions **work together**, while respecting their distinct institutional roles and competences’ (highlight original).<sup>13</sup> This echoes the EU-China 2020 Strategic Agenda for Cooperation, jointly signed by the EU and China in 2013.<sup>14</sup> The latest EU Strategy on China stresses that the EU's engagement with China will be ‘principled, practical and pragmatic’, staying true to its interests and values, based on a positive agenda of partnership coupled with the constructive management of differences.<sup>15</sup> Since 1995 the Human Rights Dialogues have offered a platform to discuss human rights. At the same time the EU has been increasingly using its cooperation programs to promote human rights, including the European Instrument for Democracy and Human Rights. Managed by the EEAS, the Working Party on Human Rights (COHOM) of the Council oversees the implementation of the Dialogues, as well as the different human rights

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10 Human rights and democracy: EU annual report 2015, for more see <http://www.consilium.europa.eu/en/press/press-releases/2016/09/20-human-rights-annual-report/>

11 Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019, 20 July 2015, available at <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

12 See for example the 2016 Report: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0355+0+DOC+XML+V0//EN>

13 Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019, 20 July 2015, available at <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

14 EU-China 2020 Strategic Agenda for Cooperation, 2013, available at [http://eeas.europa.eu/archives/docs/china/docs/eu-china\\_2020\\_strategic\\_agenda\\_en.pdf](http://eeas.europa.eu/archives/docs/china/docs/eu-china_2020_strategic_agenda_en.pdf)

15 Joint Communication to the European Parliament and the Council, Elements for a new EU strategy on China, Brussels, 22.6.2016, JOIN(2016) 30 final, available at [http://eeas.europa.eu/archives/docs/china/docs/joint\\_communication\\_to\\_the\\_european\\_parliament\\_and\\_the\\_council\\_-\\_elements\\_for\\_a\\_new\\_eu\\_strategy\\_on\\_china.pdf](http://eeas.europa.eu/archives/docs/china/docs/joint_communication_to_the_european_parliament_and_the_council_-_elements_for_a_new_eu_strategy_on_china.pdf)

guidelines the EU has established.<sup>16</sup>

Complementing my desk research the most valuable contribution has come from the analysis of the interviews I conducted, in English, with European and Chinese officials and academics on Europe-China relations, in Brussels, Beijing, Singapore and Taipei between 2013 and 2016.<sup>17</sup> Considering that my research has focused on European-level policies, interviewing officials engaged in the European institutions' relations with China was the most adequate choice. Nevertheless, throughout the research I acknowledged the co-existence of policies towards China of both the individual member states and the collective European institutions. Concerning the European side, I identified officials in European institutions working in the services most relevant to my research, including the EEAS, the European Commission, the Council and the European Parliament, focusing on Europe-China relations and strategic planning concerning Asia. The officials pointed out that dealing with the complexities of intra-institutional cooperation in shaping Europe's China policies was an omnipresent task, or as they referred to it, a 'challenge'. This reoccurring reflection contributed to my decision to consider the relevance of Europe's fragmentation to the level of its effectiveness. The selection of officials was primarily determined by the services I thought to be the most relevant, closest to shaping Europe's agenda towards China, from a great variety of member states, including Germany, France, Italy, Belgium, United Kingdom, Austria, Hungary and Greece.

Concerning the Chinese side, I approached the Mission of the PRC in Brussels and discussed with officials dealing with relations with Europe. On my visit to Beijing in 2015 I visited various academic institutions, including the Chinese Academy of Social Sciences (CASS), the China Institute of International Studies (CIIS) and China Institutes of Contemporary International Relations (CICIR), without however managing to visit relevant governmental departments. But given the close ties these institutes entertain with the government, and their important role in shaping official policies, their input was sufficient to my assessment. I similarly participated at a series of conferences dealing with Europe while in Singapore in 2014, in China in

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16 More on COHOM: <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-human-rights/>

17 Between 2013 and 2016 I interviewed thirty-six officials and academics in Brussels, Beijing, Singapore and Taipei, eighteen European and eighteen Chinese and Taiwanese.



2015 and in Taipei in 2016, where I exchanged with scholars with expertise in European affairs. During my fellowship in Taipei I met academics and officials from the Ministry of Foreign Affairs of the Republic of China, whose views brought additional contribution to assessing perceptions on European normative power.

## Europe's Human Rights Priorities vis-à-vis China

Since the 1995 Commission Communication, 'A Long-Term Policy for China-Europe Relations', commitment to safeguard human rights has been an objective at the heart of Europe's China policy.<sup>18</sup> Europe has claimed to socialize China with universal standards that are at its own foundation, i.e. human rights, democracy and rule of law.<sup>19</sup> This signals that in Europe's China strategy human rights protection is inseparably linked to other political goals. Research shows that Europe's political goals have always relied on its economic diplomacy, which has from the outset constituted the major external expression of its weight globally (Smith, 2001: 787–802). Therefore external policy activities are, in many respects, dominated by economic considerations and by the use of economic instruments in a broad sense, Michael Smith has argued (Smith, 2014: 35–48). Andrew Moravcsik has equally stressed that the core of Europe's activity and its strongest constitutional prerogatives remain primarily economic, almost exclusively in the area of trade-related areas (Moravcsik, 2002: 603–624). Given that China is a dynamic economic challenger, it is crucial to keep this context in mind when assessing Europe's effectiveness in human rights, in particular when considering Europe being torn between the pursuit of interests and values.

The review of Europe's China policies reveals its aspiration to stay true to its norm-driven commitments. Along with economic diplomacy, the 2001 Strategy reflected a consensus that there was scope for making European policies more effective by broadening cooperation and fine-tuning existing instruments.<sup>20</sup> In 2003, Europe's new Communication stated that human rights

18 A Long-Term Policy for China-Europe Relations, 1995, available at [http://eeas.europa.eu/china/docs/com95\\_279\\_en.pdf](http://eeas.europa.eu/china/docs/com95_279_en.pdf)

19 The other four objectives were to upgrade political dialogue; support the process of economic and social reform; make better use of existing European resources and raise Europe's profile in China, stressed in its 1998 Commission strategy paper. For more see Communication from the Commission, Building a Comprehensive Partnership with China, Brussels, COM(1998).

20 Communication from the Commission to the Council and the European Parliament, EU Strategy towards

concerns have been given priority focus.<sup>21</sup> In 2003 the European Security Strategy noted that ‘spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order’, reflecting a comprehensive approach to human rights protection.<sup>22</sup> More importantly it indicated Europe’s own interest in pursuing these values together. In the same vein its 2006 Communication highlighted that the EU ‘should support and encourage the development of a full, healthy and independent civil society’ in China.<sup>23</sup> As its human rights agenda suggested at the time, ‘democracy and human rights are inextricably linked’; they have become ‘a systematic feature of European foreign policy and external action through political dialogues and conditionalities.<sup>24</sup> In the 2012 Strategic Framework and Action Plan on Human Rights and Democracy, Europe placed universal human rights at the center of bilateral relations.<sup>25</sup>

Along the maturing of Europe-China relations into a ‘comprehensive strategic’ partnership, Europe narrowed human rights to specific priorities.<sup>26</sup> I identified the following: 1. the death penalty (1998 Guidelines, revised in 2008); 2. freedom of expression online and offline (2014 Guidelines), freedom of media, association; 3. minority rights and freedom of religion

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China: Implementation of the 1998 Communication and Future Steps for a more Effective EU Policy, 2001, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0265&from=EN>

- 21 Commission Policy Paper, A maturing partnership - shared interests and challenges in EU-China relations, COM(2003)533, p. 9, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0533&rid=2>
- 22 A Secure Europe in a Better World, European Security Strategy, Brussels, 12 December 2003, available at <https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>
- 23 Communication from the Commission to the Council and the European Parliament, EU-China: Closer partners, growing responsibilities, Brussels, 24 October 2006, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0631&from=EN>
- 24 Communication from the Commission to the Council and the European Parliament, Thematic Programme for the promotion of democracy and human rights worldwide under the future Financial Perspective (2007-2013), COM(2006)23 final, Brussels, 25 January 2006, available at [https://ec.europa.eu/europeaid/sites/devco/files/communication-promoting-human-rights-worldwide-com200623-20060125\\_en\\_5.pdf](https://ec.europa.eu/europeaid/sites/devco/files/communication-promoting-human-rights-worldwide-com200623-20060125_en_5.pdf)
- 25 EU Strategic Framework and Action Plan on Human Rights and Democracy, Luxembourg, 25 June 2012, 11855/12, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)
- 26 The two partners agreed to establish a strategic partnership in 2004 at the seventh EU-China Summit in The Hague on 8 December 2004 [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/er/82998.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/82998.pdf)

(2013 Guidelines); 4. human rights defenders (2004 Guidelines); 5. reform of criminal justice system. The 2012 Strategic Framework on Human Rights and Democracy has highlighted these priorities, as the key document guiding the EU's actions in the field. At the same time, the same rights have been at the centre of the EU's human rights-related initiatives towards China led by the different institutions and its main documents, including the EU Human Rights and Democracy Action Plans.<sup>27</sup> This signals that in Europe's perception these particular political rights have required the highest level of attention, hence my decision to select them. Nevertheless, the EU remains committed to implementing the *entire* human rights and democracy agenda as reflected in the Framework.<sup>28</sup> Accordingly, the Framework commits to intensifying efforts to promote economic, social and cultural rights. However, the promotion of these rights in China has not attracted the level of criticism as political rights have, but rather international recognition for their achievement in this respect. I have assessed Europe's level of effectiveness via different EU-instruments: Council annual human rights reports, Council Conclusions, EEAS statements, Europe-China joint summits, European Parliament resolutions. More importantly I have examined the level of coordination between the different instruments.

Concerning the implications of the challenges within and beyond Europe's borders, a European official confirmed that since the crises Europe has started becoming more inward-oriented.<sup>29</sup> This suggests that the crises have put immense pressure on Europe's ability to pursue human rights in China. Against the background of instability and conflicts in the Middle East, the ensuing migration crisis and recurring terrorist attacks against civilians, '2015 has been a year of extraordinary challenges for the European Union'.<sup>30</sup> It is important to note that challenges are believed to have been

27 In 2015 the EU adopted a new EU Action Plan on Human Rights and Democracy 2015-2019, building on the first such Plan launched in 2012, prepared by the EEAS. For more see [https://eeas.europa.eu/headquarters/headquarters-homepage/2528/keeping-human-rights-heart-eu-agenda-eu-adopts-new-eu-action-plan-human-rights-and-democracy\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/2528/keeping-human-rights-heart-eu-agenda-eu-adopts-new-eu-action-plan-human-rights-and-democracy_en)

28 Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019, Brussels, 20 July 2015, available at <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

29 Interview with official, Council of the European Union, cabinet of Secretary General, Brussels, 13 December 2013

30 EU Annual Report on Human Rights and Democracy in the World in 2015 – Thematic Part, Brussels, 20 June 2016, 10255/16, available at <http://data.consilium.europa.eu/doc/document/ST-10255-2016-INIT/en/pdf>

present already earlier. Accordingly, the foundational myth of the European Union as a vehicle for peace, stability and economic growth has already been losing its appeal when confronted with referenda on European issues; the reconstruction of convincing myths might become even more difficult now (Karolewski, 2015). As Professor Hungdah Su of National Taiwan University has stressed, internally, in the midst of its crises Europe now has no discourse to promote; in the fifties it was peace, in the seventies-eighties it was growth and prosperity, in the nineties it was integration, but now there is no narrative to attract citizens.<sup>31</sup>

In a fragmented Europe, member states remain divided about how to deal with the crises, which, externally, has put pressure on a joint pursuit of human rights when dealing with China. At the same time, making things even more challenging, recent decades of impressive economic growth have boosted the Chinese leaders' self-confidence, to the extent that Beijing has become more active in setting up its own multilateral channels to further its national interests and norms (Geeraerts, 2013). As a result, China's growing international assertiveness has challenged Europe's efforts to pursue human rights.

Facing such criticism, in early 2015 High Representative Federica Mogherini launched a process of strategic reflection.<sup>32</sup> This has addressed calls voiced by the European Parliament cautioning that the financial crisis is deeply affecting the credibility of Europe, undermining the effectiveness of its common foreign and security policy.<sup>33</sup> Given this complexity, the assessment of the intra-institutional interaction has revealed persisting tensions. The Parliament has repeatedly urged strengthening Europe's effectiveness, as the institution with 'a leading role in promoting human rights in all the EU does'.<sup>34</sup> However, I argue that these attempts have not been the most

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31 Interview with Professor Hungdah Su, National Taiwan University, Taipei, 28 July 2016

32 Keynote speech at Chatham House by the HR/VP Federica Mogherini, 24 February 2015, available at [http://eeas.europa.eu/statements-eeas/2015/150224\\_03\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150224_03_en.htm)

33 European Parliament resolution of 12 September on the Annual Report from the Council to the European Parliament on the Common Foreign and Security Policy (12562/2011-2012/2050(INI) P7\_TA(2012)0334, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0334+0+DOC+PDF+V0/EN>

34 Joint Communication to the European Parliament and the Council, Human Rights and Democracy at the Heart of EU External Action - Towards a More Effective Approach, Brussels, 12.12.2011. COM(2011)886 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224343/evidence-eeas-](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224343/evidence-eeas-)

significant. Given the intergovernmental nature of European foreign policy, member states ultimately decide. Following the consultations announced by High Representative, the 2016 Global Strategy commits to engaging China based on respect for rule of law, both domestically and internationally.<sup>35</sup>

The 2016 Communication, ‘Elements for a new EU Strategy on China’, maintains the same approach; ‘the EU needs its own strategy, one which puts its own interests at the forefront in the new relationship; which promotes universal values; which recognizes the need for and helps to define an increased role for China in the international system; and is based on a positive agenda of partnership coupled with the constructive management of differences’.<sup>36</sup> The Council Conclusions adopting the new Communication clearly state: ‘The Council *expects* the EU’s relationship with China to be one of reciprocal benefit in all respects. The EU’s engagement with China is principled, practical and pragmatic, staying true to our values and interests. The EU also *expects* China to assume responsibilities in line with its global impact and to support the rules-based international order from which it, too, benefits (italics original).<sup>37</sup> Europe’s commitments are articulated in a more demanding tone, reflective of awareness of a new reality, whereby China’s global clout has presented significant challenges to Europe’s normative ambitions. The assessment above has revealed that a principled and increasingly outspoken European human rights narrative has taken shape regarding China. The multi-leveled governance in foreign policy has nevertheless continued to present challenges. In the following session, I assess the perceptions on Europe’s ability to internally uphold and externally pursue human rights priorities, to determine the extent to which Europe has set an example at home.

## State of the Debate

Perceptions vary on Europe’s performance and global relevance.

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joint-communication-dec-11.pdf

35 Shared Vision, Common Action, A Stronger Europe, 2016, *op. cit.*

36 Joint Communication to the European Parliament and the Council, Elements for a new EU strategy on China, Brussels, 22.6.2016, JOIN(2016)30 final, available at [http://eeas.europa.eu/china/docs/joint\\_communication\\_to\\_the\\_european\\_parliament\\_and\\_the\\_council\\_-\\_elements\\_for\\_a\\_new\\_eu\\_strategy\\_on\\_china.pdf](http://eeas.europa.eu/china/docs/joint_communication_to_the_european_parliament_and_the_council_-_elements_for_a_new_eu_strategy_on_china.pdf)

37 EU Strategy on China, Council Conclusions, 18 July 2016, available at <http://data.consilium.europa.eu/doc/document/ST-11252-2016-INIT/en/pdf>

Similarly, they diverge on the concept of European normative power and Europe's influence over human rights in China. André Gerrits has highlighted that the large variety of perceptions on Europe's international relevance is partly due to the fact that Europe is a fundamentally novel and unique international actor, so in this respect knows no predecessor, no equivalent, not even a dominant theory (Gerrits, 2009). Jan Zielonka has stressed that Europe has a 'plurilateral' or 'polycentric' structure of governance, a kind of post-modern (or neo-medieval) polity with no single centre of government (Zielonka, 2011: 281–301). Indeed, as I illustrated in interviews conducted with Chinese officials above, this very characteristic has made Europe less accessible and therefore more difficult to understand, to a great extent shaping perceptions of Europe and its influence. In European official circles it is argued that Europe strives to balance values and interests, an effort omnipresent in its foreign policy; it follows the idea that Europe will bring China light and will make them want to be more like Europe; but to what extent people believe this, remains an open question.<sup>38</sup> In general, Europe has not received much credit to its effectiveness in conducting foreign policy; 'what chiefly dents the credibility of the EU is that Europeans have not been practicing what they preach as consistently and effectively as they committed to do, at home and abroad'.<sup>39</sup> Institutional segmentation and different national agendas are considered to be obstacles to its coherence and credibility.<sup>40</sup> What emerges in China, and in Asia more broadly, is that Europe appears more as a normative trap, in the words of Giuseppe Balducci, where the interaction of institutions and member states originate policies not in line with Europe's human rights normative basis (Balducci, 2010: 35–55).

Stefan Lehne has argued that the importance of human rights in relations with another country is in reversed proportionality to the importance of the relationship; if ties are not very important, human rights are all the more so. China is an important trading partner of Europe, so human rights have a modest place.<sup>41</sup> It is often argued that European foreign policy discourse has become increasingly divorced from reality, and has a decreasing influence on how member states in practice conduct their foreign policies (Witney,

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38 Interview with official, EEAS, Brussels, 17 January 2014

39 Challenges for European Foreign Policy in 2013, Renewing the EU's role in the world, FRIDE, 2013, p. 16, available at [http://fride.org/download/Challenges\\_for\\_European\\_Foreign\\_Policy\\_2013.pdf](http://fride.org/download/Challenges_for_European_Foreign_Policy_2013.pdf)

40 *Ibid.*, p. 19.

41 Interview with Stefan Lehne, Visiting Scholar at Carnegie Europe, Brussels, 5 March, 2013

Leonard, Godement, Levy, Liik & Tcherneva, 2014). This reinforces the argument above that as a consequence of fragmentation Europe's foreign policy has been limited. Chen Zhimin has observed that Europe's rhetoric needs to be differentiated from its reality; given the intergovernmental nature of its CFSP mechanism, it is not a reality-based approach to depict Europe as a full-fledged strategic actor in regard to security and contentious issues (Chen, 2012). While Chinese leaders valued Europe as an economic powerhouse and a sociopolitical compass for domestic reform in the early 2000s, Europe, as it struggles in the wake of the financial crisis, has not cohered as a strategic actor (Gill & Small, 2012). 'Therefore, the EU should be understood as what it is, rather than what it claims to be', Chen Zhimin has noted (Chen, 2006: 257–275). A Chinese official based in Brussels has argued that European normative power is perceived to be 'useful' in economic cooperation, social management, urbanization, but in political relations, it is not effective.<sup>42</sup>

Along the same lines, another European official has stressed that the business sector is believed to have become the driving force of the relationship; everything that is close to trade and the economy appears to be the more successful area of Europe-China cooperation, beyond this, European influence remains limited.<sup>43</sup> Given these perceptions on both sides, economic ties are what move bilateral relations forward. This seems to be more in line with Beijing's agenda, primarily driven by economic development, as opposed to the European approach where political priorities, including human rights, are supposed to be pursued to an equal extent. A failure on the part of Europe to adjust human rights concerns according to trade priorities, is what has partially led to the perception of limited normative power. As Mikael Mattlin highlighted, attempts at pursuing a normative policy towards major powers, such as China, often comes across as half-hearted, because of loss of moral high ground, conflicting positions of member states and lack of leverage, fundamental problems stemming from the very nature of Europe (Mattlin, 2012: 181–198). Relative power considerations, state sovereignty and concrete material interests still dominate EU-China relations (Mattlin, 2010: 6). As a Chinese academic interviewed in Beijing put it, 'across the areas of bilateral cooperation one can't really be optimistic about European normative power'. Yet, 'there must be a point where Europe retakes its own moral high ground,

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42 Interview with official, Mission of the PRC to the EU, Brussels, 25 April, 2013

43 Interview with official, EEAS, Brussels, 2 December 2013

and at that point China will need to do some soul searching', suggesting that there is a vacuum in Chinese soft power.<sup>44</sup>

In Europe-China relations, perceived to be primarily dominated by economic cooperation and interdependences, human rights in general are widely regarded to be a difficult, sensitive area (Freeman & Geeraerts, 2011). Mikael Mattlin has referred to human rights as a 'perennial nuisance' in bilateral ties (Mattlin, 2010: 6). In particular the Human Rights Dialogues have received little praise over the years, perceived as a theatrical ritual, where both sides repeat their lines, without any progress.<sup>45</sup> The mechanism has become convenient for Beijing; it has allowed a compartmentalisation of the human rights nuisance, isolating it from interfering with the global state of EU-China relations (Mattlin, 2010: 14). A Brussels-based European official has argued that while European institutions have delegated officials at the highest level to engage in the dialogues, Beijing has involved diplomats from ministries not sufficiently high to bring change in the implementation of human rights policies.<sup>46</sup> In contrast, a Chinese academic has argued that prior to each round of dialogues, on the Chinese side different institutions are urged 'to do something for the dialogue, because the Europeans want us to do something about it', perceived as 'a good result'.<sup>47</sup> A European official explained, that while the Dialogues are not the most successful story of the relationship, one of the successes is that the Chinese introduced the review system for the death penalty, which takes the cases out of the hands of Party officials into the hands of the Supreme Court; this happened partly because of European pressure.<sup>48</sup> 'The Dialogues are difficult, stressful, but extremely valuable', another European official has maintained.<sup>49</sup> In contrast in Chinese views while the Dialogue is a platform for discussions, there is a problem with Europe's approach; Europe raising 'cases of lawyers beaten up in China is poison to the Dialogue'.<sup>50</sup>

There is abundant research conducted on Europe's effectiveness in

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44 Interview with Xie Tao, School of English and International Studies, Beijing Foreign Studies University, Beijing 20 July 2015

45 Interview with official, EEAS, Brussels, 11 November 2013

46 Interview with official, Council Secretariat dealing with China, Brussels, 31 January 2014

47 Interview with Chinese academic, Brussels, 6 October 2013

48 Interview with official, EEAS, Brussels, 27 March, 2015

49 Interview with official, EEAS, Brussels, 6 December 2013

50 Interview with Chinese academic, CICIR, Beijing, 22 July 2015



pursuing human rights in China. The abundance of research, however, does not necessarily reveal a great diversity of views in European and Chinese circles. In other words, across both sides views are converging on Europe's lack of effectiveness. European perceptions, as I assessed, are dominated by the acknowledgement of limited effectiveness and of efforts undertaken to address the issue, cautious with giving credit to what has been achieved thus far. Chinese perceptions equally echo similar judgement on Europe's lack of effectiveness. What differs however are the different implications of these similar perceptions concerning the way the two partners relate to each other. In other words, perceptions of Europe's failure to pursue its human rights agenda seem to facilitate Beijing's efforts to justify their approach to human rights in line with their own domestic conditions, not along international standards as pursued by Europe. The factors behind the perceptions on both ends are, *inter alia*, Europe's lack of credibility, Europe's failure to pursue political commitments to the benefit of trade, failure to advance a joint European agenda, and the gap between rhetoric and practice.

This means that a widely shared perception, both among Chinese and European circles, is that the current European human rights policy towards China is in disarray; instead of having a positive effect in China, it is seen by the Chinese Communist Party as inconsistent and self-serving, 'neither of which are far from the truth' (Westad, 2013: 96–100). It is widely recognized that Europe's human rights policy *vis-à-vis* China has advanced, was gradually updated according to developments in China, reflected in generous rhetoric, speeches and declarations. But, in spite of developing valuable instruments to pursue priorities, fragmentation in European governance has remained. Institutions and member states continue engaging China in ways that have led to actions of different intensity. Europe is perceived as inconsistent in pursuing its values and interests and fails to set an example, damaging its power of attraction. In the following section I assess the individual priorities and Europe's record in pursuing them.

## The Death Penalty, Administrative Detention and Torture

On the European and World Day against the Death Penalty, on 10 October 2015 the European Union and the Council of Europe jointly reaffirmed their strong opposition to capital punishment: 'The death penalty is inhuman and degrading treatment, does not have any proven significant

deterrent effect and allows judicial errors to become irreversible and fatal'.<sup>51</sup> Europe has a strong and unequivocal opposition to the death penalty at all times and in all circumstances, it reads in its Guidelines on the death penalty issued in 1998, the first ever human rights guidelines adopted by the Council.<sup>52</sup> Encouraged by the growing global momentum towards abolition, in its 2012 Strategic Framework, Europe committed to continuing its long-standing campaign against the death penalty. In contrast, China maintains the death penalty. In 2014, Amnesty International estimated that China continued to execute more than the rest of the world combined.<sup>53</sup> When Europe pursues its advocacy in China, cultural differences come to the surface. Academics argue that in developing its discourse on human rights, China has drawn on a traditional cultural repertoire which values social relationships and respect for authority; this framework inspired by culturally acceptable patterns of behavior has shaped China's new narrative of political reform (Macbean, 2008: 205–228).

Within its reforms the Chinese government has allowed some progress, such as the reduction in the number of capital crimes from 68 to 55 in 2011 by the National People's Congress Standing Committee.<sup>54</sup> On 29 August 2015 the National People's Congress adopted the People's Republic of China Criminal law Amendment 9, which further reduced the number of capital offences from 55 to 46.<sup>55</sup> More importantly since 2007 there is now a review of all verdicts involving the capital punishment by the Supreme Court. Despite moves to 'kill fewer and kill carefully' the death penalty remains central to the expression of state power (Macbean, 2008: 205–228). Others maintain that the main reason behind China's retention policy is that the leadership sees it as an

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51 Joint Declaration by the European Union High Representative for Foreign Affairs and Security Policy, Federica Mogherini, on behalf of the EU, and the Secretary General of the Council of Europe, Thorbjorn Jagland, on the European and World Day against the Death Penalty, 10 October 2015, available at [http://eeas.europa.eu/statements-eeas/2015/151009\\_02\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/151009_02_en.htm)

52 EU Guidelines on Death Penalty, Council of the European Union, Brussels, 12 April 2013, 8416/13, available at [http://eeas.europa.eu/human\\_rights/guidelines/death\\_penalty/docs/guidelines\\_death\\_penalty\\_st08416\\_en.pdf](http://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_st08416_en.pdf)

53 Death sentences and executions in 2014, Amnesty International, 31 March 2015, available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

54 China exempts 13 crimes from death penalty, Xinhua news, 25 February 2011, available at [http://news.xinhuanet.com/english2010/china/2011-02/25/c\\_13750127\\_2.htm](http://news.xinhuanet.com/english2010/china/2011-02/25/c_13750127_2.htm)

55 2015 World Day Against the Death Penalty, Not the Solution to Drug-Related Crime, Amnesty International ACT 50/2634/2015

indispensable tool to guarantee social stability and preserve its own power (Svensson, 2001). Along the same lines, it is suggested that the enactment of new legislation to curb the use of the death penalty has been dissociated from any pattern of democratization and largely independent of international pressure; instead the Party has appealed to ‘state pragmatism’ to satisfy the desires of the Chinese population for greater accountability (Noakes, 2014: 18–30).

Europe has maintained pressure on China to reform its system by issuing demarches, raising cases of individuals facing the death penalty in the Human Rights Dialogues and in Council Conclusions. For example, the General Affairs Council Conclusions of January 2001 expressed concern caused by the ‘frequent and extensive recourse to the death penalty’ in China.<sup>56</sup> In its 2003 Conclusions it remained concerned about the extensive use of the death penalty often in violation of internationally agreed minimum standards and called on China to abolish them.<sup>57</sup> Since 2006 however, no Conclusions have been adopted on human rights in China. While this could be indicative of Europe’s diminishing attention to the issue, let us first consider all other actions Europe has taken in this respect in order to be able to adequately judge the implications of all the different tools. European officials suggest that when they raise the death penalty, there is a lot of unwillingness to discuss the issue in any kind of meaningful way with the Chinese.<sup>58</sup> Chinese officials stress that the way Europe is raising the issue is the problem; Europeans often tell them that they must abolish the death penalty; this is unwelcome.<sup>59</sup>

Another Chinese official, however, has claimed that discussions on abolition are increasing in China, which could even be a result of Europe’s soft power.<sup>60</sup> Richard Youngs has argued that Europe’s goal of abolishing the death penalty in China is neither exclusively driven by strategic choices, nor by normative interests, but it is a result of setting ideational parameters within which instrumental choices are made (Youngs, 2004: 415–435). There is criticism that Europe fails at regularly speaking out, in spite of its principled

56 2327<sup>th</sup> General Affairs Council meeting, Brussels, 22-23 January 2001, available at [http://europa.eu/rapid/press-release\\_PRES-01-19\\_en.htm?locale=FR](http://europa.eu/rapid/press-release_PRES-01-19_en.htm?locale=FR)

57 2495<sup>th</sup> General Affairs Council meeting, Brussels, 18 March 2003, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/gena/75004.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/75004.pdf)

58 Interview with official, EEAS, Brussels, 11 November, 2013

59 Interview with official, PRC Mission to the EU, Brussels, 25 April 2015

60 Interview with official, PRC Mission to the EU, Brussels, 7 November 2013

approach, allowing the Chinese to exploit this attitude. In fact, the government has used the application of the death penalty to test Europe's reaction through executions, a European official has indicated.<sup>61</sup> Accordingly, two cases of executions illustrate this well. Wo Weihang, a biomedical researcher, married to an Austrian woman, was executed in 2008 for allegedly passing sensitive information to Taiwan, in spite of Europe's repeated calls against it. The execution took place on the final day of the 26<sup>th</sup> round of the EU-China Human Rights Dialogue in Beijing. Europe issued a statement expressing 'its indignation at this execution', and in the context of the dialogues it had reiterated its strong opposition, requesting that he be pardoned'.<sup>62</sup> Pleas fell on deaf ears. The other case was Akmal Shaikh, a Pakistani-British citizen, suffering from mental disorder, convicted of drug smuggling into China. As a mentally ill person his case should have been commuted to a lesser degree. Still, he was executed in spite of European pressure. In both cases, a statement of condemnation was issued that Beijing dismissed, suggesting Beijing's capacity to turn European weakness to serve its own benefits, limiting European influence.

This paper considers Europe's efforts to urge China towards abolishment in three points. First, I argue that Europe's approach towards capital punishment has remained solid on principle — Europe has abolished the death penalty on its own territory, and internally agreed to pursue abolition globally. In this case Europe can be considered a role model that China could emulate, that would ensure the essence of being a normative power. However, China's domestic considerations overwhelm the weight of Europe's influence. Second, on this issue, Europe's internal fragmentation is not an obstacle to reaching a common position. The death penalty is not an area that Beijing can exploit to divide and rule as it tries to do with other issues, where interests diverge internally within Europe. The death penalty exposes cultural divisions, but strategic interests do not clash. When upholding this principled approach externally, Europe overcomes the fragmentation that otherwise obstructs speaking with one voice. This should be therefore acknowledged. However, the *frequency* to uphold this approach must be closely considered. As I argued in the context of Europe being torn between interests and values,

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61 Interview with official, EEAS, Brussels, 11 November 2013

62 Declaration by the Presidency on behalf of the EU on the execution of Mr. Wo Weihang in Beijing, Brussels, 28 November 2008, available at [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/en/cfsp/104380.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/cfsp/104380.pdf)

speaking out is often perceived as a risk to Europe's interests. This indicates that Europe's economic interests can constrain its normative ambitions.

Third, when evaluating Europe's effectiveness, this paper has considered the fact that Europe is only one actor pursuing abolition. Therefore, the objective was to assess the mechanism that Europe has put in place to engage China towards alignment with the international human rights regime, i.e. the tools it has used to live up to expectations. While it is possible to isolate what Europe has managed to do on the ground, it remains difficult to assess the degree to which this has influenced China. As officials have noted, the Chinese don't want to be told what to do, but learn themselves, they don't like to admit it, nor do they admit that they consider Europe as a role model.<sup>63</sup> Research also suggests that China's death penalty reforms do not necessarily signal the country's abolitionist intentions but are part of a larger effort to shore up popular consent for the Communist Party and promote the longevity of its rule (Noakes, 2014: 18–30). Considering the above, I argue that while Europe has maintained a principled approach and set a good example, this has not been sufficient to shape China's behavior towards the death penalty, as the issue remains subordinated to domestic considerations.

## Freedom of Expression Online and Offline, Freedom of Media, Association

On World Press Freedom Day on 3 May 2016 HR Federica Mogherini declared that 'the EU is committed to continue promoting and protecting freedom of opinion and expression worldwide, not only offline but also in relation to the cyberspace and other information communication technologies.<sup>64</sup> This was highlighted by the adoption in 2014 of the EU Human Rights Guidelines on Freedom of Expression Online and Offline'.<sup>65</sup> Freedom of expression is firmly rooted in the structures of Western democratic thought, enshrined in the UN Declaration of Human Rights. In China, in contrast, freedom of expression has followed a very different

63 Interview with official, PRC Mission to the EU, Brussels, 7 November 2013

64 Declaration by the High Representative on behalf of the EU on the occasion of the World Press Freedom Day 3 May 2016, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/05/02-hr-declaration-world-press-freedom-day-3-may/>

65 EU Human Rights Guidelines on Freedom of Expression Online and Offline, Foreign Affairs Council meeting, Brussels, 12 May 2014, available at [http://eeas.europa.eu/delegations/documents/eu\\_human\\_rights\\_guidelines\\_on\\_freedom\\_of\\_expression\\_online\\_and\\_offline\\_en.pdf](http://eeas.europa.eu/delegations/documents/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf)

path than as witnessed in the West. While a free press is widely viewed as a crucial element of democracy, it is often assumed that authoritarian regimes fear and restrict media independence (Lorentzen, 2014: 402–414). In China, while there are constitutional guarantees for freedom of speech and press, the authorities have maintained strong control over freedom of expression. Nevertheless, as growing literature indicates, ideological, social and economic changes have resulted in dramatic changes to the Chinese media landscape, Marina Svensson has suggested (Svensson, 2012: 19–28). Critical to the transformations that China has undergone has been the degree of interconnection between all these spheres; aspirations of people regarding political rights are closely linked to how the economic systems perform, so in times of growth, as China has witnessed, expectations of advancing such freedoms have been high (Kinley, 2013: 142–155). Seen from the same angle, investigative journalists have created their own informal meeting spaces in China, in a society that lacks freedom of the press and freedom of association is severely restricted. The shared values within their community have led to the creation of a collective identity and to new communities; a good case in point is *weibo* enabling closer interactions between journalists, other professional groups and ordinary citizens, who share the same ideals and struggles (Svensson, 2012: 19–28).

Wechat, the more recent mobile messaging app, grew as the government cracked down on the use of *weibo* as a tool for political dissent, in what was described as President Xi Jinping's 'socialism with Chinese characteristics.'<sup>66</sup> China scholars studying how an authoritarian regime can benefit from a more sophisticated media control strategy have pointed out that the Party, with a well-established authority, has benefited from an active watchdog media by keeping local officials in check, but largely blocking reporting on higher levels of government; this has directly helped the state by enhancing economic efficiency and also reduced discontent, potentially forestalling revolts that would otherwise occur (Lorentzen, 2014: 402–414). Elizabeth C. Economy has noted that the Chinese government is in a state of 'schizophrenia' about media policy as it 'goes back and forth, testing the line, knowing they need press freedom and the information it provides, but worried about opening the door to the type of freedoms that could lead to the regime's

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66 China's internet is flourishing inside the wall, November 23, 2016, Financial Times, available at <https://www.ft.com/content/5ec26734-b0b4-11e6-a37c-f4a01f1b0fa1>

downfall'.<sup>67</sup> This suggests, as Susan Shirk has stressed, that the stakes of allowing people unfettered access to information remain high in China; the very survival of Party rule is at risk.<sup>68</sup> Or, in the words of former President Hu Jintao: 'whether we can cope with the Internet is a matter that affects the development of social culture, the security of information, and the stability of the state'.<sup>69</sup> In a considerably stronger rhetoric, in an internal speech at the National Propaganda and Ideology Work Conference in 2013 President Xi Jinping said that 'the Internet has become the main battlefield for public opinion struggle'.<sup>70</sup> According to the authorities, in January 2015 there were 649 million Internet users in China, with overall Internet penetration at 48 per cent, the largest number in the world.<sup>71</sup> But China's media environment remains also one of the world's most restrictive.<sup>72</sup>

Research shows that during 2014 the limited space for investigative journalism and politically liberal commentary shrank continuing a trend of ideological tightening since Xi Jinping assumed leadership.<sup>73</sup> According to the Committee to Protect Journalists, for more than a decade China has been among the top three jailers of journalists in the world, a distinction that it is unlikely to lose any time soon, it was believed. Document 9, a secret white paper released on April 2014, included the directive to 'combat seven political perils' and reject the concept of 'universal values' and the promotion of 'the West's view of media'.<sup>74</sup> Reflecting China's stance in dealing with foreign media reporting on sensitive matters, President Xi claims that there must be a reason several journalists had visas denied. He quoted a Chinese saying, 'Let

67 Beina Xu, Media Censorship in China, Council on Foreign Relations, April 7, 2015, available at <http://www.cfr.org/china/media-censorship-china/p11515>

68 Eight Questions: Susan Shirk, 'Changing Media, Changing China', March 30, 2011, The Wall Street Journal

69 Hu Jintao asks Chinese officials to better cope with Internet, January 25, 2007, Xinhua, available at [http://en.people.cn/200701/24/eng20070124\\_344445.html](http://en.people.cn/200701/24/eng20070124_344445.html)

70 Freedom on the Net 2015, China, Freedom House, available at [https://freedomhouse.org/sites/default/files/resources/FOTN%202015\\_China%20%28new%29.pdf](https://freedomhouse.org/sites/default/files/resources/FOTN%202015_China%20%28new%29.pdf)

71 Freedom on the Net 2015, China, Freedom House

72 China 2013 – Freedom House, <https://freedomhouse.org/report/freedom-press/2013/china#.VUMrtWape2w>

73 China – 2015 – Freedom House, <https://freedomhouse.org/report/freedom-press/2015/china#.VUMtB2ape2w>

74 Committee to Protect Journalists, 10 Most Censored Countries 2015, available at <https://cpj.org/2015/04/10-most-censored-countries.php#8>

he who tied the bell on the tiger take it off’; the one who created the problem must be the one who solves it.<sup>75</sup> In reaction to controls and restrictions in China as Europe perceived them, my assessment has indicated that Europe has upheld its rhetoric. In its Annual Human Rights Report in 2013 the Council remained concerned at restrictions imposed on individuals seeking to exercise their right to freedom of expression in China.<sup>76</sup> In its 2013 report on EU-China relations the Parliament deplored the control and censorship of the Internet, concerned that the government is tightening surveillance.<sup>77</sup> In a more vocal manner, in 2015 the Parliament strongly protested ‘against the high number of Chinese citizens jailed for offences involving freedom of expression, especially on the Internet’.<sup>78</sup> Given the intergovernmental nature of European foreign policy, it is important to remember that these reports are not legally binding. Yet they play their own role in Europe’s overall outreach to China; the Parliament uses its tools to express a political position. In fact, while every single tool has its own weight, I argue that their relevance should be considered all together. Their application makes up the process of European engagement. It is their assessment together that allows assessing Europe’s record.

Council Conclusions, adopted following a debate with all member states, similarly lack legal effects. It is noteworthy however, that they reflect a political position. Given that Conclusions require the consensus of all member states, they weigh more than Parliament resolutions. The most recent Conclusions on China follow the 2016 adoption of the ‘EU Strategy on China’: ‘The on-going detention and harassment of human rights defenders, lawyers, journalists and labour rights defenders and their families remains a major concern. The EU will continue to urge China to fulfil its international

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75 Amid US-China talks, tough words from Xi Jinping for foreign press, November 2014, Committee to Protect Journalists, available at <https://cpj.org/blog/2014/11/amid-us-china-talks-tough-words-from-xi-jinping-fo.php>

76 EU Annual Report on Human Rights and Democracy in the World in 2012, the Council of the European Union, Brussels 21 October 2013, available at [http://eeas.europa.eu/human\\_rights/docs/hr\\_report\\_country\\_2012\\_en.pdf](http://eeas.europa.eu/human_rights/docs/hr_report_country_2012_en.pdf)

77 European Parliament resolution of 14 March 2013 on EU-China relations (2012/2137(INI)) P7\_TA(2013)0097, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2013-0097+0+DOC+PDF+V0//EN>

78 Report on EU-China relations, 2015/2003(INI), PE560.676v03-00, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0350+0+DOC+PDF+V0//EN>



obligations, to abide by international standards and to respect its own constitutional safeguards and stated commitment to upholding the rule of law'.<sup>79</sup> Prior to this document, the last time the Council adopted Conclusions on China was a decade earlier in 2006, whereby it welcomed progress made by China in economic rights, appreciated the commitments the country made to fulfil international obligations, but deeply regretted that there has been little progress in a number of areas, such as freedom of expression.<sup>80</sup>

As a European official has pointed out, one mistake that research on European engagement in China commits is that it looks at the occasional actions Europe has taken to raise human rights; what research should do is check how many important actions Europe has *not* taken, how many times it failed to issue a statement, pass a resolution, adopt conclusions.<sup>81</sup> Developments in human rights in China in the past decade, as portrayed in Parliament resolutions for example, proved worrisome enough, to the point that the House urged that *all* possible means be made available for condemnation, including Council Conclusions. In this light, a decade of no Conclusions indicates the failure to use all possible tools. While Council Conclusions remain just one tool, they are the fruit of negotiations bringing all member states together; these Conclusions allow Europe to speak with one voice. Criticism of failing to live up to expectations could be deflected if, in the absence of Conclusions, all other tools had been adequately, regularly and consistently used. Instead, research suggests that European-level action concerning China's human rights has remained low profile. Moreover, my desk research reviewing joint summit statements has indicated that post 2008 human rights in general have been left out and there was no increase in the number of statements on human rights related issues.

This paper considers narrative an important layer of Europe's engagement of China. Narrative enables conveying the message. It creates space and opens avenues for further discussions. When the narrative is restrained, no such space is ensured for normative power to unfold. This paper argues that by opting for restraint, there is a risk that Europe actually facilitates further

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79 EU Strategy on China – Council Conclusions (18 July 2016) 11252/16, available at <http://data.consilium.europa.eu/doc/document/ST-11252-2016-INIT/en/pdf>

80 Press Release, 2771<sup>st</sup> Council Meeting, General Affairs and External Relations, Brussels 11-12 December, 16291/06 (Presse353), available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016291%202006%20INIT>

81 Interview with official, EEAS, Brussels, 11 November 2013

dismissals of its criticism. This could signal to Beijing to expect Europe's value-driven priorities to retain a low profile to the benefit of economic cooperation. Given that the Chinese authorities prioritize upholding economic growth, Europe's hesitation serves China's domestic agenda. The above suggest that while its tools are strong in principle, in practice Europe's impact has remained weak. The conceptual divergence between the two approaches couldn't be any more evident in freedom of expression. Their profoundly different perceptions make all foreign attempts to socialize China destined to fail. China has shown great resistance; advocacy for freedom of expression is perceived as interference in its domestic affairs. This paper considers that Europe's half-hearted attitudes on freedom of press are perceived as weakness and thus facilitate Beijing's efforts to deflect criticism. Deflecting external criticism has served as a useful tool for Beijing to strengthen its internal legitimacy; it has allowed conveying a message of strength to the people by maintaining a tough stance in the face of external criticism, without facing any damaging consequences. In spite of strong rhetoric, in practice lack of coordination and fragmentation remain serious challenges to a strong European-level engagement in the pursuit of freedom of expression in China.

## Minority Rights and Freedom of Religion

The protection of minorities is a highly sensitive issue in Europe-China relations. So is freedom of religion, as they both evoke fundamental ideological differences. The Chinese authorities perceive any criticism as a violation of their sovereignty and the principle of non-interference, articulated in the Five Principles of Peaceful Coexistence.<sup>82</sup> Given the close link between the two rights and because Europe raises them together, this paper assesses them in one section. The Guidelines on the promotion and protection of freedom of religion or belief state that 'as a universal human right, freedom of religion or belief safeguards respect for diversity, its free exercise directly contributes to democracy, development, rule of law, peace and stability'.<sup>83</sup>

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82 China's Initiation of the Five Principles of Peaceful Co-existence, Ministry of Foreign Affairs of the People's Republic of China, available at [http://www.fmprc.gov.cn/mfa\\_eng/zili\\_ao\\_665539/3602\\_665543/3604\\_665547/t18053.shtml](http://www.fmprc.gov.cn/mfa_eng/zili_ao_665539/3602_665543/3604_665547/t18053.shtml)

83 EU Guidelines on the promotion and protection of freedom of religion or belief, Council of the European Union, Foreign Affairs Council meeting, Luxembourg, 24 June 2013, available at [https://eeas.europa.eu/delegations/fiji/press\\_corner/all\\_news/news/2013/eu\\_guidelines\\_on\\_the\\_promotion\\_and\\_protection\\_of\\_freedom\\_of\\_religion\\_or\\_belief\\_\(june\\_24\\_2013\\_fac\).pdf](https://eeas.europa.eu/delegations/fiji/press_corner/all_news/news/2013/eu_guidelines_on_the_promotion_and_protection_of_freedom_of_religion_or_belief_(june_24_2013_fac).pdf)

Similarly, Article 36 of the Constitution of the People's Republic of China guarantees freedom of religion.<sup>84</sup> Although the Chinese authorities insist that their religious laws and policies are in accordance with international human rights standards, the lack of freedom of religion is one of the recurring issues in the international criticism of China's human rights record. As one Chinese official has stressed, what Europeans see as 'advocating' for human rights, the Chinese most often perceive as 'preaching', all the more so since Europe often fails to act in accordance with its rhetoric.<sup>85</sup>

This exposes China's vulnerabilities and insecurities; China fears that engaging in any external discussions on Tibet and Xinjiang, for example, could endanger the integrity of its territory. It fears that allowing more freedom of religion can undermine the Party's authority. In China Tibetans and Uighurs are two ethnic minorities that are believed to be undoubtedly subject to a much tougher regime of suppression than any other group practicing a religion that is fully authorized by the state; the intense fear of the Party of a possible link between religion and ethnic separatism has put many restraints on the constitutional guarantees of the right to freedom of religious belief (Wellens, 2009: 433–454). Chinese governments at various levels have been particularly nervous about the prospect of social or ethnic agitations created by religious gatherings and have often restricted normal religious activities in the name of social stability (Zhang and Zu, 2011: 783–818). Hu Jintao claimed to advocate for all Chinese citizens, including religious citizens, to promote the development of a 'harmonious society' in order to increase social stability and the Party's legitimacy (Holbig, 2009: 50–51). In reality, following Xi Jinping's appointment to power, China has further increased the restriction, seen as a way to ensure communist control over religious organizations to prevent these groups from incubating anti-communist groups and subverting communist control over the people (Hollan, 2015: 733–773). In Europe, on the other hand, freedom of religion is promoted as a universal right; states have a primary role and duty to protect all individuals subject to their jurisdiction and must ensure that their legal systems provide adequate and effective guarantees.<sup>86</sup> Externally Europe has

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84 Constitution of the People's Republic of China, Chapter II, The Fundamental Rights and Duties of Citizens, available at [http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content\\_1372964.htm](http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372964.htm)

85 Interview with official, Mission of the PRC to the EU, 25 April 2013, Brussels

86 EU Guidelines on the promotion and protection of freedom of religion or belief, *op. cit.*

placed the issue high on its agenda; in fact in 2016 the European Commission appointed a Special Envoy for the promotion of the issue outside Europe.<sup>87</sup> The move was welcome by the Parliament, who has repeatedly urged further intra-institutional cooperation on this matter.<sup>88</sup>

The assessment of Europe's pursuit of minority rights — at home and abroad — has however exposed some of Europe's own vulnerabilities. While Europe advocates for minority rights in China, it faces criticism for not practicing what it preaches. Europe is dealing with challenges concerning its own minorities, traditional communities and new minorities alike, more so following the refugee and migration crisis. While the Lisbon Treaty emphasizes that the 'right of persons belonging to minorities' is a core European value, in reality, according to the European Agency for Fundamental Rights there is evidence of persistent phenomenon of discrimination throughout Europe.<sup>89</sup> In fact, there is no European-level framework for the protection of traditional minorities. This has made many — including Members of the Parliament — severely criticize Europe for not having elaborated effective tools for minority rights, exposing the fragmented nature of European minority protection. In one of their 2014 Parliamentary questions addressed to the Commission, a group of Members explicitly asked: 'When does the Commission plan to develop a European framework of national strategies for the protection of traditional national minorities [...] which includes a monitoring mechanism similar to the Copenhagen criteria?'<sup>90</sup> In 2009 in a plenary debate on the same subject Commissioner Vice-President Jacques Barrot had reminded that 'the treaties grant no jurisdiction in this field'. 'That is as much as I am able to say. I cannot go any further, because

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87 President Juncker appoints the first Special Envoy for the promotion of freedom of religion or belief outside the European Union, Vatican City, 6 May 2016, European Commission Press Release, available at [http://europa.eu/rapid/press-release\\_IP-16-1670\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1670_en.htm)

88 For more, see for example the activity of the European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance, <http://www.religiousfreedom.eu/2016/05/09/eu-appoints-first-special-envoy-on-forb/>

89 Respect for and protection of persons belonging to minorities 2008-2010, European Agency for Fundamental Rights, available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/1769-FRA-Report-Respect-protection-minorities-2011\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1769-FRA-Report-Respect-protection-minorities-2011_EN.pdf)

90 Parliamentary questions, Subject: protecting traditional national and linguistic minorities in Europe and their languages, Question for oral answer, 9 January 2014, available at <http://www.europarl.europa.eu/sites/getDoc.do?pubRef=-//EP//TEXT+OQ+O-2014-000008+0+DOC+XML+V0//EN>

we do not have the legal tools. The Member States will not allow us to'.<sup>91</sup>

The absence of a European framework protection for minorities has deepened divisions in Europe's governance, where member states preserve full sovereignty, stripping institutions from any possibility of intervention possibility when violations occur. This has made speaking with one voice with China difficult. A closer look at Europe's record on minority protection domestically reveals that the issue has exposed deep divisions around the concepts of sovereignty, nation, and minority. Divisions in Europe have got deeper since member states have faced the reality of the recent refugee and migration crisis and recognized the necessity to address the unprecedented wave of migrants on a European level. Research suggests that the category of migrant is created by the system of nation-state sovereignty that divides up the political world, just as ethnic categorizations divide states internally into majorities and minorities (Sutherland, 2015). Claire Sutherland argues that the case of the migrants, as Europe's new minorities, has shed light on the conflicting demands on states to fulfill moral duties whilst maintaining a nation-state construct that is premised on clearly defined and protected borders that keep citizens safe (Sutherland, 2015). Internally, heated debates on sovereignty in Europe's response to the crisis have provoked nationalist reactions; immigration even served as a potent tool in the Brexit campaign. Externally, the debates have shed a bad light on Europe's record of minority protection. Europe has failed at setting an example. As a result, China has felt entitled to question Europe's credibility. This has made it easier for Beijing to deflect criticism on the protection of its own minorities, validating the assumption that Europe doesn't practice what it preaches.

Against the overall gloomy image in minority protection, I identified individual actions of institutions that have revealed a positive discourse. As in the case of the death penalty, the activity of the Parliament on minority rights and freedom of religion towards China has been high in intensity. In a 2005 resolution on Tibet it urged raising the issue, calling on the PRC to guarantee freedom of religion and expression.<sup>92</sup> In 2008 the Parliament invited

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91 Debate on the oral question to the Commission on the protection of traditional national, ethnic and immigrant minorities in Europe, O-0002/2009 – B6-0005/2009, 3 February 2009, Strasbourg, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20090203+ITEM-014+DOC+XML+V0//EN&language=HR>

92 Human rights situation in Tibet and Hong Kong, European Parliament resolution P6\_TA-PROV(2005)0533, available at [http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/)

the 14<sup>th</sup> Dalai Lama to address the House, as part of the European Year of Intercultural Dialogue.<sup>93</sup> Several other resolutions have raised concerns in Tibet and Xinjiang alike.<sup>94</sup> When one compares the Parliament's approach expressed in the resolutions, the tone is more outspoken than documents issued by the Commission or the Council. The legislative has placed Tibet in the context of its demands for more coordination with the other institutions.<sup>95</sup> It has regularly stated the importance of improving coordination among institutions.<sup>96</sup> It has called on the Commission to ensure that its trading relationship with China is linked to human rights reforms; it warned that lack of consistency might undermine the credibility of European human rights policy on the international stage.<sup>97</sup> Via its resolutions, though legally not binding, the Parliament has tried to guide Europe's approach towards more vocal engagement. A balancing game is equally present between interests and values within the Parliament; different political groups have different priorities. When compared to other institutions, the normative dimension via its resolutions is not negligible.

Whenever such resolutions are on the agenda and discussed between political groups, the Chinese authorities request to soften the approach.<sup>98</sup>

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fd/200/200602/2006022207en.pdf

- 93 Common human values, inner peace and Tibet: Dalai Lama at European Parliament, 4 December 2008, press release available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20081203IPR43683+0+DOC+XML+V0//EN>
- 94 10 April 2008 P6\_TA(2008)0119 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0119+0+DOC+XML+V0//EN>; 12 March 2009 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0142+0+DOC+XML+V0//EN>; 26 November 2009 P7\_TA(2009)0105 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONGML+TA+P7-TA-2009-0105+0+DOC+PDF+V0//EN>; 25 November 2010 P7\_TA(2010)0449 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0449>; 10 March 2011 P7\_TA(2011)0100, <http://www.europarl.europa.eu/document/activities/cont/201103/20110322ATT16076/20110322ATT16076EN.pdf>; 27 October 2011 P7\_TA(2011)0474 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONGML+TA+P7-TA-2011-0474+0+DOC+PDF+V0//EN>; 14 June 2012 P7\_TA(2012)0257 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONGML+TA+P7-TA-2012-0257+0+DOC+PDF+V0//EN>.
- 95 EU-China Summit – EU/China human rights dialogue, P6\_TA(2007)0622, p. 3
- 96 European Parliament resolution of 6 September 2007 on the functioning of the human rights dialogues and consultations on human rights with third countries (2007/2001 (INI) available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0381+0+DOC+XML+V0//EN>
- 97 *Ibid.*
- 98 Reacting to EP resolutions the Chinese authorities have expressed their distress in public statements. Following the 2008 EP resolution on Tibet, the Foreign Affairs Committee under the National People's

The Parliament's resolutions bring unwelcome exposure to the Chinese authorities, therefore they argue that public criticism doesn't work; if Europe really wants to help, it should do so through a dialogue of equal partners and not 'demand things', one Chinese official has argued.<sup>99</sup> "Europe is ineffective in China so it should abandon the idea of being a normative power; under such circumstances it is useless to debate, so better concentrate on practical issues instead", the same official has suggested. Europe's attitude at home has undermined its credibility when addressing the matter and has served as a tool for the Chinese government to help deflect criticism and simply use it against Europe. The above reveals that European normative power is determined by the legitimacy of its foreign policy. In minority rights its credibility is damaged, as a result of which its normative power suffers. As a result of failing to set an example at home Europe's effectiveness is limited. Because of the lack of coordination between institutions, the impact of individual actions has remained limited, instead of leading to an effective engagement of institutions by reinforcing and building on each other.

## Human Rights Defenders

In accordance with Europe's Human Rights Defenders Guidelines adopted in 2004 (updated in 2008) the political dialogues between Europe and third countries include human rights defenders; Europe underlines its support and raises individual cases of concern whenever necessary.<sup>100</sup> The Guidelines set out both policy objectives and practical initiatives to be implemented by European institutions and member states; a series of measures to translate guidelines into action were taken, including elaborating local strategies for their implementation in third countries (Bennett: 2015: 908–934). Furthermore, European rotating presidencies have underlined the need for further commitment for Europe to be more effective and following the Lisbon Treaty more efforts were undertaken in this respect (Bennett: 2015:

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Congress said that 'the EP's unfounded accusation of China is an arrogant interference in China's domestic affairs and will damage Sino-Europe relations'. It urged the EP to 'never again do things that will hurt the emotions of the Chinese people'; 'such slander was unacceptable to the Chinese government, the Chinese people or anyone with a conscience in the international community. For more see China's top legislature condemns EP for Tibet resolution, Xinhua News Agency April 12, 2008, available at [http://www.china.org.cn/china/Lhasa\\_Unrest/2008-04/12/content\\_14941543.htm](http://www.china.org.cn/china/Lhasa_Unrest/2008-04/12/content_14941543.htm)

99 Interview with official, Mission of the PRC to the EU, Brussels, 7 November 2013

100 Guidelines on Human Rights Defenders, 2004, available at [http://eeas.europa.eu/human\\_rights/guidelines/defenders/docs/16332-re02\\_08\\_en.pdf](http://eeas.europa.eu/human_rights/guidelines/defenders/docs/16332-re02_08_en.pdf)

908–934). Equipped with such tools, Europe has joined — and often claimed to lead — international concerns on developments regarding arbitrary curbs on social activism and human rights defenders in China. According to the Human Rights Watch 2015 World Report China’s human rights activists often face imprisonment, detention, torture, commitment to psychiatric facilities, house arrest and intimidation. In 2013 more than 50 activists were put under criminal detention.<sup>101</sup> In 2015 about 280 lawyers and activists were rounded up, nationwide.<sup>102</sup>

Assessing the situation in 2015 in China, Human Rights Watch noted that senior Chinese leaders, perceiving a threat to their power, explicitly reject the universality of human rights, characterizing these ideas as ‘foreign infiltration’ and penalizing those who promote them.<sup>103</sup> In his address, televised nationally, at the 95<sup>th</sup> anniversary of the Party, President Xi called for ideological discipline, urging officials, academics and journalists to study Marxism, to stave off the infiltration of harmful foreign ideas, such as Western style democratic governance.<sup>104</sup> On the European side, the discourse is very different: ‘The European Union, the institutions and myself personally, will do all we can to [...] protect human rights defenders on an individual basis’.<sup>105</sup> In the Human Rights Dialogues, European officials highlight individual cases, but since the Dialogues have proved to be largely ineffective, certain European officials consider that they are not able to provide the adequate means or platform to address the issue.<sup>106</sup>

Individual cases are regularly embraced in EEAS statements as the following examples illustrate. Given that a comprehensive account is not possible in a single paper, only a selected number of cases are assessed. Concerning the detention of close to 300 human rights lawyers and defenders,

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101 Human Rights Watch World Report 2014, Events of 2013, p. 318

102 Human Rights Watch, China – Events of 2015, available at <https://www.hrw.org/world-report/2016/country-chapters/china-and-tibet>

103 *Ibid.*

104 Tom Plate, Xi Jinping, the champion of Marxism, may find unlikely comrades in critics of Western capitalism, 4 July 2016, South China Morning Post, available at <http://www.scmp.com/comment/insight-opinion/article/1985172/xi-jinping-champion-marxism-may-find-unlikely-comrades>

105 Address by High Representative/Vice-President Federica Mogherini at the EU-NGO Human Rights Forum, Brussels, 4 December 2015, available at [https://eeas.europa.eu/headquarters/headquarters-homepage/4586/address-high-representativevice-president-federica-mogherini-eu-ngo-human-rights-forum\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/4586/address-high-representativevice-president-federica-mogherini-eu-ngo-human-rights-forum_en)

106 Interview with official, EEAS, Brussels, 14 May 2013



in 2016 the EEAS urged China to live up to its international human rights obligations, and respect the right to freedom of expression.<sup>107</sup> On 17 April 2015 following the sentencing of Chinese journalist Gao Yu, the High Representative called for the immediate review of the case in line with international standards.<sup>108</sup> The famous case of Liu Xiaobo, the human rights defender and co-author of Charter 2008, in 2009 sentenced to 11 years in prison for ‘inciting subversion of state power’ had gained further prominence in Parliamentary resolutions. In 2010 the Parliament called for his immediate and unconditional release and expressed solidarity with his peaceful actions in favour of democratic reforms.<sup>109</sup> These different actions aim at keeping pressure on Beijing to respect its own Constitution, which guarantees that the freedom of the citizens of the PRC is inviolable, article 37.<sup>110</sup> However, criticism suggests that improvements are necessary on European level; for example the use of public declarations was criticized as being reactive rather than pre-emptive; others feared that issuing ‘weak’ statements may send a message that Europe is either too pressured to respond or does not care (Bennett: 2015: 908–934). A Chinese academic has pointed out that the Chinese care more about the ‘collective’, the society at large, less about specific individuals, shedding light on the conflict between the two approaches.<sup>111</sup>

This paper argues that the *frequency* of Europe issuing statements does not reflect the real situation on the ground, where a great number of defenders reportedly face persecution, and harassment and intimidation are considered to be routine.<sup>112</sup> The number of European statements remains disproportionately low when compared to the reality. It appears that European institutions are speaking out only selectively. This implies that Europe fails to act in a consistent way, as opposed to its commitment to ‘condemn *any*

107 EU Concerns about the Human Rights situation in China, EEAS, EU Delegation, China, 24 May 2016, [http://eeas.europa.eu/delegations/china/press\\_corner/all\\_news/news/2016/20160524\\_en.htm](http://eeas.europa.eu/delegations/china/press_corner/all_news/news/2016/20160524_en.htm)

108 Statement by the Spokesperson on the sentencing of veteran Chinese journalist GAO Yu, 17 April 2015, available at [http://eeas.europa.eu/statements-eeas/2015/150417\\_02\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150417_02_en.htm)

109 21 January 2010 resolution on human rights violations in China, notably the case of Liu Xiaobo P7\_TA(2010)0006, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2010-0006+0+DOC+PDF+V0//EN>

110 Constitution of the People’s Republic of China, available at [http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content\\_1372964.htm](http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372964.htm)

111 Interview with Chinese academic, Brussels, 6 October 2013

112 Human Rights Watch World Report 2015, Events of 2014, p. 156

restriction on freedom of expression'. There are initiatives that are visibly more vocal, traditionally originating from the Parliament, as in the case of the previous human rights priority I discussed. For example, in 2008 the Parliament awarded Hu Jia with the Sakharov Prize for Freedom of Thought. The Chinese Foreign Ministry has denounced the award to a 'criminal' Chinese dissident, seen as a 'gross interference in China's domestic affairs'.<sup>113</sup> Reflective of the fragmentation in Europe's human rights policy regarding China, I identified actions undertaken at the level of member states focused on human rights defenders. In bilateral talks with the Chinese government Germany claims to regularly address the topic, according to German Justice Minister Heiko Maas. However 'at the end of the day we will not be able to convince the Chinese government not to do things that are not in keeping with our understanding of the rule of law'.<sup>114</sup> Germany has projects for the training of judges, initiated by the lawyers association in Germany to establish contact with their counterparts, conducted in the context of the 1999 Sino-German dialogue on the rule law.<sup>115</sup> In another example, the UK-China Human Rights Dialogue has remained an important channel to express concerns on the handling of human rights defenders.<sup>116</sup> These individual actions run into the same difficulties as European-level engagement. In the case of Germany, cooperation has led to some result, in terms of establishing contact, in line with European-level aspirations to strengthen the protection of defenders and rule of law. I consider that the individual efforts could complement those on the European level. By maintaining dialogue member states can contribute to European aims, however, this is the case only if individual efforts do not undermine European-level action.

Essentially what Germany has tried to achieve is what Europe has committed to doing, as a normative power. Recently, President Joachim

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113 China furious at EU human rights award to 'criminal' dissident Hu Jia, The Telegraph, 23 October 2008, available at <http://www.telegraph.co.uk/news/worldnews/asia/china/3249742/China-furious-at-EU-human-rights-award-to-criminal-dissident-Hu-Jia.html>

114 Germany set for another round of touchy talks with China, 31 May 2016, Deutsche Welle, available at <http://www.dw.com/en/germany-set-for-another-round-of-touchy-talks-with-china/a-19295839>

115 Federal Foreign Office, Foreign and European Policy, Bilateral Relations, China, Overview, [http://www.auswaertiges-amt.de/sid\\_5B95422CEE76DEC9A74C9B0C48506C69/EN/Aussenpolitik/Laender/Laenderinfos/01-Nodes/China\\_node.html#doc474918bodyText2](http://www.auswaertiges-amt.de/sid_5B95422CEE76DEC9A74C9B0C48506C69/EN/Aussenpolitik/Laender/Laenderinfos/01-Nodes/China_node.html#doc474918bodyText2)

116 China-Human Rights Priority Country Report, July 2016, Foreign and Commonwealth Office, available at <https://www.gov.uk/government/publications/china-human-rights-priority-country/china-human-rights-priority-country#china>

Gauck focused on human rights in meetings with Chinese heads of state and government in his visit to China in 2016, and even held a meeting with human rights lawyers.<sup>117</sup> The German-Chinese Rule of Law Dialogue, while it included the protection of human rights through judicial procedures, is believed to merely convey the goodwill of the German and, more so, of the Chinese Government to participate in discussions about legal reform; to what extent this Dialogue is up to significantly influencing the rule of law in the PRC remains difficult to answer (Schulte-Kulkmann, 2005). Furthermore, in assessing the impact of Germany's human rights policy, its overall relations with China must be considered, given that the two are strategic partners with the strongest economic ties inside Europe. China is Germany's most important trading partner in Asia, and with a trade volume of over 160 billion euros in 2015, Germany is China's largest trading partner in Europe.<sup>118</sup> The fact that Germany is China's biggest trading partner has made its relationship with Germany the most important among European countries, underlined by the Chinese readiness to accept Berlin's offer to establish 'government consultations' between both countries (Wacker, 2012). This, however, also led to questions about the extent to which Germany balances economic interests and value-driven considerations.<sup>119</sup> In 2009 the two partners even issued a joint statement on making efforts to stabilize the global economy, to work together for continued fast growth of China-EU relations and to cope with the financial crisis.<sup>120</sup> Similarly the UK remains China's second largest trading partner in Europe, China is the second largest of the UK outside Europe, with a trade volume reaching 78,54 billion euros in 2015.<sup>121</sup>

This brings into discussion the point that the Chinese government has always preferred working on a bilateral basis with member states, where it could exploit internal divisions to its own benefit. From this angle, it can be argued that maintaining such individual channels can eventually be to the

117 A focus on human rights as Gauck meets writers in China, March 22, 2016, Deutsche Welle, available at <http://www.dw.com/en/a-focus-on-human-rights-as-gauck-meets-writers-in-china/a-19134007>

118 Enhancing cooperation: fourth German-Chinese intergovernmental consultations held in Beijing, June 2016, [http://www.auswaertiges-amt.de/EN/Aussenpolitik/Laender/Aktuelle\\_Artikel/China/160613\\_RegKonsultationen.html?nn=474944](http://www.auswaertiges-amt.de/EN/Aussenpolitik/Laender/Aktuelle_Artikel/China/160613_RegKonsultationen.html?nn=474944)

119 Germany set for another round of touchy talks with China, 31 May 2016, Deutsche Welle

120 China-Germany Joint Statement on Making Joint Efforts to Stabilize the Global Economy, 30 January 2009, [http://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/2649\\_665393/t536227.shtml](http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t536227.shtml)

121 China-UK trade consolidates as countries build partnership, 26 January 2016, China Daily, available at [http://www.chinadaily.com.cn/world/cn\\_eu/2016-01/26/content\\_23264060.htm](http://www.chinadaily.com.cn/world/cn_eu/2016-01/26/content_23264060.htm)

detriment of strengthened relations with Europe, because it is precisely the divisions among member states and their ‘lobby to become China’s European partner of choice’ that allows China to undermine joint European engagement, Francois Godement and John Fox think. In fact, it is argued that during the clashes with China over meetings with the Dalai Lama, British, French and German leaders refused each other support, in effect seeing to capitalise on each other’s misfortune (Fox and Godement, 2009: 29). The above suggest that in spite of multiple tools at its disposal, overall European-level activity on human rights defenders remains mostly reactive. On discourse level, Europe considers the issue a priority. In practice its impact is limited. China perceives European advocacy as interference into its domestic affairs. It continues resisting European efforts and has regularly eschewed deep discussions. At the heart of their differences lies the same conceptual divide, as in the case of freedom of expression, whereby China deflects criticism by insisting on the sanctity of sovereignty and non-interference in its domestic affairs. The protection of human rights defenders plays a highly dividing role in Europe-China relations, where European normative power remains limited.

## Reform of the Criminal Justice System

‘The fair and impartial administration of justice is essential to safeguard human rights; the EU will step up its efforts to promote the right to a fair trial and equality before the law’, it reads in the 2012 Strategic Framework.<sup>122</sup> In Europe’s China policies, helping to reform China’s criminal justice system has been identified as a top priority in the context of supporting China’s transition to an open society. It has been one of the five aims in the 1998 Communication.<sup>123</sup> In practice, however, shaping the reform process from the outside has proved to be a challenge. With regards to China’s reforms, research suggests that in 1997 the PRC’s central government launched a program to reform the judiciary, and since then when the Supreme People’s Court took the step toward reviewing constitutional questions, Chinese judicial reform has remained a hot topic in legal academia (Lee, 2005). Understanding that a

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122 EU Strategic Framework and Action Plan on Human Rights and Democracy, Luxembourg, 25 June 2012, 11855/12

123 Communication from the Commission to the Council and the European Parliament, EU Strategy towards China: Implementation of the 1998 Communication and Future Steps for a more Effective EU Policy, COM(2001)265final, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0265&from=EN>

dysfunctional justice system severely impairs governance, Beijing has taken a series of actions to reform the judiciary (Gechlik, 2005). Randall Peerenboom has pointed out that China has enjoyed remarkable economic growth in the past few decades without the benefit of ‘rule of law’, thus challenging the prevailing view that a legal system that enforces property rights is necessary, if not sufficient for sustained economic growth (Peerenboom, 2005). At the same time, China’s inability to fully internalize international human rights has received widespread international opprobrium (Sitaraman, 2008: 9).

Srini Sitaraman has pointed out that China has made significant strides in updating its legal system, but problems persist in the area of compliance with and implementation of international human rights regimes (Sitaraman, 2008: 10). ‘The state, in accordance with the law, guarantees the rights of litigants, especially those charged with criminal offences, to an impartial trial’, it reads in the National Human Rights Action Plan of China (2009–2010).<sup>124</sup> Yet, the Chinese judiciary is highly politicized, and the government has long prioritized the interests of the ruling Communist Party over rule of law in judicial proceedings.<sup>125</sup> Analysts stress that in spite of harsh criticism since China’s opening launched by Deng Xiaoping, the CCP has maintained control over power, got rid of political rivals, eliminated the autonomy of the courts and pressed and centralized political power; the CCP outlasted, outsmarted, outperformed or simply outlawed its critics (McGregor, 2010). President Hu Jintao’s promulgation of “Three Supremes” in 2007 was a telling example; it stated that the law must serve the strategic interests of the CCP, and Party control should be the leading principle to guide the work of Chinese courts.<sup>126</sup> More recently, under President Xi Jinping, ahead of the 4<sup>th</sup> Plenum of the 18<sup>th</sup> Party Congress in 2014 it was announced that ‘rule of law should only be advanced by the rule of the Party’ (Keck, 2014). On a different occasion, in 2015 the President also said that “the Chinese people are comprehensively advancing rule of law by both inheriting the fine traditions of Chinese legal system and learning beneficial practices from other countries in rule of law, so as to ensure that all people are equal before the law, accelerate the building

124 National Human Rights Action Plan of China 2009-2010, 13 April 2009, available at [http://news.xinhuanet.com/english/2009-04/13/content\\_11177126\\_12.htm](http://news.xinhuanet.com/english/2009-04/13/content_11177126_12.htm)

125 Promises Unfulfilled, An assessment of China’s National Human Rights Action Plan, Human Rights Watch, 2011, available at <http://www.hrw.org/zh-hans/reports/2011/01/11/promises-unfulfilled>

126 Promises Unfulfilled, An assessment of China’s National Human Rights Action Plan, Human Rights Watch, 2011, available at <http://www.hrw.org/zh-hans/reports/2011/01/11/promises-unfulfilled>

of the socialist legal system with Chinese characteristics”.<sup>127</sup>

Thus, in China, a communist country that maintains a political system of one-party rule, the concept of ‘rule of law’ is framed under the slogan of ‘socialist rule of law with Chinese characteristics’.<sup>128</sup> In the same vein, Susan Trevaskes and Elisa Nesossi have argued that the prescribed route to development and prosperity in Xi Jinping’s China remains unmistakably socialist, intolerant of the ‘deviant path’ of Westernisation and heavily reliant on anti-corruption rhetoric (Trevaskes and Nesossi, 2013). The leadership continues claiming to carry out its reforms based on a policy of building socialism with Chinese characteristics, one of its most common propaganda slogans (Shambaugh, 2014: 217). In contrast, in Europe rule of law remains a fundamental value, to be guaranteed internally and promoted externally, together with human rights and democracy as a set of intertwined and mutually reinforcing principles (Pech, 2012). This reflection sheds light on the conceptual differences between China and Europe in their political tradition and the role they confer to rule of law in their development. Europe represents a liberal democratic version of rule of law with a liberal interpretation of human rights, with civil and political rights at the centre. China in contrast endorses a state-centred socialist rule of law defined by a socialist form of economy, a nondemocratic system with the Party in the centre, whereby collective and subsistence rights enjoy priority. Therefore, China is perceived to be different in many aspects, in light of the commitment of its leaders to socialism, its traditions and contemporary values (Staiculescu and Bala, 2013: 837–843). This fundamental difference in understanding the concept has greatly limited Europe’s influence over China’s judicial reform.

In the same spirit of ‘socialist rule of law with Chinese characteristics’, in its 2014 Policy Paper on Europe, the Chinese leadership stressed that the Human Rights Dialogue must continue based on mutual respect and non-interference in internal affairs; Europe should stop using individual cases to interfere in China’s judicial sovereignty and internal affairs. It further noted that China would continue to implement the China-EU legal and judicial

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127 Xi Jinping Delivers a Speech at the UK Parliament, 21 October 2015, available at [http://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/xjpdygjxgsfw/t1308108.shtml](http://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpdygjxgsfw/t1308108.shtml)

128 Rule of law in China, China with legal characteristics, 1 November 2014, *The Economist*, available at <http://www.economist.com/news/leaders/21629383-xi-jinping-invoking-rule-law-thats-risky-him-and-good-china-china-legal>

cooperation program and expand it on the basis of equality, mutual respect and non-interference in internal affairs and deepen exchanges in judicial reform.<sup>129</sup> Such discourse indicates that the leadership is set on its own path of development allowing no deviation from its fundamental principles of Peaceful Coexistence. The leadership is not interested in allowing the values pursued by Europe to penetrate or ‘interfere’ in its own discourse, I argue. My assessment of judicial reform in China has revealed important developments in the country. Francois Godement has noted that since 2013 there is vivid debate unfolding in Chinese intellectuals’ circles setting supporters of ‘constitutional government’ against those in favour of ‘socialism with Chinese characteristics.’ (Godement, 2013)

Similarly Chinese scholars have stressed that great debate is raging across China from the law faculties of its major universities to the Central Party School over ‘constitutionalism’ and the establishment of the rule of law (Li & Chen, 2013: 21–23). Voices for the rule of law in China include distinguished constitutional scholars like Cai Dingjian, who said, ‘constitutional democracy is the mission of our generation’ (Li, 2012). In his essay ‘China’s First Step Toward Constitutionalism’, He Weifang, a liberal lawyer and Peking University professor referred to as the West’s favourite China-law scholar advocates for the rule of law, judicial review by an independent judiciary, a fully pledged legal profession and scrutiny by a free press.<sup>130</sup> Luo Ya argues, however, that the two types of regimes are essentially different and cannot be merged; a ‘socialist constitutional government’ is impossible (Luo, 2013). Yet others, like Xu Xianming, claim that 2004 was a turning point for the rule of law in China, as its legal structure was entering the stage of socialist constitutionalism, an advanced stage of the rule of law (Xu, 2015: 61–63). China has already made its choice; it opted for socialism, so there is no point in arguing over a choice, it is argued along the conservative line of thought (Yang, 2013).

Understanding these domestic challenges in China remains crucial for Europe to adequately shape its engagement efforts. By aligning their priorities

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129 China’s Policy Paper on the EU: Deepen the China-EU Comprehensive Strategic Partnership for Mutual Benefit and Win-win Cooperation, 2 April 2014, available at [http://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/wjzcs/t1143406.shtml](http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/wjzcs/t1143406.shtml)

130 He Weifang, *In the Name of Justice: Striving for the Rule of Law in China*, The Thornton Center Chinese Thinkers Series

in the EU 2020 Strategy and China's 12<sup>th</sup> Five-Year Plan, the two sides aimed at jointly supporting each other's development process. Regarding Europe's efforts to urge reforms to its criminal justice system, a European official has pointed out that Europe no longer has the clout of imposing anything on the Chinese; the EU is weak.<sup>131</sup> And, in the aftermath of the 2008 financial crisis it suffered a major step back in its normative capacity. Nevertheless, the EU should not stop acting as a normative power; it should continue telling China to improve its human rights record.<sup>132</sup> Under these circumstances, European normative power faces a Herculean test in the pursuit of judicial reform in China, as it does in the case of its other human rights priorities. As another European official put it, it fails keeping China on board — for this to succeed Europe would need to apply a principled policy of engagement, speak with the Chinese with conviction and from a position of strength, with a more unified approach.<sup>133</sup> This observation evokes the issue of fragmentation further limiting coordinated efforts to influence China's judicial reform.

Nevertheless, Europe has claimed to carefully follow the inadequacies of China's judicial system and insisted that they be addressed. For example, it has contributed 18 million euros to establish an EU-China School of Law aimed at improving the knowledge, skills and performance of the Chinese legal profession in relation to European and international legal systems. Furthermore, Europe has regularly used its tools to urge the leadership to introduce genuine reforms in the judiciary. Yet these individual actions undertaken by the different institutions have not been coordinated in order to be effective. Practical cooperation on the ground remains limited, whereby the two sides remain miles apart in their conception and application of reforms. Chinese discourse shows little interest in reproducing the European or western model. This makes scholars ask the central question: why, despite reforms, modernization, scorching economic development, the participation in international legal regimes and China's emergence as a major international actor have not produced a meaningful impact on China's human rights policies and practices (Sitaraman, 2008: 47).

A Brussels-based European official I interviewed has suggested that the Chinese try to pick some of Europe's good ingredients, but overall remain

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131 Interview with official, EEAS, Brussels, 13 December, 2013

132 Interview with official, EEAS, Brussels, 13 December, 2013

133 Interview with official, EEAS, Brussels, 27 March 2013



rather unimpressed by their pressure; they have refused to establish a rule of law dialogue because they don't like it when Europe teaches them and have doubts whether Europe has anything useful to offer. They see Europe on a rather artificial level, where the implementation is done by member states. For this reason, they prefer working with member states; they set up a separate rule of law dialogue with Germany, the only one they have with any member state.<sup>134</sup> Furthermore, in the face of the Europe's half-hearted efforts the leadership's assertiveness has further grown to resist pressure. The fact that China's economic growth of the past three decades has increased the Party's legitimacy has made things easier for the leadership in eschewing international obligations, and even its own constitutional guarantees. Accordingly, the 2008 crisis has further boosted China's hubris at the expense of Europe's normative power effectiveness.

The above assessment has illustrated that Beijing has been especially protective of their own way of reforming the system, holding on to judicial sovereignty. The authorities have understood that a dysfunctional justice system impairs governance and jeopardizes their legitimacy, so they have taken a series of actions to reform the judiciary. While the Party has acknowledged that judicial reform is necessary, reform has, however, been selective. The Chinese judiciary remains politicized, and the interests of the ruling Communist Party have overwhelmed rule of law in judicial proceedings. Under these circumstances of prioritizing domestic considerations, Beijing has opposed cooperating with Europe in the reform of its judiciary along international standards. In fact, there is a fundamental conceptual divergence between China and Europe when it comes to judicial reform, which has greatly limited Europe's influence. Finally, Europe's fragmentation, a perennial challenge to its normative power effectiveness, has enabled Beijing to avoid European-level cooperation, instead opting for bilateral cooperation with member states.

## Conclusion

In this paper I have argued that European normative power effectiveness in human rights in China remains limited. This has confirmed widely held views that Europe's human rights policy towards China is in disarray. I established however that in spite of limitations to its effectiveness, a principled

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134 Interview with official, EEAS, Brussels, 2 December 2013

European human rights narrative has gradually taken shape regarding China, with Europe's increasing role as an international actor. In this process, I demonstrated that the relevance of the different institutions to shaping China's human rights positions has greatly varied. Yet, implementation has remained highly limited; in a fragmented structure institutions continue the pursuit of normative goals separately. Through the assessment of interviews, I observed that views reflected fundamentally divergent approaches to Europe-China relations. Normative differences have shaped the ways the two sides perceive 'power', 'normative power', and therefore 'normative power effectiveness'. I found Chinese rhetoric formal and controlled, leaving limited room for input that would go beyond certain well-established and much repeated slogans. On the other hand, I found European rhetoric less formal and less controlled, leaving more room for a free flow of opinions leading to more divergence in the views expressed.

In light of the above, my paper has established that European normative power effectiveness in human rights vis-à-vis China is limited. My assessment updates academic research with several findings. First, I found that the conceptual divergence remains an important factor hampering an effective European human rights policy. The two sides embrace and prioritize different values in their development; Europe insists on democracy, rule of law and human rights, and China on sovereignty and non-interference in its domestic affairs. Second, Europe's fragmented governance in foreign policy has continued to present challenges in the pursuit of human rights, whereby the principled narrative is not followed through. As a result, difficulties persist in establishing effective European institutional coordination to put the rich narrative into practice. Third, I found that the series of crises within and beyond Europe's borders have put further pressure on Europe's power of example, and therefore its ability to pursue human rights. Focusing on the implications of the crises on European normative power effectiveness ensures the originality of this paper and brings added value to the still inconclusive scholarly debate on this matter. At the same time, it indicates that further research is needed in this respect. Therefore, I trust that my research provides well-informed and solid analysis in this respect for future research. Fourth, on Europe acting as a role model, a key factor to determine its effectiveness, I have concluded that its record is mixed. In the death penalty, Europe's approach has remained solid on principle. Europe, however, did not act as a role model in freedom of religion and minority rights. In freedom of

expression, of human rights defenders and of the reform of the judiciary, it is the conceptual divide that most limits normative effectiveness. Beijing perceives European advocacy work in these areas as interference into its domestic affairs and continues resisting.

## List of Abbreviations

CFSP -	Common Foreign and Security Policy
COHOM -	Working Party on Human Rights of the Council
EEAS -	European External Action Service
EP -	European Parliament
EU-	European Union
HR-	High Representative
PRC -	People's Republic of China
ROC -	Republic of China, Taiwan

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# 歐洲與中國關係中的人權議題：評估歐洲規範性力量的有效性

Zsuzsa Anna Ferenczy

布魯塞爾自由大學博士候選人

歐洲議會政治顧問

## 摘要

歷年來，歐盟從未能掌握實質的力量，也未試圖透過經濟實力博取籌碼。不過，歐盟也因其發揮的規範性力量（或者意識型態上的力量）而扮演模範的角色；她不僅因此廣受讚揚，本身也頗為自豪。歐洲基本上透過外交政策向外發揮這種規範性的力量，不過，她對內也必需承擔起這種示範性的角色，才足以發揮規範性力量。然而，本文要指出的是，針對中國的人權問題，歐盟的規範性力量效果有限。首先，本文認為，歐洲與中國在概念的認知上，仍存在相當的落差，這是歐盟的規範性力量受限的重要原因。兩方在各自的發展歷程中，懷抱了不同的價值：歐洲堅持民主、法治與人權，但中國重視主權與不干涉原則。其次，本文認為，歐洲的外交政策缺乏一致性，阻礙了對人權的追求，基本訴求亦難以貫穿其政策。結果，歐洲無法在論述與實踐的結合上建立有效的協調機制，導致政策分裂，北京反而因此從中獲利。第三，本文認為，歐洲內外一連串的危機，為其示範性力量帶來更大的傷害，也扼殺其促進人權的能力。不過，隨著歐洲在國際上扮演日漸吃重的角色，以及各類歐洲機制持續努力所獲致的成果，本文認為歐洲雖然面臨上述的局限，但已逐漸形成面對中國的人權論述。

## 關鍵字

歐洲外交政策、政策分裂、歐盟對外行動部、規範性力量、規範性的分歧、中國、人權

