



May 2022

Embedding Human Rights in European and US China Policy

Malin Oud

Summary

Europe and the United States share an interest in promoting human rights in China but often struggle to affect change in this regard. Because of ineffective approaches and low political commitment, human rights are a marginalized issue in transatlantic China policy and an afterthought to commercial interests. European and US policymakers have attempted to compartmentalize their approach to China, keeping human rights separate from commercial and other interests. This does little to advance human rights, and it only seems to encourage more assertive and coercive behavior by China.

During the last few years, the Western assumption that trade and foreign capital would transform China into a more open and democratic society has been replaced by a disillusioned realization that its rise as a superpower is reshaping the international order. Under President Xi Jinping, China has evolved from its previous position as rule-taker and status quo-keeper at the UN to become an assertive rule-maker and international norm entrepreneur. Its vulnerability to external pressure has declined while its power to exert pressure and economic coercion on others has increased. China no longer presents its political and economic model merely as different from but as superior to that of the liberal democracies in the West.

For several years now, European and US policymakers have declared an “end of naivety” in relation to China. After years of debating how to make the EU more resilient and robust, Russia’s invasion of Ukraine has “given birth to geopolitical Europe,” in the words of its chief diplomat, Josep Borrell. It remains to be seen whether this moment of clarity will translate into

a more principled defense of human rights and investment in democratic resilience. For this to happen, there needs to be a broader reckoning with how Western countries for decades mishandled the authoritarian challenge to the international order, often because they were pursuing stronger economic ties with the same governments they now see as systemic rivals.

If Europe and the United States are serious about upholding an international order centered on the United Nations, international law, and universal values, human rights principles need to be integrated into policy fields where they have leverage as normative and regulatory powers, including in trade and investment. The way forward does not lie in a choice between “engagement” and “containment,” but in charting a third way that uses engagement strategically to promote human rights, the rule of law, and other objectives.

This paper draws out lessons from the past two decades of Western engagement with China and outlines ten principles for embedding human rights in European and US China policy, based on:

- internationally agreed human rights standards and principles
- human rights language
- leading by example
- specific and modest goals
- coherence and coordination
- transparency and accountability
- do no harm
- using voice responsibly
- change from within
- knowledge and empathy

Introduction

Four decades of reform and opening up have transformed China from an impoverished country into the world's second-largest economy and a rising superpower. At the same time, striking continuities remain with regard to its domestic political system. For example, on freedom of information and media independence, China ranks 177th out of 180 countries in the World Press Freedom Index, higher only than Turkmenistan, North Korea, and Eritrea.¹ China today is in many ways a more closed and controlled society than it was two decades ago. It has changed, but not in the way many had expected or hoped for. This presents the liberal democracies in the West with the dilemma of how to engage a country that is the world's largest market but also the world's most resilient authoritarian state.²

From Beijing 2008 to Beijing 2022

When China in 2001 won the right to host the 2008 Summer Olympics, this was one of the most controversial decisions ever made by the International Olympic Committee.³ A decade earlier, in 1993, it had lost its first-ever bid for the Olympics, when the military's bloody crackdown on protestors around Tiananmen Square in 1989 was still fresh in memories.

In the years between Beijing's unsuccessful bid in 1993 and its winning bid in 2001, China made important human rights commitments and concessions, including signing and ratifying several international human rights conventions. It signed the UN Covenant on Civil and Political Rights in 1998, committing to work toward its ratification. China also ratified the UN Covenant on Economic, Social, and Cultural Rights in 2001. Beijing made further assurances that awarding China the Olympics would

not only promote its economy but also “enhance all social conditions, including education, health and human rights,” and that the international media would have “complete freedom to report when they come to China.”⁴

Hosting the Olympic Games in 2008 was of great symbolic importance to China. At a time of global instability—with a looming financial crisis and color revolutions in former Soviet republics—the opening ceremony, directed by the internationally acclaimed film director Zhang Yimou, projected an image of self-confidence, economic success, and political stability.

In 2022, once again, the Beijing games were organized amid a global crisis and controversy over China's human rights record. This time against the backdrop of the coronavirus pandemic and charges of genocide and crimes against humanity in Xinjiang.

But, whereas the 2008 Olympics came with an alluring promise of a more open China, Beijing in 2022 was sealed off and self-isolated, not only for reasons of pandemic control but also in the name of fighting terrorists, bad foreign influences, and other perceived threats to the party-state. “A city of fear,” as one long-time Beijing-based Western business representative described it in reference to the most recent government crackdown on the private tech sector.⁵

Wandel durch Handel in Reverse

Since the end of the Cold War, European and US engagement strategies with China have operated on the assumption that the country would be socialized into existing international norms and practices through interactions with the West. European China policy rested on an assumption of *Wandel durch Handel* (change through trade) the German maxim that closer commercial ties with China would push it toward a more open and freer political system.⁶ This was illus-

1 Reporters without Borders, [2021 World Press Freedom Index](#).

2 Andrew J. Nathan, “China's Changing of the Guard: Authoritarian Resilience,” *Journal of Democracy*, Volume 14, Number 1, Johns Hopkins University Press, January 2003.

3 Duncan Mackay and Vivek Chaudhary, “Alarm as China wins Olympics,” *The Guardian*, July 13, 2001

4 Chuck Hadad, “China falls short on Olympic promises, critics say,” CNN, August 12, 2008.

5 The remarks were made at a closed-door event attended by the author.

6 Barbara Moens, “Ukraine presses the EU to get real about trading with the enemy,” *Politico*, March 14, 2022.

trated by a front cover of *The Economist* at the time of the handover of Hong Kong from Britain to China in 1997, picturing a man standing in front of a tank (in reference to the iconic image from Tiananmen Square in 1989) holding up a bag of dollars in one hand and the scales of justice in the other, captioned “How Hong Kong can change China.”

During the last few years, the Western assumption that trade and foreign capital would transform China into a more open and democratic society has been challenged. Under President Xi Jinping, the country has evolved from its previous position as rule-taker and status quo-keeper at the UN to become an assertive rule-maker and international norm entrepreneur. China has long abandoned its previous foreign policy dictum of “keeping a low profile and biding one’s time” and is now engaged, to use its own terms, in a “struggle for discourse power” to “break Western hegemony” around global norms. With a rhetoric of “true multilateralism” and “more democracy in international relations,” it seeks increased influence in global governance and actively lobbies for international support for its viewpoints.⁷

Economic statecraft is an increasingly prominent component of China’s more assertive foreign policy. In 2021, it adopted several measures in response to European and US sanctions over human rights abuses in Xinjiang. In March, on the same day that the European Union imposed sanctions on four Chinese officials, China responded with sanctions on 10 EU citizens and four entities, including parliamentarians, scholars, and the Berlin-based Mercator Institute for China Studies. In June, Beijing enacted an Anti-Foreign Sanctions Law giving the government authority to prohibit compliance by individuals and organizations with foreign sanctions and export-control restrictions.

China is also using its rising leverage on foreign companies to put pressure on their home governments. The Swedish retailer H&M last year became

the target of a Chinese boycott because of its decision not to source cotton from Xinjiang. When the Better Cotton Initiative, a not-for-profit sourcing network that sets the global sustainability standard for the cotton industry, announced that it was suspending its licensing of cotton in Xinjiang, China promptly launched its own standards and certification scheme, called Weilai (Future) cotton.

Like so many times before, the West has overestimated its power to change China and underestimated the country’s ambitions to shape the international order.

While China moved closer to the international human rights system in the 1990s, today it appears to be further from ratification of the International Covenant on Civil and Political Rights than it was when signing the treaty in 1998.

Like so many times before, the West has overestimated its power to change China and underestimated the country’s ambitions to shape the international order.⁸ Today, the hubristic hope that landmark moments such as the 1997 Hong Kong handover or the 2008 Olympics would change China has been replaced by a disillusioned realization that its rise as a superpower is reshaping the international order.

The Beijing 2022 Olympics overall theme of Together for a Shared Future was a nod to Xi Jinping’s vision of a “shared future of mankind.” At the closing ceremony, firework formed the Chinese characters for the phrase *tianxia yijia*, which literally means “one family, all under heaven.” While they were lost in translation to English (“one world, one family”), the political connotations of *tianxia*—a traditional vision of a China-centric hierarchical world order—would not have been lost on anyone with Chinese contex-

7 Malin Oud and Katja Drinhausen, “[Introduction: Interpreting China in International Cooperation and Diplomacy](#),” in Malin Oud and Katja Drinhausen (eds.), *The Decoding China Dictionary*, March 3, 2021.

8 Jonathan D. Spence, [To Change China: Western Advisers in China](#), Penguin Random House, 1980.

tual knowledge. Xi Jinping presided over the games by presenting himself as a global family patriarch and leader of a new international order.

On February 3, the day before the games' opening ceremony, Xi Jinping and Russia's President Vladimir Putin signed an agreement in Beijing that the Chinese state media billed as a "Winter Olympics Pact." Portrayed as "a big ship" helmed by Xi and Putin, the China-Russia relationship was said to feature "the highest degree of mutual trust, the highest level of coordination, and the highest strategic value."⁹ Putin was the first world leader to meet face-to-face with Xi in nearly two years. Presenting a united front amid increasing global tensions, the two leaders called on the West to abandon its "Cold War approach" and pledged to step up cooperation to thwart color revolutions and external interference. Less than a week after the games ended, Russia invaded Ukraine.

Rule of Law with Chinese Characteristics

When Xi Jinping came to power in 2012, there was a lot of wishful speculation in Europe and the United States that his many mentions of "rule of law" heralded political reforms. When he talked about "socialist rule of law with Chinese characteristics," many heard "rule of law" in the liberal democratic sense, as separation of powers and independence of the judiciary. In 2018, just a couple of years before the passing of a controversial National Security Law for Hong Kong, an EU official speaking at the Stockholm China Forum described legal and political developments in the special administrative region as "a glass half full." But, a decade into his time at the helm, it should now be clear to everyone that Xi is not a closeted liberal reformer.

While the rule of law has been a recurring theme in China's reform plans and official discourse ever since the early 1980s, the country's legal system was always kept firmly under the leadership and supervision of the Chinese Communist Party (CCP). Placing the

party above the law is a feature of "socialist rule of law with Chinese characteristics," not a bug.

Furthermore, while the 1980s saw a de-politicization of law and a professionalization of the judiciary, Xi has overseen a re-politicization of law and a removal of measures put in place after Mao Zedong's death to prevent the over-concentration of power. An official document circulated in 2013 warned against constitutionalism and universal values as political "perils."¹⁰ It also called on party cadres to guard against "infiltration" by outside ideas and to renew their commitment to work "in the ideological sphere."

Chinese academic writing and opinion pieces that were published in the state media and major publishing houses in the 1990s and early 2000s would not be publishable today. Meanwhile, in the last couple of years, Xi Jinping Thought centers—with accompanying textbooks on the leader's ideas about socialism, governance, rule of law, human rights, democracy, and diplomacy—have been established at universities across the country.

Xi Jinping talks of law as "a means to carry out international struggle"¹¹ and as a weapon in international governance and diplomacy. As he put it in 2019,

China should be apt at using law when participating in international affairs. In the struggle against foreign powers, we must take legal weapons, occupy the high point of the rule of law, and say no to the saboteurs and spoilers. We must actively participate in the formulation of international rules and act as participant, promoter, and leader during the changing process of global governance.¹²

9 Xinhua, "[Diplomacy: Xi-Putin get-together for Winter Olympics to open new chapter in China-Russia relations](#)," February 2, 2022.

10 ChinaFile, "[Document 9: A ChinaFile Translation](#)," November 8, 2013.

11 qstheory.cn, "[习近平：运用法治手段开展国际斗争 \[Xi Jinping: Use the rule of law as a means to carry out international struggle\]](#)," February 18, 2022.

12 Xi Jinping, "[Jiaqiang dang dui quanmian yifa zhiguo de lingdao](#)" [Strengthen the Party's Leadership in the Comprehensive Rule of Law], Qiushi, April, 2019.

Ultimately, the CCP sees the law as a tool to ensure stability and order, and as a means to justify and maintain its rule. This fundamental feature of the regime is laid bare every time there is a major political crisis, like the Tiananmen protests in 1989 or the rise of the Hong Kong democracy movement in 2014. From Beijing's perspective, the fate of Hong Kong democracy was settled in Tiananmen Square, ending any discussion of a democratic future there after the 1997 handover.¹³

In Hong Kong, China used the law rather than the military to crack down on demonstrators. In June 2020, Beijing bypassed the region's legislature and introduced the National Security Law that outlaws political protest. The law gives the police sweeping new powers and criminalizes subversion, secession, foreign interference, and terrorist acts broadly defined to include disruption to public transport. The discourse surrounding the introduction of the law is a familiar one: it is said to protect the rights and safety of the majority against "a small number of troublemakers."¹⁴ Hong Kong and Beijing officials say that "Law-abiding residents have nothing to fear,"¹⁵ and they reiterate the importance of stability, safety, and security.

Political stability and sovereignty trumps economic considerations and international image for the CCP.

The National Security Law spelled the end of the policy of "one country, two systems" in Hong Kong, and constituted a breach of the 1985 Sino-British Declaration, according to which the region would preserve its legislative autonomy, independent judicial system, and freedoms of the press, expression, and assembly for 50 years after the 1997 handover. Events over the past couple of years have demonstrated that China is

willing to risk its image in the West and destroy Hong Kong as a global financial center.¹⁶ Political stability and sovereignty trumps economic considerations and international image for the CCP. Elections in Hong Kong are lawful only as long as Beijing can control the results. "One country" comes before "two systems." With Hong Kong's National Security Law, China also adopted for the first time legislation that claims global reach. It has since introduced more legislation with extraterritorial components, including the Anti-Foreign Sanctions Law.

Keeping Business and Politics Separate

Developments in Hong Kong and beyond have spurred a debate in Europe and the United States over whether engagement with China has failed. This tends to pit those in favor of confronting China with sanctions against those proposing more dialogue and cooperation. The US government has in recent years labelled China as a strategic rival while the EU continues to emphasize the country's importance as a partner. "We have to cooperate with China" is a longtime mantra in Brussels and European capitals.

Policymakers in the EU and the United States have attempted to compartmentalize their approach to China, keeping human rights separate from commercial and other interests. This was exemplified by US Special Climate Envoy John Kerry in November 2021 when, answering a reporter who asked whether he had raised the issue of Uyghur forced labor in the solar-panel industry during his meetings with Chinese leaders, he replied: "Not my lane here. My job is to be the climate guy."¹⁷

This compartmentalized approach does little to advance human rights, and it only seems to encourage more assertive and coercive behavior by China. Its officials have often suggested that China's cooperation

13 Matthew Brooker, "[Hong Kong's Avoidable Tragedy Is Complete](#)," Bloomberg, April 1, 2021.

14 Clare Jim and Carol Mang, "[Hong Kong leader says opponents of security law are 'enemy of the people'](#)," Reuters, June 16, 2020.

15 CGTN, "[Law-abiding residents have nothing to fear, says HKSAR gov official](#)," June 7, 2020.

16 Ching Kwan Lee, "[Hong Kong is the front line of a new cold war. If it burns, the world gets burned too](#)," Los Angeles Times, May 28, 2020.

17 Jake Spring and Valerie Volcovici, "[U.S. and China unveil emissions deal in bid to save UN climate talks](#)," Reuters, November 11, 2021.

is conditional¹⁸ on other countries not interfering in its “internal affairs.” Criticism of its domestic human rights record is dismissed as “politicization” and said to “hurt the feelings of the Chinese people.”¹⁹

The threat of commercial retaliation by China has created “preemptive obedience”²⁰ in the boardrooms of Europe and the United States, and it has instilled an assumption that friendly political relations are necessary for good economic relations.²¹ Cooperation has become an end in itself, with governments, businesses, and international organizations backing themselves step by step into trade-offs on freedom of expression, not only in China but also at home. There are numerous examples of this from capitals around the world.

The threat of commercial retaliation by China has created “preemptive obedience” in the boardrooms of Europe and the United States

This includes even in Scandinavian countries that otherwise holds their head high on human rights and democracy. When President Hu Jintao visited Copenhagen in 2012, for instance, pro-Tibet demonstrators were blocked and detained by the police in order to allow the Chinese President to “save face.”²² In 2016, Norway’s government issued an apologetic statement aimed at getting diplomatic relations with China, which had been frozen since 2010 when the Norwegian Nobel Committee awarded the Nobel Peace Prize

to the imprisoned Chinese dissident Liu Xiaobo, back on track. This stated that the government

reiterates its commitment to the one-China policy, fully respects China’s sovereignty and territorial integrity, attaches high importance to China’s core interests and major concerns, will not support actions that undermine them, and will do its best to avoid any future damage to the bilateral relations.

In 2019, the UNDP cancelled an event in Stockholm at the last moment in response to Chinese government pressure.²³ The event, which used the hashtag #stand-up4humanrights, was to mark the 70th anniversary of the UN Declaration of Human Rights and was to include a photography exhibition portraying images of human rights figures, including the Dalai Lama and the Chinese artist Ai Weiwei. The decision to cancel the event was made by the UNDP Nordic office, which said “the exhibition risked steering the conversation in an unintended direction, which would distract from the important work for human rights.”

The same year, the French and Italian luxury brands Givenchy and Versace issued a public apology for producing T-shirts that China regarded as undermining the “One China” policy,²⁴ and the US National Basketball Association apologized on behalf of Daryl Morey,²⁵ a team executive who had voiced support for pro-democracy protesters in Hong Kong on Twitter.

The Chinese government uses the psychology of vaguely defined red lines to manage and control public expression in China and in international settings. The American academic Perry Link has likened this control system, which relies primarily on self-censor-

18 Global Times, “[China-US cooperation in specific areas affected by overall ties: FM on climate cooperation](#),” January 28, 2021.

19 Bernhard Bartsch and Martin Gottske, [The Thin Red Line of China’s National Feelings](#), Bertelsmann Foundation, 2019.

20 Max J. Zenglein, [Mapping and recalibrating Europe’s economic interdependence with China](#), Mercator Institute for China Studies, November 17, 2020.

21 Ben Hall, “[Germany frets over its corporate dependency on China](#),” Financial Times, November 25, 2020.

22 Luke Patey, “[Confronting Coercion](#),” The Wire China, February 6, 2022.

23 Donor Tracker, “Swedish government criticizes UNDP’s handling of pressure from China on human rights exhibition,” June 13, 2019.

24 Elizabeth Patton, “Versace, Givenchy, and Coach Apologize to China After T-Shirt Row,” The New York Times, August 12, 2019.

25 Daniel Victor “Hong Kong Protests Put NBA on Edge in China,” The New York Times, October 7, 2019, Updated October 21, 2021.

ship, to a “giant anaconda coiled in an overhead chandelier.”²⁶ As he described it:

Normally the great snake doesn't move. It doesn't have to. It feels no need to be clear about its prohibitions. Its constant silent message is “You yourself decide,” after which, more often than not, everyone in its shadow makes his or her large and small adjustments—all quite “naturally.”

China increasingly applies pressure on foreign companies and political leaders not only so that they avoid politics, but so that they explicitly support its policies and core interests. The British investment bank HSBC was warned in 2020 that it would lose its business in China and pay a “painful price” for its lack of public support for the National Security Law in Hong Kong. In 2008, the French supermarket chain Carrefour became the target of a Chinese boycott after pro-Tibet protesters disrupted the Olympic torch relay in Paris, prompting the company's chairman to “go all out to support the Beijing Olympics” and its staff in China to put on “patriotic uniforms.” In 2022, following the boycott of H&M over its decision not to source cotton from Xinjiang, Carrefour launched an advertising campaign promoting Xinjiang products.

Meanwhile, the list of politically sensitive topics in China keeps growing. Most recently, “tennis” became a sensitive word and inquiring about the Chinese top female player Peng Shuai, who went missing after publicly accusing former vice-premier Zhang Gaoli of sexual assault. Women's rights, generally considered to be a safe topic in China, became sensitive as soon as the country's MeToo movement touched the CCP leadership.

The ever-present anaconda in the chandelier and China's changing red lines makes the notion of a separation of business and politics untenable. And yet, compartmentalization remains the rule in European

and US engagement with China, as at the UN and international bodies.

Human Rights and China Policy

Human rights have never been a significant focus of European or US China policy, except for a brief period immediately after the Tiananmen crackdown when the United States and other countries made coordinated and multi-pronged efforts at the multilateral and bilateral levels to pressure and persuade Beijing to comply with international human rights standards and norms. In response, Beijing applied pressure on states to stop supporting human rights resolutions on China at the UN. It also made continued dialogue conditional on other states refraining from confrontation, public criticism, statements, and resolutions.

By the mid-1990s, many countries had already demoted human rights in their relations with China and were instead pursuing quiet diplomacy and business as usual. Instead of multilateral processes and cooperation on human rights in China, the issue was bilateralized and taken behind closed doors. Communication in this field that had been public became private and secret, undermining multilateral engagement and NGO efforts to name and shame the Chinese government.

Quiet diplomacy is not necessarily ineffectual—human rights discussions behind closed doors can support NGO fact-finding and public condemnation. However, independent evaluations and academic research have shown that the EU failed to effectively assert human rights in diplomatic dialogue behind closed doors with China.²⁷

China made a direct connection between its economic needs and its enhanced international engagement on human rights. Seeking to gain most-favored-nation status and accession to the World Trade Organization, it made strategic concessions in the form of participating in human rights dialogues,

26 Perry Link, “China: The Anaconda in the Chandelier,” ChinaFile, April 11, 2002.

27 Katrin Kinzelbach, *The EU's Human Rights Dialogue with China: Quiet Diplomacy and Its Limits*, Routledge, 2016.

releasing political prisoners, receiving foreign human rights delegations, and signing international human rights treaties.²⁸ However, Beijing's behavior changed again when its need to maintain a good image and relationship with the United States and other Western democracies diminished.²⁹ This behavior is consistent with the findings of research on sanctions in general to the effect that economic coercion tends to encourage ritualistic behavior by reducing human rights compliance to a mere cost-benefit calculation.³⁰

Nevertheless, the strategy to socialize China into accepting international human rights norms worked to a degree. Beijing started participating in the human rights discourse instead of standing as an outsider to it. Its official commitment to human rights provided an opportunity for legal scholars and human rights defenders in China to push for reforms and improvements of the country's law and practice. Since the 1990s, however, China's vulnerability to external pressure has declined while its power to exert pressure and economic coercion on others has increased. It has become more and more immune to public shaming, and it has launched a counter-discourse against external criticism, focused on Western hypocrisy and double standards.

Whataboutism and Discourse power

A key aspect of China's new diplomacy is to "struggle for global discourse power" in order to "break Western hegemony" around global norms.³¹ In the CCP's history books, China has suffered a century of humiliation and "three afflictions" at the hands of Western powers: "being beaten," "being starved," and

"being scolded."³² The first two were solved under Mao Zedong and Deng Xiaoping respectively. Now, in Xi Jinping's new era of "national rejuvenation," China will no longer accept being scolded. Instead, the time is ripe to "tell China's story well" and defend "China's right to speak." Xi gave a taste of this new, confident approach already in 2009 when, speaking to overseas Chinese in Mexico, he said:

China has managed to feed 1.3 billion people during a global financial crisis. There are some foreigners who have eaten their fill and have nothing better to do than pointing their fingers at our affairs. China does not, first, export revolution; second, export poverty and hunger; or third, cause unnecessary trouble for you. What else is there to say?³³

China no longer presents its political and economic model merely as different from but as superior to that of liberal democracies in the West. A White Paper issued last year stated that the CCP has "opened a new path of human rights protection and added diversity to the concept of human rights."³⁴ According to Xi Jinping, "China's socialist democracy is the most comprehensive, genuine and effective democracy."³⁵ In 2021, Foreign Minister Wang Yi said that "The standard of democracy and human rights is whether the people of the country are satisfied and happy."³⁶

International human rights law recognizes that it is legitimate for states to interpret human rights norms in ways that are compatible with the specific context in which they are being applied. China's recent rhetoric goes beyond such acceptable interpretations, however,

28 Rosemary Foot, *Rights Beyond Borders: The Global Community and the Struggle over Human Rights in China*, Oxford University Press, 2000.

29 Rosemary Foot, *China, the UN, and Human Protection: Beliefs, Power, Image*, Oxford University Press, 2020.

30 Morten B. Pedersen, "The Theoretical Case for Principled Engagement," in Morten B. Pedersen and David Kinley (eds.), *Principled Engagement: Negotiating Human Rights in Repressive States*, Routledge, 2016.

31 Oud and Drinhausen, [Introduction](#).

32 David Bandurski, "[CCP media policy, soft power and China's 'third affliction'](#)," China Media Project, January 5, 2010.

33 Josh Rogin, "[China's next president lashed out in Mexico against 'well fed foreigners'](#)," Foreign Policy, January 12, 2011.

34 Xinhua, "[CPC adds diversity to concept of human rights: white paper](#)," June 24, 2021.

35 Katja Drinhausen, "[Democracy](#)," in Oud and Drinhausen (eds.), *The Decoding China Dictionary*,

36 Katja Drinhausen, [Hong Kong elections: Beijing redefines democracy](#), Mercator Institute for China Studies, December 22, 2021.

and attempts to redefine fundamentally how human rights should be understood. European and US policymakers are seemingly ill-prepared to deal with this discourse. “Whataboutism,” the rhetorical practice of accusing others of offences to deflect attention from one’s own, and platitudes about cooperation plague the China policy debate, and they undermine efforts to defend universal human rights standards and hold governments to account.³⁷ Even if well-intended and factually correct (since systemic human rights abuses abound also in the West), whataboutism does very little to advance human rights in China.

Xinjiang and the Streetlight Effect

Foreign companies operating in China were seemingly caught by surprise when reports about mass internment, forced labor, and systemic human rights abuses in Xinjiang made the headlines in 2020. They should not have been. Human rights organizations and the international media have raised concerns for decades about the treatment of minorities in China, including the Muslim Uyghurs in Xinjiang, well before companies like Volkswagen made large investments in the region ten years ago.

According to the UN Guiding Principles on Business and Human Rights, companies should undertake due diligence to identify, prevent, and correct any negative impacts of their activities on human rights.³⁸ The goal of this is to identify if a company can operate responsibly in a given situation. What is more, if it is difficult to conduct such due diligence, that in itself is a red flag that should generate a corporate response.

Very few companies have conducted human rights due diligence on their business relationships and supply chains in China, relying instead on traditional factory audits to verify compliance with labor and human rights

standards. The problem with these audits is that they are geared toward verifying that there is no non-compliance and, as such, they often avoid identifying problematic issues. Corporate responses to questions about forced labor and human rights risks in Xinjiang have been symptomatic of the “streetlight effect,” namely the tendency to search for something where it is easiest to look. A good example of this was provided by Volkswagen’s CEO in China Stephan Wollenstein in an interview in 2020, in which he stated:

[Volkswagen] are making sure that none of our production sites have forced labour, and this is something that we specifically checked in Urumqi [in Xinjiang] and I can assure you, we do not have forced labour... I would say everything that is happening outside the fences of all of our production sites all over China and what is happening in the spare time of our employees is out of our control.³⁹

From a human rights perspective, this narrow focus on forced labor and audits at production sites is problematic. Setting aside that auditing firms have been criticized for being permeated by a “veritable industry of falsification,”⁴⁰ the corporate responsibility to respect human rights does not only concern labor conditions within factories but also linkage to any harm via operations, products, or business relationships. Auditing firms in China lack the means and methods to identify this wider range of human rights issues. As things stand, their clean audits are held up by the Chinese media as evidence that all accusations of forced labor are fabricated and used to discredit any human rights concerns.⁴¹

37 Ivan Franceschini and Nicholas Loubere, “[What about Whataboutism? Viral Loads and Hyperactive Immune Responses in the China Debate](#),” *Made in China Journal*, July 7, 2020.

38 The United Nations, “[Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework](#),” 2011.

39 John Sudworth, “[China Muslims: Volkswagen says ‘no forced labour’ at Xinjiang plant](#),” BBC News, November 12, 2020.

40 Justine Nolan and Auret van Heerden, “Engaging Business in the Business of Human Rights,” in Pedersen and Kinley (eds.), *Principled Engagement*.

41 John Carter, “[How Xinjiang human rights controversy is souring relations between China and the West](#),” *South China Morning Post*, May 10, 2021.

Lessons Learned

Foreign companies with a presence in Xinjiang find themselves caught between a rock and a hard place, having to navigate compliance with human rights policies, codes of conduct, laws, and sanctions in their home markets on the one hand, and Chinese policies, laws, and counter-sanctions on the other.

The UN Guiding Principles on Business and Human Rights call on companies to build and use their leverage to address human rights harms. But the possibility of them doing so in China looks very different today than it did two or three decades ago, when many companies entered the Chinese market. China has leverage with foreign companies and governments because of the size of its domestic market. Many large Western firms depend on the country for a good share of their profits, which risks making them a hostage to it.⁴²

Many companies seem to have concluded that this leaves them only with a choice between leaving China and continuing with business as usual. But this is a false choice: the question is rather under what conditions can they do business responsibly in a country where human rights are widely and consistently violated. Rather than a stay or go question, it is one of when to stay and when to go, and how.⁴³

For several years now, European and US policy-makers have declared an “end of naivety” in relation to China. After years of debating how to make the EU more resilient and robust, Putin’s war in Ukraine has “given birth to geopolitical Europe,” in the words of its chief diplomat, Josep Borrell.⁴⁴ It remains to be seen whether this moment of clarity will translate into a more principled defense of human rights and investment in democratic resilience. For this to happen, there

needs to be a broader reckoning with how Western countries for decades “mishandled, misunderstood or simply ignored” the authoritarian challenge to the international order, often because it was pursuing stronger economic ties with the same governments they now see as systemic rivals.⁴⁵ Much of Western policy toward China was driven by “fear and greed,” as Australia’s Prime Minister Tony Abbott put it in 2015, to the detriment of human rights and freedoms.⁴⁶

Rather than a stay or go question, it is one of when to stay and when to go, and how.

Too often, the EU’s self-proclaimed policy of principled pragmatism and strategy of labelling China simultaneously as a partner, competitor, and systemic rival have amounted to a “have your cake and eat it too” approach, with difficult human rights issues referred to the union level while business has gone on as usual at the member-state level. In the United States, President Donald Trump flipped from expressing support for the building of reeducation camps in Xinjiang in 2019 to being “tough on China” a year later when that was politically more expedient.⁴⁷

Because of ineffective approaches and low political commitment, human rights are a marginalized issue in transatlantic China policy and an afterthought to commercial interests.⁴⁸ If Europe and the United States are serious about upholding an international order centered on the United Nations, international law, and universal values, human rights principles need to be

42 Jamil Anderlini, “[Western companies in China succumb to Stockholm syndrome](#),” Financial Times, May 5, 2021.

43 Salil Tripathi and John Morrison, “[Staying or Leaving Myanmar Part 2 – Reflections on the Human Rights Approach One Year on from the Coup](#),” Institute for Human Rights and Business, February 1, 2022.

44 Josep Borrell, “[Putin’s War Has Given Birth to Geopolitical Europe](#),” Project Syndicate, March 3, 2022.

45 Rhoda Kwan, “[Interview: Author Joanna Chiu on how the West tried to curry favour with an expansionist China](#),” Hong Kong Free Press, May 22, 2021.

46 John Garnaut, “[‘Fear and greed’ drive Australia’s China policy, Tony Abbott tells Angela Merkel](#),” The Sydney Morning Herald, April 16, 2015.

47 Kevin Liptak, “[Trump signs Uyghur human rights bill on same day Bolton alleges he told Xi to proceed with detention camps](#),” CNN, June 11, 2020.

48 Rhoda Kwan, “[Interview: Author Joanna Chiu on how the West tried to curry favour with an expansionist China](#),” Hong Kong Free Press, May 22, 2021.

integrated into policy fields where they have leverage as normative and regulatory powers, including in trade and investment.

The way forward in European and US China policy does not lie in a choice between engagement and containment, but in charting a third way that uses engagement strategically to promote human rights, the rule of law, and other objectives. Below are principles that would help put human rights at the center of European and US engagement with China.⁴⁹

Principles for Human Rights-centered Engagement with China

Internationally Agreed Human Rights Standards and Principles

European and US engagement with China should be based on the standards and principles enshrined in the Universal Declaration of Human Rights and codified into nine major human rights treaties, of which Beijing has ratified six. In this context, it is detrimental to talk about American or European values given that the emergence of the UN human rights framework was co-shaped by many different countries, including China.⁵⁰

Framing China policy in terms of a battle between democracy and autocracy is also problematic, given the West's poor track record of coercive democracy promotion and regime change in Africa, Asia, and Latin America, as well as the big variations in the human rights situation in authoritarian regimes and democracies. Likewise, the unreflective use of terms like "liberal international order" and "free world" only feeds into Beijing's narrative of an imperialist West imposing values on the Global South, and it will fail to win any majorities at the UN.⁵¹ This does not imply

that it is wrong for Europe and the United States to promote democracy. But since no universal consensus exists on democracy as an international norm, framing engagement with China around democracy promotion makes it harder to gain broad international cooperation, as opposed to if it is framed around international human rights law.

Human Rights Language

Most international organizations, development agencies, and Western companies claim to be committed to promoting human rights, yet many avoid referring to them in their engagement with China due to political sensitivity. While it may be strategic not to use the language of human rights in certain circumstances to help overcome political barriers, in the long term the less one refers to human rights, the less acceptable and normalized they will be. Human rights language should be used in any engagement with China, and not vague euphemisms about harmony and happiness.⁵²

Leading by Example

The importance of Europe and the United States practicing what they preach and leading by example cannot be overstated. There are no perfect states, and all must be willing to accept criticism and allow scrutiny of their human rights record. In this regard, President Joe Biden has undone much of the damage caused by Trump; for example, with the United States rejoining the UN Human Rights Council or by inviting the UN special rapporteur on contemporary forms of racism to visit the country. The United States ratifying the International Covenant on Economic, Social, and Cultural Rights would also send a powerful message about the universality and indivisibility of all human rights.

Specific and Modest Goals

The purpose of European and US engagement with China on human rights should be to support incre-

49 These principles were inspired by Chris Sidoti, "Ten Principles for Engagement," in Pedersen and Kinley (eds.), *Principled Engagement*.

50 Hans Ingvar Roth, [P. C. Chang and the Universal Declaration of Human Rights](#), University of Pennsylvania Press, September 2018.

51 Yun Jiang, "Can the West extend its clear-eyed thinking beyond China?," *The Canberra Times*, April 5, 2021.

52 Malin Oud, [Harmonic Convergence: China and the Right to Development](#), The National Bureau of Asian Research, August 25, 2020.

mental change and to make a modest contribution to improving the situation in the country. Specific and realistic goals should be set in place of vague and wishful thinking about trickle-down effects or change through trade. At the same time, even when human rights and democracy goals are set, measuring the impact of projects to achieve them is fraught with methodological challenges, in particular where the lack of independent statistics, free media, and freedom of expression makes it difficult to gather evidence of results. Advances in human rights also often require a long process. Therefore, sometimes, the process or goal pursued is more important than tangible results.

Coherence and Coordination

Research on China's engagement with the international human rights regime shows that progress is made when the international community is consistent and acts multilaterally and bilaterally at the same time. Quiet diplomacy can support naming and shaming, and vice versa. For Europe and the United States, it is therefore not a matter of one tool or approach being more effective than another, but of applying a coherent and multi-pronged strategy combining persuasion, pressure, incentives, and positive support. The ultimate responsibility for human rights lies with the Chinese state, but foreign companies also have a distinct role and distinct responsibilities. Through lobbying activities and their business operations, they can reaffirm or undermine human rights. Companies have little leverage on their own but they can increase it by supporting collective and coordinated action through industry associations and international organizations.

Transparency and Accountability

European and US human rights diplomacy and cooperation with China tends to be surrounded by a lot of confidentiality, which makes it difficult for external stakeholders to assess progress and the results of the engagement. To ensure that engagement remains relevant and effective, it should be transparent. Transpar-

ency ensures integrity, allows sharing of knowledge, and leads to learning and accountability. For example, an independent commission of inquiry has been established by Sweden's parliament to evaluate the actions by the country's government concerning Gui Minhai, a Swedish citizen jailed in China.⁵³

Do No Harm

The principle of "do no harm" should be applied to consider the potential risks of all different types of European and US interventions with regard to China, from dialogue to capacity building and sanctions. Decision-makers need to consider, for example, when does engagement with Chinese government and government-affiliated actors risk crossing over into legitimization of CCP policies or when to shy away from interactions with Chinese universities that have terminated their faculty for political reasons?⁵⁴

Disengagement can also have a negative impact on human rights and is therefore not always the most responsible or ethical course of action. The need to disengage rarely materializes overnight, however but will often be the result of a deteriorating situation over time. The key is to make a risk assessment and a mitigation plan in advance. Importantly, risks in this context concerns risks to people, not to business.

Using Voice Responsibly

Standing up for human rights in China does not have to mean standing on the barricades shouting. Many European and US organizations, governments, and businesses play a constructive role by quietly upholding human rights in their day-to-day dealings in the country. But sometimes it is necessary for them

53 Swedish Ministry of Foreign Affairs, [En granskning av regeringens. Utrikesdepartementets och utlandsmyndigheternas arbete med att uppnå frigivning av Dawit Isaak och Gui Minhai](#) [A review of the work of the government, the Ministry of Foreign Affairs and the foreign authorities in achieving the release of Dawit Isaak and Gui Minhai], June 10, 2021.

54 US-Asia Law Institute, [Ethical Dilemmas of the China Scholar](#), April 8, 2021.

to take a public stance in solidarity with others. The Federation of German Industries last year called on Europe to define its human rights “red lines” and to not shy away from confrontation when these are crossed.⁵⁵ At a minimum, Western actors should not issue apologetic statements,⁵⁶ engage in whataboutism,⁵⁷ and participate in fora that undermine rather than promote human rights.⁵⁸ Calling charges of genocide in Xinjiang “flimsy” and debating legal definitions and nomenclature obscures more than it clarifies,⁵⁹ and risks deflecting attention from the situation of the Uyghur there.⁶⁰

Change From Within

Geopolitical and geo-economic debates often lose sight of the people the China debate is supposedly about. In the academic Yangyang Cheng’s words,

To the corporate elite, China is a market to be mined. To the security expert, China is a threat to be addressed. To the politicians and pundits, China is a “problem” to be solved. The lives and wellbeing of Chinese people, affected by policies, rhetoric and business deals, barely register in these discussions.⁶¹

Westerners mourning “the death of Hong Kong democracy” comes across as both condescending and

ahistorical. “Colonial nostalgia,” as a Chinese professor called it, speaking at the Stockholm China Forum.

However, engagement with China over the past three decades has involved sustained engagement by European and US academic institutions and nongovernmental organizations with Chinese scholars, civil society, and policymakers to advance human rights, democracy, and the rule of law. It is wrong to claim that this engagement was a failure or in vain. Even if engagement has become increasingly difficult in the current political climate, these efforts should continue. Instead of withdrawing their support for them, the EU and the United States should double down on investment in people-to-people exchanges and collaborations with Chinese partners.

Knowledge and Empathy

European and US human rights-centered engagement with China must be informed by a basic level of knowledge about, and interest in, the country and its people. China is not a monolith or some mystical “other.” Unfortunately, the last few years have seen a gradual hollowing out of China expertise in the West.⁶²

At the same time, the current environment of geopolitical tensions and mistrust, risks putting Chinese researchers, teachers, and students under suspicion at home and abroad, either for being “anti-China” or for being too “pro-CCP.” A Chinese human rights law professor described this feeling of being pressured from inside and outside China with the words: “Neither side sees you as human.”⁶³

At worst, lack of knowledge and empathy can lead to misguided and racist policy, like the US Justice Department’s China Initiative launched in 2018.⁶⁴ Knowledge and empathy are mutually reinforcing and should underpin any effort to promote human rights in China.

55 Madeline Chambers, “[Germany must confront China on human rights despite trade, says industry](#),” Reuters, June 22, 2021.

56 CNBC, “[Intel apologizes in China over Xinjiang supplier statement](#),” December 23, 2021.

57 Michabo Sustainable Harmony, “[UN Advisor Slams BBC for Ignoring Western Human Rights Abuses – 15 April 2021](#),” April 19, 2021.

58 Chi Jingyi and Liu Xin, “[International seminar on counter-terrorism highlights necessity of abandoning double standards](#),” Global Times, October 14, 2021.

59 Jeffrey D. Sachs and William Schabas, “[The Xinjiang Genocide Allegations Are Unjustified](#),” Project Syndicate, April 20, 2021.

60 Sophie Ryan, “[Atrocity Crimes in Xinjiang: Moving beyond Legal Labels](#),” Global Responsibility to Protect, Volume 13: Issue 1, 2021.

61 Yangyang Cheng, “[‘China-watching’ is a lucrative business. But whose language do the experts speak?](#),” The Guardian, January 13, 2021.

62 The Economist, “[As China’s power waxes, the West’s study of it is waning](#),” November 26, 2020.

63 The remarks were made a private meeting attended by the author.

64 Margaret K. Lewis, “[Time to End the U.S. Justice Department’s China Initiative](#),” Foreign Policy, July 22, 2021.

As a non-partisan and independent research institution, The German Marshall Fund of the United States is committed to research integrity and transparency. This work represents solely the opinion of the author(s) and any opinion expressed herein should not be taken to represent an official position of the institution to which the author is affiliated.

About the Author(s)

Malin Oud is director of the Stockholm office of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, where she also heads the China Program. She has worked with human rights and sustainable development in China for more than 20 years in different capacities, and she was based in Beijing in 2000–2009. She studied Chinese language, Chinese law, and international human rights law in Lund, Kunming, and London, and has an MA in international development from Melbourne University. Malin Oud is a member of the advisory boards of the Mercator Institute for China Studies (MERICS) and the Hong Kong-based NGO China Labour Bulletin. She is co-editor of The Decoding China Dictionary (www.decodingchina.eu)

About the Asia Program

The Indo-Pacific increasingly tops the foreign policy agenda in both the US and Europe. At a time when the international rules-based order is increasingly contested, GMF's Asia Program fosters coordinated US-European approaches to common challenges in the region while building closer US-European-Asian partnerships. Through its long-standing, signature trilateral Track 1.5 dialogues with stakeholders from China, India, Japan, and Taiwan, the Asia Program promotes cross-fertilization of ideas and potential policy solutions in key foreign, economic, and security policy areas, including maritime security, connectivity, technology, and supply chains. As the United States continues coalition-building in the region and Europe is developing its own Indo-Pacific strategies, GMF Asia's insights and networks have never been more vital and relevant. The Asia Program's fellows and staff manage an active set of policy programs, conduct in-depth research, publish regular newsletters and podcasts, and frequently contribute articles and commentary to a wide range of international publications and news outlets.

About GMF

The German Marshall Fund of the United States (GMF) is a non-partisan policy organization committed to the idea that the United States and Europe are stronger together. GMF champions the principles of democracy, human rights, and international cooperation, which have served as the bedrock of peace and prosperity since the end of World War II, but are under increasing strain. GMF works on issues critical to transatlantic interests in the 21st century, including the future of democracy, security and defense, geopolitics and the rise of China, and technology and innovation. By drawing on and fostering a community of people with diverse life experiences and political perspectives, GMF pursues its mission by driving the policy debate through cutting-edge analysis and convening, fortifying civil society, and cultivating the next generation of leaders on both sides of the Atlantic. Founded in 1972 through a gift from Germany as a tribute to the Marshall Plan, GMF is headquartered in Washington, DC, with offices in Berlin, Brussels, Ankara, Belgrade, Bucharest, Paris, and Warsaw.

Acknowledgments

The author would like to thank Mareike Ohlberg and Nicolas Bouchet for helpful guidance and suggestions on this paper.



Ankara • Belgrade • Berlin • Brussels • Bucharest
Paris • Warsaw • Washington, DC