



# QUADERNS DE RECERCA (Bellaterra)

MÀSTER UNIVERSITARI EN INTEGRACIÓ EUROPEA

Núm. 8 / Curs 2010-2011

The EU as a foreign policy actor –  
should human rights really be promoted in China?

Saskia Pedersen

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Núm. 8

Curs 2010/2011

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ISSN 2014-153X

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Langues de travail: catalan, castillan, anglais et français

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# THE EU AS FOREIGN POLICY ACTOR – SHOULD HUMAN RIGHTS REALLY BE PROMOTED IN CHINA?

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Saskia Pedersen

Màster Oficial en Integració Europea, UAB,  
edició 2010-2011

Tutors: Dr. Sean Golden & Sebastian Bersick

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## **Abstract**

The EU promotes its norms and principles such as human rights in third countries too. This paper conceptualizes the EU as a normative power and introduces its human rights policy and some alternative understandings of human rights. The questions whether and at which price the EU should promote human rights in China considering various points of conflict and if it can comply with its role as a normative power in light of different restrictions are examined. Lastly, it is analyzed what this limited realizability implies for the EU's original claim and what an optimized human rights policy may look like.

**Key words:** EU, foreign policy, normative power, human rights, China

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# ***1 Introduction***

The European Union's (EU) inner structure has changed considerably during the last few decades, and so have external circumstances in international politics, most recently due to the global economic and financial crisis. These transformations have implications for the EU's worldwide promotion of its norms and principles in its external relations with third countries. The EU's normative foreign policy increasingly faces different value concepts of other countries and cultures that question the superiority of the 'western' concept<sup>1</sup> and are unwilling to adopt the putative universal European values. As Susi Dennison and Anthony Dworkin (2010: 1) put it: "Across the world, there is increasing opposition to the idea that the West should tell countries how to run their own affairs."

This paper critically examines the characterization of the EU as a normative power in regard to the EU's promotion of human rights in the People's Republic of China (PRC)<sup>2</sup>. The aim is to explore in a first step whether and at what price the EU *should* promote human rights in China through its foreign policy in light of several points of conflict between its own and Chinese views. In a second step it will examine whether or not the EU in practice *can* comply with its role as a normative power and successfully promote human rights in China in consideration of various internal and external limitations. Finally, in a last step it will analyze what this limited realizability implies for the EU's original claim and what an optimized EU human rights policy towards China may look like. These questions shall be explored from the perspective of the EU while also taking into account the Chinese view by introducing various alternative viewpoints.

## ***1.1 Analytical Framework***

The majority of literature on the EU's promotion of human rights takes for granted a general affirmation of the question that the EU should promote its own norms and values in other countries, in this case, respect for human rights in China, at all. Only few sources are concerned with the fundamental question of whether the EU really ought to promote human rights in China and for which reasons. In order to get an overview of the arguments in the scientific discourse, the

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<sup>1</sup> The notions 'western' and predominant concept are used synonymously for the United Nation's (UN) human rights regime as it is promoted by the EU.

<sup>2</sup> Subsequently referred to as China, too.

following literature review lists the most important arguments pro and contra the EU's promotion of human rights in China from both a European and a Chinese perspective.

Ian Manners first introduced the concept of 'normative power Europe' in 2002, arguing that to act in a normative way is one of the key features of the EU's self identity and respect for human rights is among its central norms (2009b: 3), which is, along with respect for human rights and their worldwide promotion, anchored in the EU's treaties as one of its major principles and foreign policy objectives. Their promotion therefore constitutes a moral as well as a legal commitment for the EU as a normative power (Mattlin 2010: 5). The EU regards its own norms and principles as desirable and exportable to other countries, for which reason it supposes that China should adopt them too and develop in the same direction as the EU does itself (Holslag 2006: 571). As the European Commission (EC) puts it (2003: 12): “The EU believes that the respect for human rights, democratic accountability and the rule of law, as well as a democratic participation of citizens in decision-making processes, constitutes the best guarantees for the long-term stability of a society and for the sustainability of a country's economic development, in China and elsewhere.” Further, the EU promotes human rights on the basis of international agreements of the UN which are accepted as universal and compatible with all cultures by the grand majority of states, one of them being China (ibid.: 7). China has committed itself to the Universal Declaration of Human Rights (UDHR) and the universality of human rights and, thus, voluntarily accepted the responsibility of being accountable to the international community on human rights. Hence, it cannot claim special privileges or legitimately denounce international monitoring as interference in its internal affairs (Human Rights in China 2000). The EU generally advocates multilateralism and the judicialisation of international relations in order to create a more secure and predictable environment in which it can cooperate with its partners on the basis of shared values and guarantee stable economic conditions (Hackenesch and Jin 2009: 3). This includes respect for human rights as part of a reliable legal system. Dennison and Dworkin (2010: 5) point to the fact that the EU does this not for purely altruistic reasons, but because “a foreign policy informed by these values also serves Europe's interests.” Some authors claim that since the EU is so publicly committed to the promotion of human rights, the end of this may cause a general decrease of the EU's credibility as a normative foreign policy actor (Dennison and Dworkin 2010: 5, Mattlin 2010: 21).

On the other side, European promotion of human rights faces numerous critiques and arguments against its continuation. Sjursen (2006b: 248) remarks that the intention of the EU to spread its values to the rest of the world might be nothing more than “an expression of Eurocentric cultural

imperialism.” The EU is a regional organization that claims an universal character for its norms and values, but in fact it is in a minority position, considering that most countries and people in the world do not belong to the so-called post-modern world of which the EU is a part of (Wang 2009: 69). Dennison and Dworkin (2010:4) even note that the EU's normative conditionality, which it seeks to apply in external relations, could lead to a further rejection of the 'western' concept and a decline of the EU's power in general and especially, regarding the increasing international success of Chinese foreign policy. Mattlin (2010: 19) recalls that the EU cannot 'dictate' solutions to China as it lacks sufficient leverage and should rather focus on a cooperation on an eye-to-eye level. Furthermore, it is argued that if China wants to or will change anything about its human rights policy, it does so for its own reasons and interests and not because of any European pressure or request. On the contrary, China is economically so important that the EU is unable to isolate it for violating human rights (Wan 2001). Leaving aside the normative argumentation and focusing on the EU's interests, it becomes obvious that normative principles are usually superposed by European or national strategic and economic interests (Mattlin 2010, Schubert 2002: IV), or as Dennison and Dworkin (2010: 5) put it: “long-term objectives are displaced by short-term priorities.” The West, and as part of it the EU, mainly promotes individual rights even to the point of disregarding another state's sovereignty, whereas China focuses on state rights in the form of the principle of non-interference even at the cost of tolerating violations of human rights and democratic principles (Bauer 2003). Consequently, there is a conflict between the principle of international law of the sovereign equality of all states and non-interference and the disrespect of these principles by some western powers on behalf of their self-assigned duty to promote their own system in the rest of the world. Considering the Chinese perspective on the matter, the promotion of human rights by the EU in China forms an interference in a purely domestic issue and therefore violates the principle of national sovereignty (Tocci and Manners 2008: 315). Further, foreign interference in general and the value of human rights specifically are closely associated with colonization and the harm of national pride in China and therefore rejected (Schmierer 2010). Others argue on the cultural level, that the western concept of human rights does not fit the Chinese culture as it promotes moral values alien to Chinese cultural traditions (Li C. 2003: 292), as for instance granting rights on the basis of being a human person or belonging to a moral community.

## ***1.2 Methodology***

The object of investigation in this paper is primarily the EU as an economic and political union of



national states and particularly as a foreign policy actor and secondarily, the EU's member states and China as a target of the EU's human rights policy and as the other part in a comparative discourse on different concepts of human rights.

In order to answer the above questions, various text sources have been analyzed ranging from books, essays, and articles to contributions in magazines and newspapers, both in paper and in electronic form. To get a picture of the whole subject from all different perspectives, works of European as well as Chinese<sup>3</sup> authors were taken into account. The grand majority of sources are secondary ones, but also primary ones were used where possible such as official documents of the European institutions and Chinese authorities. The second chapter ends with a case study examining the actual human rights policy of the EU towards China and the third one follows a comparative approach. Different alternative concepts of human rights are introduced and compared to the 'western' one as it was developed by the UN and is promoted by the EU. On the basis of the normative-ontological theory of politics, the hermeneutical-interpretative method was used for the evaluation of the relevant material, first, in order to understand the content of all sources and then, integrating all contextual knowledge, develop an integral analysis on the subject. This analysis cannot be mono-disciplinary since the debate in the field of interest does not exclusively happen in one scientific category. The relevant disciplines considered are mainly political sociology, international relations, political philosophy, and international law.

First, a normative analysis is made on the basis of the EU's anchorage of its norms and principles within its treaties and their worldwide promotion through foreign policy. A normative asymmetry exists for example concerning the currently negotiated Partnership and Cooperation Agreement (PCA) between the EU and China. Whereas the EU seeks to integrate as much political cooperation as possible, including the human rights clause, China would like to reduce the scope of the agreement to economic cooperation and technology exchange. Or as Sebastian Bersick (2008: 121) puts it: "Normative aspects play an important role in the EU's relations with China (as a clause on human rights within the prospected PCA indicates)." Second, after identifying all practical limitations that restrict this value-based policy, an interest-based analysis is made in consideration of these practical limitations of the theoretical claim, from which results the conclusion and policy implications for a modified version of the EU's current human rights policy.

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<sup>3</sup> Limited to those works translated into English.

### ***1.3 Structure***

In order to investigate the research interest outlined above, the *second* chapter conceptualizes the EU's identity as a foreign policy actor as a normative power and then introduces the European human rights regime. After briefly outlining the discussion about the EU's international identity, the concept of 'normative power Europe' by Manners is presented. It conceives the EU as a norm-creating international actor and human rights as one of its major principles. The role that human rights play in the EU's external relations becomes clear by introducing the international human rights regime and its concept of human rights, the EU's legal framework and its actual human rights policy. In a case study the EU's specific human rights policy towards China is explored.

Conversely, the *third* chapter examines different Chinese perspectives on human rights and compares them to the 'western' conception. First, on a theoretical-philosophical level, a Chinese understanding of human rights is explored, considering its Marxist and Confucian influences and how it differs from the 'western' concept promoted by the EU. Second, on a practical-political level, the official Chinese position on human rights as propagated by Chinese authorities is examined. At this point, some undeniable inconsistencies within the Chinese position will become apparent. In order to illustrate how approaches to human rights may vary, two alternative concepts of human rights by the Chinese philosopher Zhao Tingyang and the Japanese professor of Law Onuma Yasuaki are presented.

The *fourth* chapter deals with theoretical implications and practical restrictions for the EU's human rights policy towards China. First, it seeks to answer the question of whether or not the EU really *should* promote human rights in China by introducing the debate on universality of human rights versus cultural relativism and the principle of national sovereignty and non-interference anchored in international law. Second, it discusses whether or not the EU actually *can* comply with its characterization as a normative power and successfully promote human rights in China in consideration of various internal and external limitations.

The *fifth* chapter examines the conclusions that can be drawn from this discrepancy between the EU's theoretical claims and their practical realizability and what those limits may imply for the initial question of whether human rights should really be promoted by the EU at all. Further, policy implications for an optimized human rights policy will be developed.

## ***2 The EU as a Foreign Policy Actor: Normative Power Europe***

It is not an easy task to characterize the international identity of the EU since “[...] the European Union is less than a state, but more than an international organization,” (Hlavac 2010: 2) meaning that the EU cannot be described adequately as a nation state as defined by post-Westphalian characteristics like sovereignty and territoriality. Through the 'pooling of sovereignty' from the individual member states to the common institutions within the EU and its not fixed and finalized borders, it evidently contrasts these. But its definition as an international organization would be inappropriate too, because it is more than just that. Most of the time, in the academic as well as in the political discourse, the EU is characterized as a “distinctly 'different' type of international actor.” (Tocci 2007: 1) The EU is founded on a series of international treaties that define a set of norms and principles that it also seeks to promote externally through its foreign policy. Article 2 of the Treaty of Lisbon, which entered into force in 2009, defines these fundamental values as “the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.” And according to Article 3 (5) of the Treaty of Lisbon, the EU “shall uphold and promote its values and interests” in its relations with the rest of the world.

According to Manners and Whitman (2003: 384), the EU is constituted by the “interplay between its hybrid polity and its international roles.” By the former, they mean the conjunction of various different political perspectives within the EU and by the latter, they refer to the interplay of various different role representations which in some cases are contradictory and in others reinforcing, but all conjointly constitute the EU's identity. What makes the EU different then, is the complex interaction of multiple perspectives and multiple role representations. In the 1970s, François Duchêne (1973: 19) started to call the EU<sup>4</sup> a 'civilian power' that can be described as a “civilian group of countries long on economic power and relatively short on armed force.” This civilian power can be characterized by “the idea of pursuing the domestication or 'normalization' of international relations by tackling international problems within the sphere of contractual politics” (ibid.) and focusing primarily on economic and diplomatic instruments rather than military ones. Joseph Nye developed the concept of 'soft power' in the 1990s as the capacity to “get what you want through attraction rather than coercion or payments” (Nye 2004: x) or, more specifically, through forms of foreign policy influence which rely on co-optation, multilateral cooperation, institution-building, integration and the power of attraction. This capacity of an international actor mainly

<sup>4</sup> To simplify matters the term 'EU' will be used for the time before the Treaty of Maastricht ,too.

depends on resources like culture, political values and policies which become effective and legitimized in the moment that they appeal to and serve as an example for others. Manners first introduced the idea of normative power about a decade ago, focusing on what the EU *is* rather than what it *does*, emphasizing the EU's ability to define what is 'normal' in international relations through non-coercive means (2002).

This chapter first present the concept of normative power Europe and then examines the EU's promotion of human rights as one of its core norms, including the 'western' concept of human rights as it was developed within the UN and as it is promoted by the EU, the underlying legal framework, and the EU's actual human rights policy. This aspect will be further carried out in a case study on the EU's human rights policy towards China.

## ***2.1 Concept of 'Normative Power Europe'***

When Manners first came up with the theory of the EU as a normative power he asked whether a normative power Europe would be a contradiction in terms. He negates this question and proposes the additional characterization of the EU's international identity as a normative power, whose legitimacy derives from its foreign policy. The concept of normative power Europe is “built on the crucial, and usually overlooked observation that the most important factor shaping the international role of the EU is not what it *does* or what it *says*, but what it *is*.” (ibid.: 252) This is also proclaimed by the EU itself as we have seen in the Treaty of Lisbon cited above. The idea of normative power Europe assumes that the EU is perceived as attractive by the rest of the world and sets an example which makes other international actors want to imitate it by adopting the same norms and values on which the EU is constituted on and which it is globally promoting. This requires twofold conditions: first, that third countries accept the EU's norms and values as universally valid and second, that they somehow want to change their own current norm system and, therefore, are searching for different norms to adopt (Aggestam 2009). Manners (2002: 252) explains “that the EU can be *conceptualized* as a changer of norms in the international system” for two reasons: because it has “a positivist quality to it [which implies] that the EU *acts* to change norms in the international system” and “a normative quality to it [which implies] that the EU *should* act to extend its norms into the international system.” In Manners' view, the EU's international identity is unique, because it is shaped by constitutive norms like the 'pooling of sovereignty' and for the normative basis on which it was founded. Since the founding of the EU, this basis is developed and

redefined through numerous declarations, treaties and policies. Five 'core' norms and four 'minor' norms of the EU can be identified. These 'core' norms are (ibid.: 242): “the centrality of peace, [...] the idea of liberty, [...] democracy, the rule of law, and respect for human rights and fundamental freedoms.” Whereas the five 'core' norms are undisputed, the four 'minor' norms of the EU's constitution and practices are much more controversial. These 'minor' norms are “the notion of social solidarity, [...] anti-discrimination, [...] sustainable development [...], and the principle of good governance.” (ibid.: 242f.) Manners explanation for the conceptual difference of the EU is threefold: “its historical context, [its] hybrid polity and [its] political-legal constitution” (ibid.: 240) whose interplay has, especially after the Cold War, contributed to a strong commitment to universal norms and principles in both internal and external relations. For Manners (ibid.: 242) “this particular difference pre-disposes it to act in a normative way.” So this particular constitution, the set of norms and its behavior enable the EU to “[redefine] what can be 'normal' in international relations.” (ibid.: 253)

In later publications, Manners develops his argument further, examining more in detail the EU's supposed peculiarity and its consequential normative power (2008: 45): “Simply by existing as different in a world of states and the relations between them, the EU changes the normality of 'international relations'. In this respect the EU is a normative power: it changes the norms, standards and prescriptions of world politics away from the bounded expectations of state-centricity” and declares that “the EU has been, is and always will be a normative power in world politics.” Besides this general affirmation of normative power Europe, he now limits the scope by stating that “it is one thing to say that the EU *is* a normative power by virtue of its hybrid polity consisting of supranational and international forms of governance; it is another to argue that the EU *acts* in a normative (i.e. ethically good) way.” (ibid.) He further opposes the accusation of normative power Europe being a contradiction in terms because it mainly empowers itself rather than others, by stating that normative power is “sustainable only if it is felt to be legitimate by those who practice and experience it” (ibid.: 46), which implies that he expects this legitimation by the rest of the world which is 'receiving' the EU's foreign policy. He assumes on the one hand, that norms and principles acknowledged within the UN are universally applicable, but on the other hand, does acknowledge that “the creative efforts and longer-term vision of EU normative power towards the achievement of a more just, cosmo-political world which empowers people in the actual conditions of their lives should and must be based on more universally accepted values and principles that can be explained to both Europeans and non-European alike” and, therefore, proposes to base foreign relations on “more transparent normative ethics that accommodate the social rights and perceptions

of the member states with those of the EU and its citizens, together with the universal individual rights of non-Europeans, no matter where one might live.” (ibid.: 60)

Furthermore, Manners identifies the ways in which the EU promotes its norms: “by virtue of the principles of 'living by example'; by duty of its actions as 'being reasonable'; and by consequence of its impact in 'doing least harm'.” (ibid.: 46) Javier Solana, former High Representative of the Common Foreign and Security Policy (CFSP), once said in a speech (2006): “We do system change, not regime change. We do it slowly and on a basis of partnership,” underlining the EU's willingness to actively engage in third countries' matters and the importance not only of the promoted principles, but also of the way in which they are promoted. In regard to the Treaty of Lisbon, Manners (2008: 48) remarks that “the constitutionalization of these normative principles [the General provisions on the Union's external action] in the highly contested Lisbon Reform Treaty marks the crystallization and culmination of norms and practices which have been evolving over the past 15 years.” In a later publication, Manners (2009a: 10f.) even claims that “understanding and prioritizing normative power may help to ensure that any subsequent or simultaneous use of material incentives and/or physical force is practiced in a more justifiable and reflexive way” and proposes a “five-point conceptualization of normative power as being: ideational; involving principles; actions; and impact; as well as having broader consequences in world politics” which he further specifies. That normative power is ideational, highlights its contrariness to being material or physical (ibid.: 11): “its use involves normative justification rather than the use of material incentives or physical force” which “implies a very different timescale and form of engagement in world politics” and should be perceived as convincing or attractive. This means that the EU's foreign policy “should be 'normatively sustainable' - that is, 'normatively' explicable and justifiable to others, and 'sustainable' into the next generation.” (ibid.) According to Manners, this can be witnessed increasingly in the EU's external relations.

Concerning the promoted norms and principles, Manners states that they are the primary source of legitimacy for normative power and must be promoted in “a coherent and consistent way.” (ibid.: 12) This legitimacy of principles derives from international treaties and agreements, especially from the UN. Their coherence depends on whether the different principles are “sound and noncontradictory” (ibid.) and consistent, referring to uniformity in the practices to promote them internally as well as externally and in their application. In order to be successful, the actions taken to promote these principles “must involve persuasion, argumentation and the conferral of prestige or shame.” (ibid.: 3) A persuasive foreign policy “involves constructive engagement, the

institutionalization of relations and the encouragement of multi- and plurilateral dialogue among participants” (ibid.) in which reference is made to the international agreements stated above and which should always target mutual understanding and agreement among participants. Also prestige can be granted to another actor by, for instance, public declarations of support, the membership in an international organization or, on the contrary, the granting of shame can take place for example through public condemnations or the use of symbolic sanctions. Manners' concept has raised a variety of critique of which the most important aspects will be presented in a later part of this work.

## ***2.2 The International Human Rights Regime and its Concept of Human Rights***

In one of its communications, the EC (2001: 4) describes the EU as an international actor with “political and moral weight” and with a foreign policy promoting and diffusing its own values and principles. Apparently, the EU supposes that its domestic political and socio-economic model can and should be successful in the rest of the world too. The Commission characterizes human rights as being universal, indivisible, inter-related and inter-dependent; as covering all areas of civil, political, economic, social and cultural rights; and as being applied through a broad spectrum of international instruments: “The European Union has made human rights and democracy a central aspect of its external relations: in the political dialogue it holds with third countries; through its development cooperation and assistance; or through its action in multilateral fora such as the United Nations”. Further on, it explains that such importance is given to the promotion of human rights, because they “reinforce human dignity and allow individuals to reach their full potential; [they] create peaceful and stable societies; make more reliable international partners [out of the states which respect them]” and because there is “no peace without human rights, no development without human rights – and vice versa.” (2007: 5)

The predominant concept of human rights, as it was developed within the UN, is based on the fundamental philosophical claim of the existence of a moral order that is rationally identifiable, precedes any potential social order, and applies equally to every human being (Czarnetski 2009). According to this belief, an objective identification of moral beliefs and concepts as “fundamentally and universally” true is possible (Fagan 2010: 2.). The idea of human rights has been influenced by the philosophical concept of moral universalism by Aristotle and Roman Stoics like Cicero and, most importantly, by European philosophers of the Enlightenment period like Thomas Hobbes, John

Locke, Jean-Jacques Rousseau, and Immanuel Kant, who all have in common the presumption of the existence of something like a 'natural' or 'primary law' that exists independent and a priori to society (Glover 2002: 11). In his *Nicomachean Ethics*, Aristotle argues for the existence of a natural moral order from which, through the use of free reason, derives a 'natural justice,' which provides comprehensive and potentially universal criteria for the evaluation of legal systems. This 'natural justice', in comparison to 'legal justice', does not depend upon its acceptance by anybody, because it is regarded as valid by everyone and everywhere and is, therefore, a priori to and independent of all social and political formations. On this natural moral order, all rational systems of justice can be based and their legitimacy may be evaluated by its universally accepted criteria (Fagan 2010: 2.). Roman Stoics like Cicero argue, similarly, in favor of the existence of a universal moral ethics whose origin they see, in contrast to Aristotle, in the rational will of God. Accordingly, all men are members of a moral community through their relations to God, whose will, expressed in the universal moral ethics, they need to follow; a belief that was carried on by Christianity (ibid.).

The concept of human rights was probably most importantly influenced by ideas of the Enlightenment period in Europe in the seventeenth and eighteenth centuries which contain arguments for a preexistent law that goes beyond the abstract idea of a natural moral order by identifying some fundamental natural rights that correspond to every individual equally. Because their existence is assumed to be prior to and, therefore, independent of any social and political construct, they are autonomous from any current ruler or sovereign (ibid.). Hobbes did not yet mention equal and inalienable rights for everyone, but his political philosophy strongly influenced later works on human rights. He argues that, given a hypothetical anarchical state of nature, the right to self-preservation of every person is endangered by a potential 'war of all against all' (Czarnetski 2009). In order to avoid this war from breaking out, and thereby protecting oneself, every individual rationally subordinates himself or herself to an overpowering sovereign who has the monopoly of power and thus can prevent this war of all against all. This state has to legitimize its power constantly before the individual interests of every person, but does not accept any legal claims on part of its subjects (von Blohn 2010: 5). Locke developed a first version of the idea that the legitimacy of political authority is to be based upon certain rights of the people. In his *Two Treatises of Government*, Locke argues for the existence of natural law, similar to a universal moral code that originates from God (Fagan 2010: 2.). Under this natural law, the duty of every person before God is his or her own self-preservation for which compliance it is granted some natural rights, derived from the natural law. These natural rights, the right to life, liberty, and property, apply to every single human being, independently of the current political order, because they



already existed before the formation of society (Czarnetzki 2009). According to Locke, the state's basic function is to guarantee these 'natural rights' for the people. This constitutes the state's sole justification and, consequently, in the case of failure, it automatically loses its legitimacy. In contrast to Hobbes, the individual rights of the people are superior to the state and, for that reason, every individual can assert his or her right before that state (Müller 1997: 35). The basic assumption of Rousseau is, that given the fact that in the state of nature all people are free and equal, they should be so within a state too. He focuses on liberty as the foundation of personhood which he divides into three kinds: natural, civil, and moral liberty (Kaempfer: 82). It is assumed that in the state of nature, with its unlimited natural liberty, the individual cannot really be free because he or she is dominated by his or her own instincts and egoism. Accordingly, the individual can only be free if he or she decides as a moral person to obey some self-imposed laws. Thus, individuals consciously disclaim natural liberty in the favor of civil and moral liberty, organize themselves in a state and follow the laws which it imposed on them. Because everybody has the right to equal political participation, the state supposedly governs for the common good (Glover 2002: 14ff.). An idea of moral reasoning was introduced by Kant with his moral philosophy, emphasizing the ideals of equality and moral autonomy of every rational person. It is assumed that this group of all rational people identifies the moral principles necessary for the maintenance of equality and moral autonomy by themselves on the basis of the fundamental principles of ethics (Czarnetski 2009). These moral principles, the categorical imperative, are supposedly universal as they are self-imposed by the rational individuals who all agree upon them or, in Kant's own words, one should "act only on that maxim through which [he] can at the same time will that it should become a universal law." (1948 in Fagan 2010: 2.) This exertion of moral reasoning on behalf of the individual constitutes the basic characteristic of humanity and, therefore, provides for the justification of human dignity (ibid.). These philosophical developments have led to the idea of rights and human dignity and have strongly influenced, or even caused, important political changes since the eighteenth century like the drafting of the US *Declaration of Independence* and, in the twentieth century, ultimately culminated in the adoption of the UDHR as reacting to the recent outbursts of violence during World War II (Fagan 2010: 2.) and for the first time questioning the international principle of national sovereignty of every state and non-intervention in the internal matters of other states.

According to the international human rights regime's definition of human rights and fundamental freedoms they are universal and apply equally to every person, regardless of origin, race, sex, religion, or culture. Every individual enjoys these moral guarantees and has to respect the same of

all others. Accordingly, a person can invoke his or her human rights, but not resign from them. Human rights are independent from specific countries, political and legal systems, rulers and their recognition and implementation of the same respectively (ibid.: 1.). Human rights shall enable a basic good existence by providing both positive rights, like the right to asylum, as well as negative rights, like the right not to be tortured. Further, national and international authorities are the important actors that shall guarantee the respect of the rights of every individual as they have the most adequate means to do so. Human rights are supposed to dominate over the principle of national sovereignty as they primarily target on the individual and its provision with adequate means. (ibid.) This moral doctrine has been laid down in the major international documents on human rights, like the one's of the UN and the European Convention on Human Rights (ECHR). The UN was created shortly after the end of World War II and immediately adopted the UDHR in 1948 which was inspired by various scholars and philosophers from all over the world, for example Mahatma Gandhi and the Chinese philosopher Chung-Shu Lo (Kaempfer 2006: 84), who were invited to make suggestions for the draft, and consists of a Preamble and 30 articles. According to one of the main drafters of the UDHR, René Cassin, dignity, liberty, equality, and brotherhood are the four main pillars of human rights which constitute the basis of the three types or generations of human rights that can be found in the UDHR (ibid.: 85). Hence, the first generation of civil and political rights derives from dignity and liberty and stands for the principles of the Enlightenment period as it mainly consists of rights to security, property, and political participation. Most of them are negative rights, which means that they enjoin the state from intervening in the personal freedom of its citizens. The second generation of economic, social and cultural rights derives from equality and originates in the industrial revolution. It consists of mainly positive rights, which means that they oblige the state to act in order to guarantee their compliance, such as the right to education, social security, and self-determination. The third generation of rights is linked to the post-colonial era and consists of collective rights of populations such as the right for solidarity, peace, development, and a healthy environment (Fagan 2010: 2.). Even though there exist different generations and types of rights, all are supposed to be of equal importance and value, meaning that conflict between two or more of them is theoretically impossible as well as their composition into a ranking order.

The UDHR is formally adopted by an immense majority of states worldwide.<sup>5</sup> Therefore, it should theoretically strongly influence international politics in general and the foreign policies of many actors in particular. It is supposed to constitute a mutually shared basis, the smallest common

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<sup>5</sup> Currently 192 countries.

denominator, in a world of countries and people with differing value orientations. Regardless of its supposed universality, it is debated whether or not the UDHR really is a universal concept rather than an expression of western power since it is mainly rooted in European philosophy of the Enlightenment and, therefore Eurocentric, even though it was drafted by scholars from different countries and religions. In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were created. There is an ongoing debate about the significance of the two groups of rights, respectively the rank of one in relation to the other. One position is that civil and political rights are superior to economic, social and cultural rights as the latter are “solely a tool for repressive governments to ignore political rights, and therefore omitted all discussion of those rights from its focus.” (Kaempfer 2006: 86) The other position argues in the opposite way, that economic, social and cultural rights, primarily economic development and subsistence, are prerequisites for civil and political rights, as political freedom has no value living in absolute poverty and fearing starvation. Concerning the third generation there does not exist a legal proposition. Nowadays, some 167 countries have ratified the ICCPR and another seven have signed but not ratified it<sup>6</sup> and 160 countries have ratified the ICESCR.<sup>7</sup> Despite this grand consensus on the UDHR and its additional covenants, human rights are regularly violated all over the world and the successful implementation of these basic documents is far from reality. The international human rights regime consists of an extensive and strong set of norms, but really weak institutions and capabilities. Because of the low efficiency of international human rights bodies, such as the UN Council on Human Rights and the European Court of Human Rights, that mainly monitor the situation of human rights, it is a seemingly impossible task to make unwilling states apply human rights (ibid.).

### ***2.3 EU's Legal Framework and Human Rights Policy***

There are various important European and international agreements concerning the EU and human rights. But that was not always the case. With the entry into force of the Treaty of Maastricht in 1993, the CFSP was constituted with the goal to develop and consolidate democracy, the rule of law, and respect for human rights and fundamental freedoms (Article 21). As mentioned above, the Treaty of Lisbon states in Article 3 (5), that “in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall

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<sup>6</sup> One of them is China.

<sup>7</sup> UN Treaty Collection: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the UN Charter.” Further, the treaty provides for the EU's development policy in Article 208 and for economic, financial and technical co-operation in line with its fundamental values in Article 212. A Charter of Fundamental Rights of the EU was pronounced by the European institutions in 2000, consolidating all civil, political, economic and social rights of the citizens and residents of the EU in one single document and enshrining them into EU law. Addressees of this document are its founding institutions themselves, which are the EP, the Council of the EU and the EC, whereas it applies to EU Member States only when they are implementing Union law. With the Treaty of Lisbon, the Charter became legally binding (EC 2007).<sup>8</sup> The Treaty of Lisbon also established the legal basis for the accession of the EU to the ECHR, as it states in Article 6 that the EU “shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms” whose fundamental rights “shall constitute general principles of the Union’s law.” The ECHR was constituted by the Council of Europe shortly after its establishment in the early 1950s in order to guarantee the protection of fundamental rights of citizens under the surveillance of the European Court of Human Rights in Strasbourg. What is special about the European Court of Human Rights is that not only states, but also individuals can claim their rights before this court. By contrast, the highest court of the EU, the European Court of Justice in Luxembourg, works according to a separate legal order, the EU law (Wiessala 2006). Although all EU Member States are parties to the ECHR, the EU itself is still not. Its accession could enhance the protection of human rights within the EU by making its legal system subject to an independent external control. In 2010 a protocol to the ECHR entered into force that provides the legal basis for the EU's accession and official talks on the matter began.

The EU's foreign policy can be described as comprehensive and multidimensional, covering various policy areas such as economics, trade, and aid and including measures like diplomatic initiatives, development and humanitarian aid, and the promotion of human rights and democracy. This approach is based on the assumption that a certain degree of development and stability is necessary in third countries in order to enable economic development (Panebianco 2006). The human rights cause ought to be mainstreamed, meaning its inclusion in all of the EU's policies and programs. The promotion of human rights is carried out through a variety of instruments: traditional instruments of diplomacy and foreign policy, political dialogue, the human rights clause in agreements with third

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<sup>8</sup> With the exceptions of the United Kingdom, Poland and, hereafter, the Czech Republic.

countries, and development aid programs like the European Instrument for Democracy and Human Rights (EIDHR). Traditional tools of diplomacy at the EU's disposal in the framework of the CFSP range from common strategies, common positions, joint actions, démarches, and declarations over dialogue and consultations with third countries, to guidelines which the EU publishes on specific matters such as the death penalty, torture, dialogues with third countries, children affected by armed conflict, and human rights defenders. Further, the EU provides assistance to civil society actors all over the world that are dedicated to the promotion of human rights in the broadest sense and finances cooperation projects, mainly through the EIDHR. Civil society organizations are seen as especially strategic partners which can play an important role in monitoring the adherence of human rights in third countries (EC 2007). The EU holds political dialogues with third countries and regional groups in which human rights are regularly addressed. Additionally, specific human rights dialogues were introduced with some countries according to the guideline on dialogues with third countries in order to intensify the process of mainstreaming and, thereby, trying to persuade the dialogue partner of the importance of the respect for human rights. Some dialogue partners, however, may see the dialogue as “just another way for the EU to exercise pressure and conditionality.” (Smith 2008: 135) Human rights dialogues vary with regard to the level on which they are carried out. There are dialogues that exclusively focus on human rights, are highly structured, and take place at the level of senior human rights officials. This type is usually applied to countries with which the EU has no formal agreement or whose agreement does not include a human rights clause.<sup>9</sup> Other dialogues take place at a rather low and local level or within the agreements the EU has with the country or region. The EC (2007: 11) defines the dialogues' general goals as “seeking information about the human rights situation in the country concerned; expressing EU concerns about aspects of the country’s human rights record; identifying practical steps to improve the human rights situation on the ground, in particular through the setting up of co-operation projects; and discussing questions of mutual interest and enhancing co-operation on human rights in multinational fora such as the United Nations [and] exposing governments to international human rights standards and EU practices.” Thereby, they are supposed to lead to concrete results and measurable improvements of the human rights situation in the country at debate. Moreover, the EU has established human rights and democracy subcommittees, primarily with partner countries from the European Neighborhood Policy area, and holds consultations on human rights issues twice a year in the run-up of UN meetings with countries that have a predominantly congruent conception of human rights in order to agree on common positions. The human rights clause was adopted in 1995 and since then is supposed to be included in all

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<sup>9</sup> The latter is the case with China.

agreements between the EU and third countries. It highlights the importance of respect for human rights and democratic principles for the EU and provides for the application of certain targeted restrictive measures, such as the refusal to give visas or the freezing of assets held in EU countries, in the case of its violation up to the point of a possible suspension of the whole agreement (Smith 2008). In fact, until today only the human rights dialogue with Iran was suspended because of human rights violations, which may be explained by the EU's preference "to use positive action rather than penalties" (EC 2007: 13) and to execute a policy of dialogue, cooperation and engagement rather than generating isolation. In 2006, inter alia, the EP (point 3.) reiterated "that it is the responsibility of the Union to ensure, when signing an international agreement with a third country that includes a clause on human rights, that the third country in question respects international human rights standards when the agreement is signed." But this does not match reality. Despite the human rights clause, the EU concludes and holds agreements with countries whose behavior does not conform to the EU's concept of human rights at all. For example in the case of China, a trade agreement from 1985 is still in force to which the human rights clause does not apply. In 2007, negotiations on a PCA started for which until today the human rights clause is not explicitly scheduled. Similar situations exist with other mayor EU trading partners (Smith 2008). This lets the EU's foreign policy seem arbitrary, since it does not observe its own standards.

## ***2.4 Case Study: China***

Whereas the political and economic system of China recently did undergo some modification caused by the country's rapid development, that is the economic opening to the global market and the reforms carried out in the judicial and legal system, human rights violations in China continue without outstanding improvement (Panebianco 2006). Baker (2002: 46) even claims that "since late 1998 there has been a notable deterioration in China's human rights practice" and that its human rights record is in no way adequate in consideration of China's history and the fact that it "has not suffered a foreign invasion for over half a century, has not suffered major civil unrest for over a quarter of a century, has not been subject to any country-wide natural disasters and has enjoyed the levels of economic growth which China has enjoyed since the late 1970s." From this situation derives the idea that the international community does have a "right to expect that China's position on human rights would be significantly better than it is at present." (ibid.) Common human rights violations in China are the use of the death penalty and torture; administrative detention; constraints regarding the freedom of expression, assembly, association and religion, speech and press;

repression of political activists, advocates of trade unions and followers of Falun Gong; and the suppression of ethnic minorities, for example in Tibet and Xingjiang (Panebianco 2006). Particularly prominent examples that recently attracted public attention were the award of the Nobel Peace Prize in 2010 to the currently imprisoned dissident Liu Xiaobo and the repression of the traces of an assumed 'Jasmine Revolution' imitating the recent revolutions and protests in the Arab world including the beating and detention of foreign journalists.

As shown above, the EU strongly believes in the promotion of human rights in other parts of the world through its foreign relations as part of the intent to further their transition into democracies based on the rule of law and respect for human rights. This applies to China too, as becomes apparent on the website of the EU's delegation to China: "The EU's main objective is for China to occupy the position it deserves according to its size and geo-strategic importance in the international community, both politically and economically. The EU supports the process of economic and social reform underway in China. It backs China's transition towards an open society based upon the rule of law and respect for human rights, and believes this will benefit China's development and social stability."<sup>10</sup> The former European Commissioner Benita Ferrero-Waldner (2009: 2) calls the relations with China a "key issue of discussion in the EU" and China one of the "most important partners to meet the challenges of today and of tomorrow." Since China does not share the EU's fundamental values and principles, it does not comply with the expectations regarding human rights (Mattlin 2010: 8). At this point, the EU's promotion of human rights remains subsidiary, suffering under China's economic weight, which definitely makes the trade relationship the more important one and renders human rights marginal where important economic or strategic interests are at stake. As Ferrero-Waldner (2009: 3f.) puts it: "I believe that the Euro-China strategic partnership, based on economic interests, equality and mutual respect, and where possible shared values, is strong. Our relationship is strong enough to overcome differences due to distance, history, culture and even politics." The EU conducts a comprehensive policy framework concerning China which includes economic, cultural, and general foreign policy aspects like trade and competition, human rights dialogue, and science and technology which has increased notably since the mid-1990s regarding its mechanics and complexity (Wiessala 2006) and which shall even develop into a strategic partnership. But the postponement of the EU-China Summit in 2008 on behalf on Beijing, caused by a meeting of the French President Sarkozy with the Dalai Lama, suggests a different picture. John Fox (2008) calls this move a "brutal, and unprecedented, warning of how little Europe means to China" and Giuseppe Balducci (2009: 8) points to the "EU's

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<sup>10</sup> See: [http://eeas.europa.eu/delegations/china/eu\\_china/political\\_relations/index\\_en.htm](http://eeas.europa.eu/delegations/china/eu_china/political_relations/index_en.htm) (accessed on 15.08.2011).

irrelevance for Beijing”, declaring the “end of the honeymoon” between the EU and China and calls upon the EU and its member states to rethink their strategy and elaborate a new approach for the promotion of human rights in China.

Following the establishment of official relations between the EU and China in 1975, the signature of a first trade agreement in 1978 and the adding of China to the EU's *Generalised System of Preferences* in 1980, the EU and China concluded their first (and until today only) comprehensive agreement on economic and trade cooperation in 1985, which granted a broader framework for cooperation and trade, but did not include any provisions on democracy or human rights. China was de facto exempted from criticism of human rights abuses. Only since 1989 is this a sensitive issue. Reacting to the events on Tiananmen Square in 1989, the EU and especially its member states, took a tough stance on China, including the suspension of bilateral meetings and new cooperation projects, the freeze of existing economic programs, the initiation of an arms embargo that still remains valid today, and the support for a resolution against China at the UNHRC (Nuttin 2010). Given that China at the time had signed hardly any of the major international human rights treaties which allow for the supervision of human rights abuses, it resulted that the (former) UN Commission on Human Rights (UNCHR)<sup>11</sup> reacted in this case according to Article 55(c) of the Charter of the UN which provides that it “shall promote [...] universal respect for, and observance of, human rights and fundamental freedoms [...]” Consequently, a Sub-Commission adopted a relatively moderate resolution on the human rights abuses in China later in 1989, which until today remains the only one and was “completely rejected by the Chinese Government and declared null and void.” (Baker 2002: 52) At that time, the resolution was tabled and co-sponsored by all, then 12, EU Member States. However, it was blocked by a no-action motion initiated by Pakistan. This procedure was subsequently repeated almost annually (Baker 2002). This unanimity within the EU already began to change in 1996, as more and more member states shifted their approach towards a more pragmatic solution in consideration of China's growing economic weight (Balducci 2010). The search for a new approach led to a compromise in 1998 based on the lowest common denominator and especially advocated by economically strong Member States: albeit the EU Member States will not table or co-sponsor a resolution critical of China anymore, they will at least vote in contra of a no-action motion. This “more effective and constructive approach” (Balducci 2010: 43) was justified by the recent signature of the two UN covenants on human rights by China and its engagement in dialogue, but in reality it was more caused by the fact that strategic and economic interests gained superiority in the countries favoring this move, which are in particular

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<sup>11</sup> Since 2006 UNHRC.



the big one's who hold strong economic ties with China. Even facing serious human rights abuses since then, the EU Member States never returned to support a resolution against China (ibid.).

The EP can be regarded as the most critical of the EU institutions concerning human right abuses in China and has, in the aftermath of Tiananmen, significantly contributed to the EU's human rights policy by expressing often sharp criticism through its own resolutions and declarations as well as its Human Rights Committee (Wiessala 2006). The EC has published various communications since the mid-1990s regarding the EU's strategy to and its relationship with China, following a three-fold approach of political and human rights dialogue, economic and trade relations, and cooperation programs including technical assistance, and legal and judicial cooperation (Panebianco 2006). It was assumed that economic reform and liberalization will in the long run inevitably cause the development of a middle class and, thereby, a 'political spillover', leading to enhanced political liberalization and the initiation of reforms too, although there was and still is no evidence of success of this strategy. The EU increasingly turned to a more pragmatic approach which relies on 'engagement' based on dialogue and persuasion and cooperation in preferably all areas and on all levels, rather than the threat or imposition of sanctions and the constant pressuring of China regarding its human rights record (Panebianco 2006). With the establishment of a political dialogue in 1994, the restrictive measures from 1989 were mainly resumed.<sup>12</sup> Additionally, in 1995 a human rights dialogue was established which takes place twice a year and is accompanied by legal seminars in which officials, academics and members of Non-Governmental Organizations (NGOs) discuss specific issues (Nuttin 2010). When China cancelled the dialogue as a reaction to the intended support of an UN resolution by the EU Member States in 1996, it became obvious that "the Chinese regarded the dialogue as a way of deflecting criticism and deterring the EU member states from co-sponsoring a resolution" (Baker 2002: 58). The dialogue was not resumed until the end of 1997. Besides, the EU and China hold bilateral summits twice a year since 1998 and exchange views at meetings on ministerial and expert level, through public statements, for example at the UNHRC, and *démarches* on specific cases (Panebianco 2006). For the EU, the human rights dialogue assures a direct channel of communication to the highest level of Chinese authorities through which it can, on the one hand, express its concerns and request information on particular issues and cases and, on the other hand, present its own understanding of and approach to human rights "[exposing] the most reform-minded Chinese decision-makers to international human rights standards and EU practices" (EC 2007: 11). The EU can also request written information on individual cases of concern from Chinese authorities. The results of the dialogues are regularly

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<sup>12</sup> Apart from the arms embargo which is still in force.

evaluated by the EU with regard to the compliance of expectations (Panebianco 2006). Mattlin (2010: 13) states that the human rights dialogue “has become practically the only venue where the EU is still trying to maintain at least a façade of a commitment to human rights”, which does not mean that it has any substantial success.

China on the one hand continuously reacts with reluctance to the EU's requests for information or transparency (*ibid.*) and even acts provocatively, for example by carrying out an execution on the same day the EU requested the reconsideration of the same case (Runner 2008), but on the other hand does pass various kinds of information on to the EU, such as the process of ratification of the ICCPR and the status quo of the implementation of recommendations that the UN Special Rapporteur on Torture has made after his visit to China in 2005, and carries out legislative reforms such as on the review of all cases of death penalty by the Supreme Court, a special court for minors, or new regulations on the transplantation of organs (Balme 2008: 153). The EC (2007) rectifies the rather slow progress with the long-term orientation its strategy, but even official EU documents increasingly call for a notable outcome. In 2000, the Council of the EU stated: “The Council however regretted that the positive steps taken by China at the international level are not only marking time but also have not been matched by tangible progress in the domestic human rights situation. The EU is deeply concerned by the continuing and widespread restrictions on fundamental freedoms, notably freedom of assembly, expression and association.” Besides China's at times unsupportive behavior, the EU obstructs itself by not sufficiently coordinating its efforts with those of the one's of the member states and by tolerating the “compartmentalisation of the human rights nuisance, thus isolating it from interfering with the global state of EU-China relations” (Mattlin 2010: 14), which is also used by the member states as a possibility to outsource conflictive matters of human rights to the EU level and, thereby, liberating their bilateral trade and economic relations from disputes (Balducci 2010: 51).

Since 2003, the EU's strategy envisages a more broad and 'strategic' dialogue. In the Council's conclusions on China, the EU criticizes the “significant gap still existing between the current human rights situation in China and the internationally accepted standards” (Council of the EU 2003). But the supervision and criticism of the human rights situation no longer happens on a one-way basis from the EU to China, since China has begun to repeatedly express its concern about the EU's human rights record, especially regarding racism and xenophobia (Balme 2007: 12) and in 2003 published its first-ever Policy Paper on China-EU Relations in which it claims that there are “no fundamental differences of interests between the EU and China”, acknowledges that “the EU is a

major force in the world [...] the European integration process is irreversible and the EU will play an increasingly important role in both regional and international affairs” and even announces that “China–EU relations are now better than at any time in history” (Ministry of Foreign Affairs of the People’s Republic of China 2003). According to this document, the obviously fundamentally diverging views on human rights can be justified by the differences in historical development, cultural heritage, political systems, and the level of economic development between the EU and China (Algieri 2008). Further, direct contacts between the EU and Taiwan and support of the Dalai Lama are criticized and for the first time, an end to the arms embargo is officially requested. Together with the EU’s refusal to accept the ‘market economy’ status of China if there is no significant progress in human rights, the lifting of the arms embargo is one of the few remaining leverages the EU holds against China (Wiessala 2006). But in practice, while officially keeping it up, it is regularly contravened by major EU arms exporters such as Germany, France and Italy (Balducci 2009: 10, fn. 7).

Even though the relationship between the EU and China has increasingly been called a ‘strategic partnership’ by both sides, implying a “relationship in which the two parties reciprocally recognize the strategic relevance of the partner on issues concerning both bilateral relations and global governance” (Caira 2010: 266) and that is “suggesting recognizable convergence, collaboration and coordination, generally shared perceptions and/or interests,” (Scott 2007: 23) until today this meaningful rhetoric has not been filled with any substantive contents. Since 2007, both parties are officially negotiating a PCA in order to replace the trade agreement from 1985. It is still uncertain if the new agreement will, in contrast to the currently valid one, contain the human rights clause which the EU theoretically integrates in all agreements with third countries since 1995. Chinese authorities are generally reluctant to much political cooperation and EU authorities did, until today, not insist on China subscribing to such a clause (Mattlin 2010). The communication of the Commission on China from 2006 significantly downplays the importance of human rights. It rather focuses on China’s economical and political rise, expressing the wish for intensified bilateral as well as international cooperation and engagement and calling upon China to assume the responsibility corresponding with its increasing influence and weight in the world. More recent policy papers of the EU also tend to follow a more holistic, grassroots-level approach by putting a new emphasis on “education, people-to-people exchanges, inter-civilisational dialogue, common curriculum development” (Wiessala 2009: 97) in order to establish and strengthen mutual trust and confidence. As a result of the constant growth of China’s economical importance, human rights are increasingly “overshadowed, if not sidelined, by the imperatives of economics” (Scott 2007: 28).

Recently, the High Representative of the EU (2010 in Rettman 2010), presented a major foreign policy review in which she emphasizes the EU's need for enhancing relations to China by lifting the arms embargo in order to remain globally relevant: "The current arms embargo is a major impediment for developing stronger EU-China co-operation on foreign policy and security matters," quite objectively assesses that "China will not match EU standards of human rights and rule of law for some time to come. Future convergence is best sought by concentrating on common ground [...] We need to manage mutual expectations," and seems to focus rather pragmatically on more promising steps: "The EU should continue to work for the release of individual political detainees through active diplomacy."

### ***3 Alternative Conceptions of Human Rights***

In the following chapter, the issue of human rights will be explored from different, mainly Chinese, viewpoints, which is especially interesting regarding the very little attention given to them in European, or generally western, politics and media and the resulting lack of knowledge among people about the general existence of other understandings and concepts of human rights and, more specifically, about their history, development, and specific characteristics.

First, the influence that the traditional Chinese thinking of Confucianism and the more recent political doctrine of Marxism might have on the Chinese idea of human rights is examined by pointing out their specific positions on matters related to human rights. On the basis of the previous and the historical context, a particular Chinese understanding of human rights is elaborated, highlighting the differences to the western concept in the most important aspects. Following this, the official position on human rights is introduced as it is promoted by Chinese authorities, giving special attention to its development since the founding of the PRC, the Chinese legal framework, and the official political as well as academic discourse. In the second part of this chapter, two alternative concepts of human rights are presented. Zhao proposes the alternate concept of 'Credit Human Rights,' which fundamentally contradicts the predominant one and criticizes basic western ideas such as the principles of liberty and equality. Zhao is not proposing a possible inter-cultural consensus among different points of view, but a totally different approach based on Confucian ideas of the human being and society, in which rights are always linked to duties and can be denied to people who do not fulfill the expectation that society puts on them. Contrary to Zhao's concept, Onuma's 'Intercivilizational Approach' is seeking a comprehensive consensus among people from

different 'civilizations'<sup>13</sup> which integrates diverging approaches and only promotes those norms that are accepted and wanted by a majority of participants. He underlines the importance of a departure from former West-centrism and to consideration of the particular situations in each country. In similar approaches, Charles Taylor and Jeffrey Flynn advocate the achievement of a consensus through dialogue, too. Whereas Taylor focuses on the need to tolerate different justifications underlying the norms agreed upon, Flynn underlines the two main requirements of a successful cross-cultural dialogue on human rights: symmetry and the acceptance of pluralism.

### ***3.1 Development of a Chinese Understanding of Human Rights***

In the case of China, the ancient tradition of Confucianism and the more recent political doctrine of Marxism have shaped and still do shape the state, society, and social order and thereby, the Chinese understanding of human rights. Considering this, and having in mind Chinese history too, a specific Chinese understanding of human rights can be elaborated with a special focus on its main characteristics as opposed to the predominant concept of the UN, of which several aspects might be challenged from a theoretical-philosophical Chinese viewpoint. The challenge of the western idea of a universal human dignity that is equally inherent in every human being, simply for being human, might affect the content and the inalienability of human rights. Further, there exists a different understanding of the relationship of individuals towards each other and towards the society as a whole as well as the state, which influences the understanding of the bearer of rights, respective duties, and actually the role of law within society.

Since its founding in 1949, the PRC has been strongly influenced by Marxist conceptions of society which are also relevant for the Chinese idea of human rights as it rejects the 'western' concept of human rights. The Marxist concept of the human being regards the individual as a natural being according to its biological origin, but what ultimately matters is its qualitative determination as a social being, according to which the individual is understood as the sum of its social relationships. Hence, in Marxism the collective is prioritized over the individual (Heilmann 1994). Further, the legal doctrine inherent to Marxism differs significantly from the western one. Law is understood to be an independent variable of the objective material basis, as a function of economy. The content of legal norms is seen as influenced by historic and socio-economic developments within a society, whereas concepts of natural or primary law are rejected, which implies that universal rights applied

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<sup>13</sup> Onuma uses the term 'civilization' not in the popular meaning of Samuel Huntington, but comparable to 'culture.'

to every human being are alien to this concept (Müller 1997). Rights are rather understood in a relativist manner, as an expression of class structure in a specific society and, therefore, are supposed to have particular characteristics according to the society concerned. Consequently, a socialist society may not provide the same rights to its citizens as a capitalist one. Marxism does still strongly influence the official political discourse in China and the academic debate on human rights since Chinese scholars are obliged to use Marxist theories.<sup>14</sup> Svensson (2000: 211) even claims that: “It is thus Marxism, rather than Chinese culture, which explains the official Chinese relativist position on human rights.” One of the leading Chinese philosophers and Marxist experts on human rights, Li Buyun, describes the character of human rights as both natural and social at the same time and distinguishes between three different categories of human rights: “those which one ought to enjoy by virtue of one's humanity; those actual rights which are realised in society; and more narrowly defined legal rights.” (in Svensson 2000: 212) This categorization is justified by the argument that all people live together in the same world and nature, for which reason they have, on the one hand, similar interest and problems and, therefore, rights too, like the right to life and the freedom from torture. These rights are seen as universal and independent of the particular society or political system. But furthermore, people live in different societies under unequal historical, cultural, and socio-economic conditions which causes, on the other hand, diverging interests and leads to different rights depending on the respective society. A weak point of this argumentation is that it may be used to excuse all kinds of restrictions of human rights with the hint of national particularities.

In comparison to the political doctrine of Marxism, Confucianism is an ancient Chinese tradition that includes moral and philosophical as well as legal and political concepts and ideas and first and foremost influenced East Asian societies like the Chinese, the Japanese, and the Korean. The Chinese philosopher Confucius lived assumedly from 551 to 479 before Christ and was really called Kong Qiu (Tian 2010:1). His doctrine was predominant in China continuously until the fall of the Qin Dynasty in 1911, when it started to be suppressed. For most of the twentieth century the Chinese Communist Party (CCP) disgraced Confucianism as backward and feudal, but since the start of the reform period, initiated by Deng Xiaoping in 1978, it is not a taboo anymore. A revival of Confucianism can even be witnessed in official Chinese rhetoric. In the 1980s, Chinese authorities actually started to hold major conferences on different aspects of Confucian theory with some leading politicians participating and publicly praising the Confucian doctrine (De Bary and Tu Weiming 1998) and starting in 2004, China has set up a large number of “Confucius Institutes” all

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<sup>14</sup> Of course there do exist alternative and dissident voices, too.

over the world in order to promote the study of Chinese language and culture. The content of this doctrine and its position on human rights is highly contentious as it leaves a lot of room for even contrary interpretations. Even though Svensson (2000: 201) claims that “it is unclear what Confucian values actually are,” most authors point out to virtues like mutuality and reciprocity, ritual propriety, benevolence, filial piety, wisdom, justice, and trustworthiness as important aspects of Confucianism (e.g. Kaempfer 2006). To the question of the core of his ethical concept, Confucius replied “that zhōngshù, acting in accordance with reciprocity, was the thread that ran through all his thinking.” (Golden 2006: 293) But there is no agreement on whether they constitute an obstacle in the process of constructing a righteous and democratic society, the very key to a better and peaceful world, or even one of the concepts on which the predominant western idea of human rights is based. Similarly to Marxist ideas, Confucianism sees the individual first and foremost as a social being from a viewpoint that always focuses on the society as a whole rather than on the isolated person. It is assumed that only through its societal and interpersonal relationships, is the human nature of the individual being put into effect (Müller 1997). Based on this foundation, the relations between individual and collective rights may be determined. According to Heinz (1997), Confucianism regards individual and collective rights as fundamentally equal, as the former provide the basis and the source of the latter, and the latter constitute the sum of and the guarantee for the former, implying that the individual as a mere social being does not dispose of human rights. But because of the general priority of the society over the individual, collective rights are being preferred in the case of conflict. The basis for social relations is the family, which is composed of hierarchical relations which implicate not only duties of obedience to the inferior, but also duties of care and protection to the superior. Accordingly, rights are always closely linked to duties. This hierarchy in personal relationships serves as an example for the societal order as a whole. There exist different definitions of the five major relationships which constitute a family and, thus, the whole Chinese society, but they are generally described as follows: father-son, husband-wife, older son-younger son, friend-friend, and king-subject (Kaempfer 2006).

The legal conception of traditional Confucianism can be described as the ruling by 'li', which stands for rituals, rather than the ruling by 'fa', which stands for proper laws. Ruling by the principle of li presupposes the affirmation and practice of the rituals, which are a system of norms that determine how people should behave, like for example loyalty to superiors and respect for elders in the community, internalization of action, and selflessness. Confucian rituals in this context refer to the things people do and the routines in their everyday life, somehow similar to the western concept of culture, and not to customs as in the religious context. Li is not regarded as a static construct of

norms, but rather dynamic, changing over the period of time. According to Confucianism, people internalize these rituals which then preventively control their actions and guarantee that they act right and will not 'lose face.' Hence, through the constitution of all-penetrating hierarchical structures and the internalization of a preventative system of continuous indoctrinations and self-education, so-called self-control, the rituals serve as a solution to handle relationships and to peacefully solve conflicts as they provide for ideal schemes of behavior involving all areas of life. Traditionally, self-control relied on persuasion and education rather than on threats, arbitrary measures, and punishment, for which it was more applicable in informal settings, whereas the actual law, *fa*, contained norms concerning criminal and administrative law that served as an instrument of deterrence for the ruler and never really became an independent detached regulating instrument. According to traditional Confucian thinking, the legitimacy of the ruler is based upon the well-being of his people, for which he is directly responsible. The principle of the 'mandate of heaven' signifies, that heaven will protect the power of the ruler as long as he fulfills this duty or otherwise deprive the ruler of his mandate and hand it to another and authorize the people to exercise resistance in order to reestablish the state of harmonious order according to *li*. Thus, in contrast to the West, where the principle of the division of powers limits the power on a political-institutional level, in Confucianism the limitation of stately arbitrariness is rather taking place on a cosmological-moral level (Tian 2010).

The complete hierarchization of the Chinese society through the five types of relationships, which do imply social inequalities, has some major implications for the concept of human dignity. As mentioned above, people are in fact seen as equal regarding their biological disposition, but not regarding social life. Concerning human dignity, this means that every individual does have the potential to develop his or her human dignity by nature, but the degree to which he or she can realize this in real life depends on his or her social behavior. Accordingly, people are seen as social beings and human dignity as a social ability that needs to be accomplished. Obviously, this stands in sharp contrast to the western idea of human dignity as an inalienable characteristic of every human being independent of his or her behavior and the social context (Müller 1997). The strict system of hierarchies builds the framework for rights and duties, but does not ultimately aim at emphasizing the differences among people, but rather at harmonizing them and, therefore, can be connected to the ubiquitous search for harmony. The harmony of the familial, societal, public, and cosmic order is the all-inclusive and all-connecting goal in Chinese society, whereas conflicts are regarded as threatening because of their potential to disrupt the social hierarchy and, thereby, the social order as a whole. It is supposed that conflicts, including legal ones, may always be resolved by negotiating a



compromise acceptable for both sides (Heinz 1997). As mentioned before, traditional Chinese thinking assumes that the objectives of a legitimate state necessarily equal those of its people, which ultimately is the construction of a good and just regime committed to the well-being of the people (Heilmann 1994). In the case of a different agenda of the state, its claim to power becomes illegitimate and collective resistance of the people is justified. Resulting from this conception, law can be understood to be both a means for the assertion of power by the legitimate ruler as well as a means for the collective control of this ruler by the people and, when indicated, an instrument of resistance. Accordingly, there exists a lack of individual rights of the people as well as instruments for their enforcement. Rights in terms of the implementation of individual interests against the state or defense against infringements by the state is unknown in Chinese legal doctrine. Especially the idea of an individual suing the ruler or the state itself seems absurd. Exemplary for this is the fact that the term 'right' did not even exist in Chinese language until the late nineteenth century, when it was invented in order to translate western works referring to it (Müller 1997).

The Chinese understanding of human rights needs to be regarded in the light of its history of relationships with the West. China's conception of western powers was first influenced by contacts in the nineteenth and early twentieth century, primarily in the framework of colonization, when European powers tried to establish zones of influence in China and to introduce European modernism derived from the Enlightenment period in China by the force of arms. This has provoked an enduring association of the corresponding values and modernism in general with these traumatic experiences of western 'civilizational' efforts in China and still influences China's relations to those former colonial powers and can be regarded as the, or at least one, cause of its critical reactions to and understanding of modernism and modernization, for example its resistance to regard the values of Enlightenment as universal.<sup>15</sup> On this basis, Golden (2006: 268) explains the difficult relation that many people have to western values: "A very large proportion of the world's population cannot view these values as "universal" because they have suffered the consequences of an imperialism which justified itself on the basis of these same values and principles, which have acquired semiotic connotations as a result: they have become symbols of a kind of discourse that attempts to justify a geopolitical strategy which defines itself as idealistic, but whose practical consequences contradict that idealism." Further, these experiences can be regarded as one of the reasons for which Chinese authorities, and people too, put the principles of national sovereignty and non-interference before any other, which sharply contrasts with the western view that human rights

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<sup>15</sup> Even though in the period of colonization human rights were only promoted in the metropolis but not in the colonies, they are nowadays connected to western modernism there.

transcend borders, according to which it is every state's and the international community's responsibility to monitor another state's human rights performances and, in case of violations, actively interfere (Balme 2007).

### ***3.2 Official Chinese Position***

Right after the founding of the PRC, the term 'human rights', which was used before by the CCP to oppose the rule of the Kuomintang, disappeared and was substituted by the terms 'citizen's rights' and 'people's rights', underlining the socialist nature of the Chinese state to which 'human rights' did not suit well. In the 1980s, the Chinese government even ran some political campaigns against human rights describing them as something capitalist and foreign by using notions like 'spiritual pollution' and 'bourgeois liberalization' to refer to them and by trying to convince the people that they were doing well without them (Chunying 1995). With the beginning of the reform period in 1978, the CCP under Deng Xiaoping initiated a policy of opening-up, focusing on modernization through economic development. Accordingly, economic development is conducive to the safeguarding of people's subsistence by producing wealth and, thereby, minimizing the problem of hunger and poverty. According to Li Junru (2009), by guaranteeing increasingly the right to subsistence to Chinese people, the regime can slowly pass on to enhance individual rights, carry out reforms, and expand the rights of the people through constitutional amendments.

Besides, rights have been gradually incorporated into China's legal framework as well as into official political discourse and institutions during recent decades. Basically, all rights included in the UDHR and the two covenants were indeed incorporated into the PRC's first constitution in 1954, but immediately violated by Mao Zedong and his regime in order to safeguard the “autarkic, totalitarian development model” and counteract upcoming resistance (Nathan and Scobell 2009). The seemingly broad concessions included in the legal framework are limited by numerous restrictions and vague provisions in theory and gross discrepancies in practice. All granted rights are generally not justiciable and the same constitution contains several barriers that limit the scope of these same rights. For instance Article 51 of the constitution generally restricts the practice of liberties: "The exercise by the citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the State, of society and of the collective, or upon the lawful freedoms and rights of other citizens." (in Siegmund 2000) The duty of the state is described in Article 28 as follows: "The State maintains public order [...]; it penalizes actions that endanger

public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals." (ibid.) The link of individual rights to duties constitutes another, albeit indirect, form of restriction. For example, besides the right to work and education, there exists a duty to work and education, too. The constitution incorporates the values of stability and order as the highest priorities. The implementation of individual rights is restricted in favor of the interests of the state, the society, and the collective (Heilmann 1999). International as well as domestic commitments to human rights request implementation into national law and practices to be beneficial for the people. But according to Chinese view, rights do not derive from the universal personhood of the individual, but are granted by the state. Hence, their primary goal is the strengthening of the state rather than the protection of individual rights from infringements by the executive power.

While the constitution of 1999 further subscribed China to a 'socialist rule of law' and obligated the government to rule accordingly, the one from 2004, which is still valid today and introduced the right of private property, guarantees that "the State respects and safeguards human rights," and simultaneously initiated a broad campaign on human rights, including the holding of international human rights conferences, meetings and exhibitions, the regular publication of official reports on human rights, and the establishment of think tanks and websites on the issue (Balme 2007). In practice, there is obviously no guarantee for the realization of this amendment. Liu Jie (2005), director of the Democratic Government Research Center under the School of World Economy and Politics of the Shanghai Academy of Social Sciences, notes that this subscription to the respect for and protection of human rights as a duty of the state to the constitution, implying a transformation from a merely political into a legal concept, constitutes an important step towards the "construction of democratic constitutional government and political civilization" and strongly enhances the whole human rights cause in China. But he also remarks that in order for this to be beneficial for the people, the whole system of legal procedures would have to be reformed.

Since the beginning of the 1990s, China has sought to become more proactive in the field of human rights in order to not only react to western criticism of its human rights record, but also to develop and promote its own concept of a hierarchical order of human rights while at the same time acting in accordance with international commitments. In 1993, the UN held its World Conference on Human Rights in Vienna with a preparatory meeting in Bangkok, where China did, for the first time, become actively involved in the international human rights regime by promoting its point of view of the existence of a hierarchy among human rights, even at the risk of being publicly

criticized by other countries. The preparatory meeting in Bangkok resulted in the Bangkok Declaration, which generally accepts the universality of human rights, but at the same time indicates that their implementation into practice may require some adjustments to the specific context and situation on the ground: “[The signatories] recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural, and religious backgrounds.” (Bangkok Declaration 1993: Article 8) In a statement, the head of the Chinese delegation at the Vienna conference, Liu Huaqiu, highlighted the Chinese view of a hierarchical order and the importance of the principle of national sovereignty, including the deriving exclusive competence of each national government concerning its domestic human rights issues: “We believe that the major criteria for judging the human rights situation in a developing country should be whether its policies and measures help promote economic and social progress, help people meet their basic needs for food and clothing, and improve the quality of their life.[...] According to the UN Charter and the norms of international law, all countries, large or small, strong or weak, rich or poor have the right to choose their own political system, road to development, and values. Other countries have no right to interfere. To wantonly accuse another country of abuse of human rights and impose the human rights criteria of one’s own country or region on other countries or regions is tantamount to an infringement upon the sovereignty of other countries and interference in the latter’s internal affairs, which could result in political instability and social unrest in other countries. As a people who used to suffer tremendously from aggression by big powers but now enjoys independence, the Chinese have come to realize fully that state sovereignty is the basis for the realization of citizens’ human rights.” (Liu Huaqiu 1993 in Angle and Svensson 2001: 393) This unequivocal comment provoked much criticism of other participating states, for which the Chinese delegation felt impelled to revise some major aspects for the final draft of the Vienna Declaration. Eventually, this declaration contains several propositions even opposing the Chinese stance, like the emphasis on the universality of human rights, the conclusion that democracy, development, and human rights would depend on and reinforce each other, and the refusal to accept the justification of any human rights violation with a lack of development. Thus, since the Vienna World Conference on Human Rights in 1993, the argumentation of Chinese authorities towards the international community concerning its human rights policy and record does, at first, include the general acceptance of international human rights standards. But this formal acceptance of universality is limited by the condition that its implementation on the ground needs to depend on the local situation, implying that there is no homogenous and standardized path to the realization of human rights in all countries. This

argumentation leads to the idea that in developing countries on the way to modernization, which China considers itself to be, the rights to subsistence and development should be prioritized before individual political liberties and further, the political system of these countries should primarily be judged on the basis of its success in the support of political and economic development and the improvement of living conditions of its people, rather than by static international standards (Heilmann 1994). Furthermore, by regularly publishing white papers and progress reports on human rights, Chinese authorities try to thwart the western claim of normative superiority in the field of human rights by pointing out that the protection of universal human rights does not depend on the political system, but rather on the accurate economic, social, and legal conditions, which can possibly be developed within the Chinese 'socialism with Chinese characteristics', or 'socialist market economy' (Schubert 2008).

In their political discourse, Chinese authorities developed their own distinctive manner to use the term 'human rights' in order to justify and promote their political agenda and human rights policy, emphasizing mutual respect, equality, and the exclusively national responsibility of every state concerning its own human rights situation. This official rhetoric has a more or less propagandist character, but regardless represents an outstanding change from ignoring and even fighting the whole issue towards its full incorporation into all types of official communication and legal framework. In a protective attitude, a contrasting 'socialist human rights theory with Chinese characteristics' was developed in order to both protect and justify their own standpoint (Svensson 2000). According to official documents of the Chinese government,<sup>16</sup> the main characteristics of this theory are: first, continuity is emphasized by the presentation of the domestic human rights development as a continuous and consistent process since the foundation of the PRC in 1949; second, universality of human rights is accepted as legitimate, but is not understood as a static construct but rather as a flexible framework that must be adjusted to each country concerning its specific situation and level of development; third, the different types of rights are regarded as a comprehensive and inseparable unit which includes civil and political as well as economic, cultural, and social rights, and individual as well as collective rights; fourth, the most important human rights are the right to subsistence and the right to development; fifth, rights can never stand on their own, but are always linked to duties; sixth, societal and economic stability is regarded as the precondition for the implementation of and respect for human rights; seventh, human rights fall under the responsibility of the state, which makes foreign interference illegitimate and unwanted; eighth, the

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<sup>16</sup> Which can be found on the website 'China Human Rights,' part of the China Society for Human Rights Studies: <http://www.chinahumanrights.org/index.htm>.

only desirable way for the international promotion of human rights is through dialogue and cooperation.

As seen above, China advocates the understanding of all three generations of human rights as an equal and integrative system whose different parts cannot be regarded separately. The Chinese argument here, which is used to criticize the western human rights performance, is that a country which on the one hand refuses economic aid and, thereby, violates the right of the people to development and solidarity cannot, in turn, request the compliance to political human rights of an economically underdeveloped country (Exner 1994). Obviously, there exist conflicts between this line of argumentation and the explicit prioritization of certain human rights, like the right to subsistence. This seems to be accepted by Chinese authorities as an inherent contradiction of their human rights concept. Economic rights are repeatedly highlighted as a counter-argument against the accusations of neglecting civil and political rights. Officially, Chinese authorities even claim that the national economy of a country is an important aspect regarding its human rights agenda, that these two depend on and somehow develop in step with each other. This argumentation leads to the explanation of China's 'developing' human rights record in consideration of the developing status of its economy. But in fact, through economic reforms which have led to a 'socialist market economy,' at least some Chinese regions cannot be regarded as underdeveloped anymore. Besides the economic argument, Chinese officials point out the cultural argument according to which the traditional cultural heritage and history of China needs to be considered when debating human rights (Kaempfer 2006).

The official rhetoric also includes sophisticated criticism of other countries' human rights records and still outstanding signatures or ratifications of international human rights covenants, first and foremost targeting the USA which is accused not only of violating economic and social rights, which are traditionally given priority by China, but even of violating civil and political rights, whose disrespect China is usually blamed for by the USA and other western countries. On the other hand it is claimed that western criticism of the Chinese human rights practice is not sensitive with regard to Chinese national pride and, thus, perceived as an affront by the Chinese which potentially leads to enhanced nationalistic feelings and the rejection of the western concept of human rights or even western ideas in general (Svensson 2000). Li Junru (2009) claims that China indeed does not have the perfect human rights record, but that it has made outstanding progress since the initiation of the UDHR, especially during the last few decades since the beginning of the reform period. He argues that all countries have deficits in their human rights records and that their criticism is only an

expression of the deep prejudice against China. Accordingly, “China not only needs to fight against those opposed to human rights, democracy and the rule of law inside the country, but also against the offensive Cold War thinking in the international society” (Li Junru 2009: 12).

Just like Chinese authorities, most Chinese scholars on the one hand accept the universality of human rights, but on the other hand highlight the importance of taking into consideration the specific historical, political, economic, and social situation of a country. For example Liu Nanlai, director of the Centre for Human Rights Studies under the Chinese Academy of Social Sciences, explains China's human rights policy in the following way (2010): “China never avoids the universal nature of human rights, but human rights are a goal that can only be achieved step by step, taking into consideration a country's changing conditions. Pursuit of this goal encourages persistent efforts and consistent policy adjustments by the Chinese government to fulfill its obligations under the covenant.” And his colleague Li Yunlong even claims that human rights include the principle of state sovereignty: “China puts special stress on national sovereignty in practicing human rights, and has always made safeguarding its sovereignty the top priority. China holds that national sovereignty is an important part of human rights” and stresses that “China takes the right to subsistence as the most important of human rights. To a country or nationality, the right to subsistence is a necessary part of fundamental human rights. Without the right to subsistence any other human right is no more than empty talk.” In turn, there are also dissidents who challenge the higher importance of economic and social rights and in general the existence of a conflict in goals between the different generations of rights as propagated in China. The Chinese professor Sun Zhe for example argues against any special national conditions and, therefore, against the prioritization of the right to subsistence before civil and political rights (Svensson 2000).

### ***3.3 'Credit Human Rights' by Zhao Tingyang***

The Chinese philosopher Zhao Tingyang (2007) criticizes the western concept of 'natural' human rights, which according to him has risen to be a de facto religion in the West and is tacitly accepted in the rest of the world just for the lack of a better alternative, as unjust and theoretically illegitimate. Instead, he proclaims the concept of 'Credit Human Rights' as supposedly more reasonable. According to him, this concept preserves all good aspects of the traditional idea while eliminating the aspects that jeopardize justice. Indeed human rights are granted unconditionally and equally to everyone but, and this constitutes the main difference, are not regarded as natural and

imprescriptible, but rather as a conditional 'credit' which can only be kept if one complies with the corresponding duties.<sup>17</sup>

The traditional western concept of human rights assumes universality but, according to Zhao, because of its origins in a Christian worldview and western philosophy it is just not plausible and acceptable for people from other parts of the world. Thus, global universality can only be reached through a justification independent from assumptions limited to a specific culture. Kant for example proposed two steps in order to verify universality by means of the categorical imperative. In the first step the individual asks himself if he would want that everybody follows norm x or call upon right y, and in a second step, the applicability on everyone is being reviewed by checking if all people would want that everybody follows norm x or call upon right y (Kesselring 1999: 6f.). Obviously, in order to respond to these questions, a comprehensive intercultural dialogue would be fundamental. Zhao argues that precisely because this dialogue is mainly limited to and taking place in the West, in other parts of the world human rights are often considered to be an export item of western culture. Further, the underlying denotation of 'human' in the traditional concept is declared wrong. Zhao states that rights do not arise from (human) nature, but are always defined in the social game. Accordingly, he alternatively proposes the concept of a 'moral person' who is acting in consideration of certain virtues which are generally desirable qualities of a person, similarly to the Confucian idea of virtues. Hence, this concept focuses rather on what a person does than on the mere fact that he or she is. Zhao's theory is based upon the Confucian view of the world, making reference to the hierarchical relationships between individuals, within society, and towards the state from which rights as well as duties arise and highlighting the priority of the collective over the individual according to which the nature of human beings is social and only gets fulfilled through the system of relationships in which they are involved. Zhao argues that there has to be a complete symmetry between rights and obligations. In contrast to the western understanding of rights being unconditional and a priori, in his concept obligations exist a priori to rights, meaning that one can expect others to comply with their duties only if he himself is justifying his own rights by complying with the respective duties. This interdependency between all actors involved in this social game leads to mutual implications. According to the western concept, rights cannot be conditioned by duties, because they are indispensable, meaning that the behavior of one person cannot influence the rights and obligations of another. This self-centered view of the world is being criticized by proclaiming that no single human right can exist in the absence of others and human rights can therefore never be individual, applying independently to one single person. On the contrary, western

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<sup>17</sup> Tingyang himself uses the term 'obligations' instead.



thinking emanates from the individual as the basis of all. Thus in the *Bible* the individual, created as an image of god and therefore granted special rights, is being regarded as the center of all life. Exactly this individualism is being criticized by Zhao for sacrificing common welfare in the name of human rights and the rule of law and that in the UDHR, for example, individual rights outweigh collective rights by far, which constitutes a characteristic of western modernity and a source of tensions towards other societies. One of his main arguments for the invalidity of traditional human rights is the proclaimed absence of justice, which he understands to be a total symmetry between behavior and retribution, or between input and return. Western theory interprets justice in terms of liberty and equality, but Zhao notes that this justice can never be more than procedural (or formal) justice, but not substantial, and criticizes the western world for its emphasis on individual life, private property and individual liberty (especially political freedoms). He argues that priority of liberty and equality cannot guarantee justice but, on the contrary, the priority of justice would be able to establish a situation of limited liberty and limited equality, but one that would be acceptable to all people. And exactly this is the distinctive feature of his concept. He assumes that the restraint of both liberty and equality could be acceptable to all people in the light of perfectly symmetrical justice. But from a western perspective, this subsidiarity or limitation could never be accepted neither of liberty nor of equality, as those two are the most basic principles in occidental thinking. As mentioned before, in Christianity the principle of equality derives from God, the philosophers of the stoa regard all people as naturally equal, Locke emphasizes the rights on life, liberty and property and defines the function of the state as to guarantee these natural rights, and Kant identifies liberty as the only natural human right out of which all other rights might develop. Zhao questions the principle of equality amongst people by stating that the predominant concept of equality would only guarantee a degraded form of equality, but not a genuine one, because immoral people who do not comply with their duties and, therefore, do not go along with societal expectations, would ethically belong to a different group of people and, in turn, real equality could only be accomplished without them. In contrast, he proposes an 'excellence-oriented society' with the highest level of morality as the standard and thus, accepting the social exclusion of people from this society. His concept totally contrasts western ideas of equality and social integration as well as the Christian value of forgiveness. He assumes absolute awareness of people over their own actions and their consequences at any time and accordingly, labels non-compliance with the duties linked to one's rights as a rational decision against society. The question is, who decides about the rights and duties and how their compliance is observed. Zhao rejects both concepts of unanimity (as utopian) and democracy (as a rejection of the minority) and proposes a model 'with fewer players,' who negotiate an agreement that, subsequently, every other actor can either accept as given or abandon society

and, therewith, disclaim his human rights without any possibility of resumption. Underlying this is the assumption that people's biggest interests can only be those shared with others and only exist within a relationship and that neither egoism nor rivalry among people exist.

The bottom line of Zhao's alternate concept of 'Credit Human Rights' is consequently, that everyone gets equal credit rights without any prior conditions, but in the same moment, in order to keep these rights, one has to obey one's duties. The principle of justice is highlighted in this concept as being the most important, before liberty and equality.

### ***3.4 'Intercivilizational Approach' by Onuma Yasuaki***

The Japanese professor of law Onuma Yasuaki (1998) claims that the western approach to promote human rights in East Asia has failed, on the one hand, because western governments as well as NGOs do not pay sufficient attention to the specific situations on the ground, referring especially to the experiences of colonization by western powers (as well as by Japan in the case of China and Korea), and on the other hand, because of the West's attitude of superiority and its incapacity to reflect and exert self-criticism regarding its own internal situation of human rights while excessively judging and criticizing other countries' human rights records. Accordingly, Onuma calls upon western actors involved to perceive and respect the particular traditions and conditions of other cultures and societies, and not blindly assume that their own concept with its underlying thinking is the only one, or at least the only right one. Similarly, the common but one-sided assumption in the West that Christian or European values are universal and those of other religions or cultures represent particularities is criticized. As a solution to the conflict on human rights he proposes an 'intercivilizational approach' to human rights, including dialogue and mutual comprehension between different civilizations, which ultimately leads to the broadest consensus possible.

In general, Osuma subscribes to the importance of the global promotion of human rights, but at the same time highlights the fact that this promotion constitutes a tool and should not be confounded with an end itself, meaning that the worldwide respect for human rights can never be regarded as completely accomplished, but needs to be assessed and improved continuously as external factors and situations constantly change. And at this point, obviously, a one-sided monitoring and critique of the West towards the East cannot be promising as the criteria used are not regarded as objective

and appropriate to all actors and often appear insensitive to the ones assessed. One of the reasons for this is their origin in the West, for which reason Onuma proposes an intercivilizational approach to the assessment of human rights which incorporates only such criteria on which was previously found a broad consensus by representatives of all important cultures, religions and other groups or, as Onuma puts it, civilizations. This alternate approach neither assumes nor aims at a single common value system underlying the concept of human rights, but rather tolerates and seeks to incorporate various different ones. In order to reach this peaceful coexistence of different value systems that are all equally valid, the West needs to disclaim its West-centrism, which refers to the understanding of its own concept as (the only) universal and begin to accept other ways of thinking as just as legitimate as the own one. Unless this is accomplished, no non-western value or norm will ever be regarded as universal. In practice, Onuma proposes to emanate from the already existing provisions of the international human rights regime to which the majority of countries worldwide have committed themselves, including with equal importance the UDHR as well as the ICCPR and the ICESCR, in order to assess the human rights practices of specific countries. Crucial for the evaluation would be a country's compliance with the international standards, whereas social, economic and cultural rights would be regarded as just as important as civil and political rights, but also taking into account the specific historical, political, and socio-economic situation in each country. Further, according to the intercivilizational approach the primary obligation of each state, above all else, would be to guarantee subsistence with human dignity to all its citizens. The selection of the rights which should be promoted would take place according to their specific juridical significance depending on the number of states which have adopted instruments to promote a certain right, if these states have the possibility to resign from it, if the right concerned is construed to become a mandatory rule, and if violations of this right constitute an international crime. Following these provisions would provoke a fundamental change, at least for the EU, which becomes apparent in the case of the death penalty whose global abolition is one of the major concerns of the EU's human rights policy. But in fact, at the moment<sup>18</sup> only 73 of the 192 countries of the UN have ratified the Second Optional Protocol of the of the ICCPR that abolishes the death penalty, nor does international law contain a provision on death penalty. Apparently, the European point of view is not generally accepted as opinions on this matter strongly depend on religious and philosophical beliefs. The freedom from capital punishment would not be given higher importance than any other freedom and its promotion would consequently not be part of an intercivilizational approach on human rights. The methods actually used for the evaluation would need to be

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<sup>18</sup> The current status can be checked on the UN website: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en).

thoroughly selected as they have to take account of all the main international human rights provisions equitably, be the legitimate product of an inclusive intercivilizational negotiating process, be statistically verifiable, and openly reveal their theoretical fundamentals, including for instance the standards for the selection of data, in order to ensure transparency and accountability for all actors involved and everybody else who is interested and disprove the allegations of self-righteousness and cultural imperialism of the West. Hence, Onuma claims that his alternative approach could not only prevent a dominating role of the West in the debate on human rights, but would further enhance the worldwide commitment to and respect of human rights.

Similarly, Taylor (1996) criticizes the western concept of human rights for being based on assumptions that other cultures or societies may not share and, therefore, will not commit themselves to, and proposes an 'unforced consensus' on human rights' norms. Given the involvement of groups that have fundamentally incompatible ideas of for example human nature, he highlights the need to indeed agree on certain norms, but at the same time tolerate disagreement in consideration of the underlying justification of a specific norm, the practices of its enforcement, and potential discrepancies regarding the legal institutions. This means that every group involved would have its proper mode of justification in accordance with its cultural, religious, or national background. Essential for this consensus is a mutual sympathetic understanding of all parties involved which requires the West to be able to see its own set of values and principles as just one among many others. Flynn (2009: 69) on the one hand criticizes the lack of symmetrical relations between the West and the rest of the world as the West continuously declares its own standards to be universal and puts itself at the center of the world or, to say it in his words: "When the nations that determine the global structures of power and wealth also dictate the nature of the normative structure of global society, members of other societies are rightly suspicious." And on the other hand, he calls for the acceptance of pluralism as a basic condition of the success of a dialogue. He argues that only if these conditions are met, would participants of the dialogue be able to distinguish between their own particular and relativistic system of norms and views from the one's that they would like to become universally accepted by all and, thereby, justify their interpretation of human rights.

#### ***4 Theoretical Implications and Practical Restrictions***

After the examination of the EU as a 'normative power' promoting human rights in China and some

different, mainly Chinese, views on human rights, this chapter will explore the question of whether and why the EU really *should* continue to promote human rights by first introducing the debates on universality versus relativism and the principles of national sovereignty and non-interference. After having shed some light on these theoretical implications for the EU's promotion of human rights in China, the second part seeks to explore how these efforts might be restricted by practical limitations reducing the success of the EU's human rights policy and weaken the human rights cause as a whole. While the first analysis is normatively guided, the second one emphasizes interests potentially undermining the normative approach.

#### ***4.1 Should the EU Promote Human Rights in China?***

Within the EU it is generally unquestioned that the own norms and values, one of them human rights, are good, desirable and hence should be promoted through foreign policy in the rest of the world. While the EU justifies the universal validity of its concept on the basis of international agreements accepted by a majority of states, among them China, and assumes compatibility with all cultures, the Chinese stance on the matter is ambivalent due to the official acceptance of universality on the one hand, and its challenge through references to national particularities and a hierarchy of rights on the other. Obstacles arise in cases, in which countries do not comply with their international commitments. In favor of the international human rights regime and the enforceability of international human rights standards, a normative change was noticeable within the international legal order in the 1990s, limiting the principles of national sovereignty and non-interference in other state's affairs in the case of serious human rights violations.<sup>19</sup> But since China became increasingly active and gained power on the international stage, this transformation was slowed down or even stopped. China claims that the promotion of human rights by the EU or other external actors within its borders forms an interference in purely domestic affairs and therefore violates its national sovereignty. As mentioned above, in 1993 China publicly announced its particular view on human rights including the formal acceptance of universality, but under the condition of considering the specific local situation on the ground and emphasizing the indefeasible principle of national sovereignty.

In order to answer the question of whether and why the EU really *should* continue to promote human rights in China, two debates that are of major importance and closely correlated will be

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<sup>19</sup> For example the 'Responsibility to Protect'

presented: first, the debate on universality versus relativism, inter alia introducing to the theory of 'Asian values'; and second, the closely linked debate on the principles of national sovereignty and non-interference.

#### ***4.1.1 Universality versus Relativism***

The meaning of the term 'universal' stems from the Enlightenment period and was particularly shaped by Kant.<sup>20</sup> It implies absolute validity, meaning the equal and consistent application to human beings in all places, and does not tolerate any alternative or competing concepts. The 'western' concept of human rights does invoke universality, which excludes the possibility of other universal concepts of human rights as they would contradict each other's 'universality' and, thereby, render each other meaningless. Besides this clear factual subscription to universality in the UDHR, it is regarded as universal because of the grand majority of states that have signed it and thereby accepted its universality. It is assumed that the signature of such documents expresses the signatory's, at least basic, compliance with the contents and its willingness to implement them domestically. Nevertheless, this is not unequivocally clear since some countries obtain divergent interpretations of the UDHR's content, which renders a clear identification and denunciation without controversy of human rights violations impossible; or as Huntington (2003: 184) puts it for instance: "What is universalism to the West, is imperialism to the rest."

Advocates of a relativist viewpoint emphasize the different historical, cultural, and economic circumstances in different parts of the world, such as the focus on duties rather than on rights or their close linkage, and the stronger weight given to collective rather than to individual rights in other societies (Kaempfer 2006). Enraged by a perceived intervention into their domestic affairs by other countries and the international community, for example due to political conditionality, some leaders, particularly of Asian countries, accused the West of a 'hidden agenda', with which "the West is supposed to introduce universalist issues into Asian societies in order to cause disturbance and stall the rising political and economic significance of Asian economies with a view to maintaining its own hegemony" (Bruun and Jacobson 2000: 4). Principally, the argumentation of proponents of cultural relativism goes that human rights are values, and values are specific to the culture which they stem from. Consequently, human rights cannot be universal, but always depend upon the specific cultural context (Li 2003). Emanating from this assumption, it is claimed that a

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<sup>20</sup> This does not imply that human rights were universal at that time as they were denied to women and slaves.

society, and specifically its human rights record, should not be judged with the help of a concept which is based on values not inherent to this society and that judgement by external criteria would be a form of cultural imperialism (Svensson 2000). Some claim that especially Chinese values are either an obstacle or an alternative to the 'western' concept of human rights (Kaempfer 2006). As seen above, the West usually puts civil and political rights at the centre of attention and regards them as inherent in the very nature of human beings as well as universally applicable, regardless of the political system, historical background, or cultural traditions within the country concerned. By contrast, other societies do have different views on human nature from which results the claim for a different understanding of human rights, primarily the emphasis on social and economic rights as a condition for the realization of civil and political rights, first and foremost referring to wealth and economic development. Many cultures or regional traditions prioritize collective over individual rights (Wiessala 2009).

As a response to the perceived challenge to the principle of national sovereignty together with the constant criticism of the situation of human rights in Asia and assumed cultural imperialism by the West, the cultural relativist theory of putative 'Asian values' tries to implement an alternative "specifying the balance between citizens' rights and the integrity of state power." (Bruun and Jacobsen 2000: 4) It seeks to point out the particularities and specific values of Asian societies as an alternative to the allegedly western values which make a different approach to human rights justified or even necessary. It is supposed that Asian societies crucially differ from western one's because of their communitarian nature, emphasizing familial and societal duties and enhancing societal harmony, for which reason positive communitarian characteristics and values are used to characterize their nature. Accordingly, Asian societies particularly prioritize the "rights of family, state and society over those of the individual and the primacy of 'development-rights' or 'subsistence-rights'. Secondary arguments highlight the value of education, hard work and team-spirit" (Wiessala 2006: 40). This picture opposes the view of individualistic western societies which are criticized and characterized by little desirable, mostly liberal attributes and which supposedly cause social disintegration and even crime and drug abuse (Li 1999: 82). It is argued that social and economic rights, for example the right to development, must be prioritized over individual political rights in Asian societies because of the still underdeveloped economies and the valuelessness of political liberties in consideration of hunger and poverty.

The concept of Asian values is strongly criticized, both from within and from outside of Asia. On the one hand, due to its promotion mainly by authoritarian leaders, it is accused of being a means

for them to “stabilize their power and prevent democratic reforms which could endanger their political position” (Kaempfer 2006: 119) or to even justify a regime that is thoroughly illegitimate. On the other hand, the very existence of values that are specifically Asian is being questioned. Undoubtedly, there are values that exist in all or most Asian societies, but they usually do neither cease at the borders of the continent nor at the borders of civilizations and, on the contrary, Asian societies are so multifaceted that numerous differences in value conceptions can be identified within them. Michael Jacobsen and Ole Bruun (2000) argue that through a precise examination of the East and the West in the field of human rights, it would become clear that a distinction between specific Asian and western values would be fundamentally wrong and pure invention. Kevin Y.L. Tan (1996: 3) has argued that the core of the debate is probably not so much about cultural distinctiveness as about economics and power, stating that “the real interests underpinning the debate have nothing at all to do with questions of culture, or indeed, even human rights. Rather, they are related to Asian economic success and confidence and Asia's continuing reaction to colonialism.” Especially in the case of China this is relevant because “as a socialist country [it] relies more on the argument that different stages of economic development influence the realisation of human rights than the argument that different cultural and historical conditions give rise to different views on human rights.” (Svensson 2000: 201)

As a preliminary result it can be noted that, although the 'western' concept of human rights as anchored in the UDHR is officially accepted as universally valid by a majority of states, there do exist diverging opinion which claim relativist understandings of human rights according to the respective culture, such as the relativist theory of 'Asian values' that refers to specific values inherent in and particular of Asian societies. But pertaining to the case of the EU promoting human rights in China it can be concluded that, despite all divergent opinions and theories, as long as China officially accepts universality, as it has signed in the UDHR, this acceptance is binding and renders all diverging interpretations and claims for relativism irrelevant.

#### ***4.1.2 Principle of National Sovereignty and Non-Interference***

The principle of the sovereign equality of states is one of the most approved principles in international law. The first clause in Article 2 of the UN Charter states: “The Organization is based on the principle of the sovereign equality of all its Members.” Therefore it enjoys, at least theoretically, the support of all UN member states, which are the grand majority of all states. The



UN General Assembly highlighted the fundamental meaning of this principle through its *Friendly Relations Declaration* in 1970 and pointed out that the objectives of the UN, particularly the safeguarding of peace and international security, can only be achieved if all states enjoy equal sovereignty and fully comply with their obligations in international relations which arise out of this principle. Without the mutual acceptance of national sovereignty, peaceful international relations would be impossible. Therefore, national sovereignty constitutes one of the most important, albeit not without controversy, principles of modern international law (Kindt 2009). The concept of sovereign equality consists of various elements. Confirmed by the *Friendly Relations Declaration*,<sup>21</sup> and therefore principally undisputed, are especially the following elements: “All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. In particular, sovereign equality includes the following elements: (a) States are judicially equal; (b) Each state enjoys the rights inherent in full sovereignty; (c) Each state has the duty to respect the personality of other States; (d) The territorial integrity and political independence of the State are inviolable; (e) Each state has the right freely to choose and develop its political, social, economic and cultural systems; (f) Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.” Judicial equality implicates, at least formally, that all members of the international community have to act and are to be treated according to the same rules and no member of the international community may be discriminated against. All have the same rights and duties and are equal members of the international community regardless of economic, social, political, or other differences. This means that, considering the extremely unequal allocation of power and influence within the community of states, the principle of national sovereignty is granted a corrective role (ibid.).

But even the principle of national sovereignty does not apply unrestrictedly. Usually, the right of full sovereignty of one state ends where the right of sovereignty of another state begins. In this regard, particularly the appearance of the human rights regime on the international stage has caused tensions and conflicts between states because it essentially concerns the previously almost untouchable principle of national sovereignty by obliging states to publicly account for their national human rights record. The belief that every state has the right to make its domestic political decisions autonomously and without external influences is directly at odds with the belief that every person has the inherent and untouchable right of basic liberties, as Fagan (2010) puts it: “The moral justification of human rights is thought to precede considerations of strict national sovereignty.”

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<sup>21</sup> See: <http://www.unhcr.org/refworld/topic,459d17822,459d17a82,3dda1f104,0.html> (accessed on 15.08.2011).

Serious violations of human rights are not merely the internal issue of a state, but are regarded as a concern of the international community. They can constitute a threat or a challenge to peace and international security according to Article 39 UN-Charter and, if applicable, even justify the deployment of military force (Kindt 2009). The West, and as a part of it the EU, mainly promotes individual rights even to the point of disregarding other state's sovereignty, whereas China focuses on state rights in the form of the principle of non-interference even at the cost of tolerating violations of human rights and democratic principles. Consequently, there exists a conflict between the principles of sovereign equality of all states and non-interference and the need for intervention in the case of serious human rights violations.

China regards the promotion of human rights by the EU or other external actors outside their own borders as an interference in a purely domestic issue and therefore as a violation of national sovereignty. Chinese authorities still follow the 'Five International Principles' set up by the first Prime Minister of the PRC, Zhou Enlai, in 1955: mutual respect for territorial integrity and sovereignty, non-aggression, non-interference in internal affairs of other countries, equality and mutual benefit, and peaceful coexistence (Golden 2006: 265f.). China puts the principle of national sovereignty above all else in foreign relations, for which it neither interferes in other countries domestic affairs, nor does it make economic and political cooperation or trade agreements conditional upon the compliance with certain political requirements. A report of the *International Commission on Intervention and State Sovereignty*,<sup>22</sup> appointed by the Canadian government, from 2001 confirms this position: “In a dangerous world marked by overwhelming inequalities of power and resources, sovereignty is for many states their best – and sometimes seemingly their only – line of defence. But sovereignty is more than just a functional principle of international relations. For many states and peoples, it is also a recognition of their equal worth and dignity, a protection of their unique identities and their national freedom, and an affirmation of their right to shape and determine their own destiny. In recognition of this, the principle that all states are equally sovereign under international law was established as a cornerstone of the UN Charter (Art. 2.1).” But at the same time, China's foreign policy seeks participation in an international community which indeed respects the national sovereignty of every state, but also tries to narrow the scope of the principle with reference to community membership. Jeremy P. Paltiel (2007: 139) notes that: “So long as China seeks status and recognition in international society and is not in a position to surround itself with its own normative community, it will be forced to deal with a human rights regime derived from western tradition and practice.”

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<sup>22</sup> See: <http://www.iciss.ca/report2-en.asp> (accessed on 15.08.2011).

In summary, China has no right to accuse the violation of the principles of national sovereignty and non-interference since it does itself not comply with its international commitments, for instance the implementation of the human rights covenants it has signed. Accordingly, interference of the international community is justified as the basic principle of international law that generally guarantees national sovereignty to every state is only applicable in the case of the state's adherence to its international commitments. One could even express this in terms of the Chinese view: rights and duties are indivisibly correlated, so if one does not fulfill its duties, rights cannot be claimed either.

## ***4.2 Can the EU Successfully Promote Human Rights in China?***

As pointed out above, the EU should keep on carrying out a normative human foreign policy through which it promotes human rights in China. Besides moral obligations, like the profound belief of the rightness of the respect for and promotion of human rights and the representation of the prevalent public opinion, the EU has a legal commitment to actively promote human rights outside its own borders deriving from its treaties and international agreements. Given these theoretical implications, it will be examined if in reality the EU really *can* comply with its role as a normative power by successfully promoting human rights in China in light of several kinds of practical restrictions. In a report which assesses the EU-China cooperation and partnership programs, the main conclusions are that the coordination between the EU and its member states towards China “is strong in form but weak in substance” (EC 2010), and that this shortcoming does not only reduce its effectiveness but also leads to inconsistencies and incoherences in the EU's promotion of human rights in China. Furthermore, since the CFSP is of an intergovernmental nature, unanimity is necessary in most cases and leads to a policy of the smallest common denominator, which can be particularly unfavorable for the promotion of human rights.

The limitations that the EU's human rights policy faces in China are both of internal and external nature. While the former ones the EU imposes upon itself due to its inability to follow a united, consistent, and coherent approach and the regular outweighing of the human rights cause by economic and strategic interest of the EU and its member states, the latter ones refer for instance to China's rising economic and political power, due to which the EU may not cancel relations even if China does not comply with its international commitments, and the lack of an international

normative agreement and sufficient enforceability of international law.

#### ***4.2.1 Self-Limitations***

According to a communication of the EC (2001), the effective promotion of human rights should focus on the development of a coherent and consistent approach to human rights that includes the coordination of action between the member states and the EU, the mainstreaming of human rights into dialogue and cooperation with third countries, and a better strategy concerning the match of EIDHR projects with human rights commitments. But in spite of its ideal intentions, the EU's human rights policy towards China does not correspond in reality to the theoretical one described in official documents as it is often incoherent, inconsistent, and hypocritical and member states usually do not act in a unified way, except in the case of Tiananmen 1989, and tend to prioritize their, often competing, national economic and strategic interest over the EU's normative principles (Wiessala 2009).

Coherence means the relatively comparable application of measures according to the respective situation of human rights in the country concerned, meaning that similar instruments should be used in dealing with different third countries that are in a similar situation or have a similar human rights record. This also comprises the avoidance of 'double standards', referring to different means applied depending on national, and in this case additionally European, interests in the country in question or on the quality of the relationship until now (Heinz and Liebl 2008). Evidently, the EU almost exclusively imposes sanctions for human rights abuses to economically and politically less important or unimportant states. In contrast, strategically important states like China or Russia are treated much more cautiously and kindly (Mattlin 2010). The same happens within the UN concerning the sponsoring of resolutions. While the adopted resolutions may all be justified by violations of human rights in the target country, other countries violating human rights at least in the same way were never under consideration for a draft resolution or were at some point dropped from the EU's list of resolutions, for example in the case of China (Smith 2006). An additional weakness can be a lack of consistency in the form of "double standards and cognitive dissonance," (Eriksen et al. 2005 in Sjursen 2006a: 244) which refer to the discrepancies between the constitutional norms of the EU, which it has internally integrated into its legal framework and verbally promotes and even expects the compliance with them externally from the rest of the world, and its own actual behavior regarding their compliance. The EU is unable to internally enforce what it externally claims, which

therefore diminishes its legitimacy and credibility. Looking at the EU's annual human rights reports it becomes clear which marginal role the respect for human rights plays within the EU and the member states as this field is hardly even mentioned, whereas the external aspect is examined in great detail. Yet the report from 2006 at least admits that: "It is of course important from the point of view of credibility, that while the EU actively promotes human rights with regard to third countries, it also applies human rights standards in a coherent and consistent manner in its own policies." (Council of the EU 2006 in Smith 2008: 112f.) In reality, the contrast between proclaimed values and own performance is evident. The *Annual Report on Human Rights 2007* by Amnesty International for example criticizes "dubious methods used to combat terrorism" and "abusive practices in the fight against irregular immigration" (in Smith 2008: 115). Mikael Mattlin (2010) notes that the supposed moral high ground of the EU and generally 'the West' on human rights has strongly suffered under significant human rights abuses at home. Especially in light of the 'war on terror', political and civil rights were violated through secret detentions, limitations of personal freedoms, and toleration of torture. While the EU repeatedly criticized the Chinese surveillance state, its member states themselves engage in wiretapping, video surveillance, and data retention. Other exemptions to the EU's benevolent theoretic claims are made in reality when for example the French expel Roma or try to close their borders to Libyan immigrants fleeing through Italy from the war in their country.

Consistency in this case refers to the EU's compliance to human rights standards without causing contradictions or tensions (Heinz and Liebl 2008). In addition to disagreement between EU institutions and member states about the right foreign policy objectives and the best way to achieve them, the officially communicated version changes regularly and is therefore not carried out consistently. Some national governments seem to lose their belief in the European project, assuming that an individual approach of their country towards China may result more successful for them, most importantly in economic terms, than an integrated one carried out on EU level. This becomes clear in the comment of Fox and Godement (2009: 2) on the member states' attitude towards the outdated trade agreement with China from 1985 which is still in force: "They acknowledge its existence, largely ignore it in practice, and pursue their own, often conflicting national approaches towards China. Some challenge China on trade, others on politics, some on both, and some on neither." Besides, the delinking of the human rights policy from other policies such as trade or security has led to a compartmentalization of the human rights cause which seems to further this development and clearly undermines the EU's strategy of mainstreaming human rights. Some authors even claim that China uses the disunity among member states as a possibility

to play them off against each other, for example by offering important economic deals to countries that recently seemed less critical than others (Fox and Godement 2009) and Berndt Berger et al. (2009) warn that “talk does not amount to a strategy – and, unless the EU's member states can coordinate their policies, China will divide them.”

The constant growth of China's economical and political weight, on the one hand, is leading to a more reluctant and cautious approach of the EU and some of its Member States carrying out their policy and also to a more critical stance of European politicians and media towards China which is increasingly regarded as a challenge rather than as a chance<sup>23</sup> and on the other hand, supports China's increasing self-confidence which can be evidenced for example in the rejection of the EU's interference and the non-fulfillment of its expectations. Furthermore, as in national politics, trade-offs exist between the respect for human rights and other fields of foreign policy such as economics and security (Heinz and Liebl 2008). Strategic and economic interests usually prevail over the principle of human rights in foreign policy. Like pointed out in the previous part, the EU's decisions regarding its human rights policy towards China were often determined by a few, but important member states with major economic interests in China which suppressed opinions of other member states, which may have been more critical and thereby conform more to the EU's normative principles. This behavior was rendered possible by the institutional set-up of the EU, distributing foreign policy competences among various actors<sup>24</sup> within the multi-level system of EU governance.

#### ***4.2.2 External Limitations***

As we have seen, the EU faces various obstacles promoting human rights in China that are due to its institutional set-up, diverging interest between member states and institutions, and the prevalence of economic and strategic interests over the human rights cause. Additionally to these internal problems, the EU's human rights policy has to cope with several external factors beyond its sphere of influence. First of all, there is China's rising power, respectively the EU's diminishing influence and leverage which can be witnessed both in bilateral relations as well as on the international stage within the UN. Furthermore, the EU's promotion of human rights in China is restricted by the lack of an international normative agreement and rational debate about it and by the fact that international law is indeed formally binding but not sufficiently enforceable in reality.

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<sup>23</sup> See for example: <http://www.usnews.com/usnews/biztech/articles/050620/20china.htm>.

<sup>24</sup> The EC, the Council of the EU (and with it all 27 member states) and the EP.

There seems to be an increasing insight among European policy-makers that China will not adapt to European values and that “The EU cannot 'dictate' solutions to China on its 'internal issues.’”<sup>25</sup> China not only holds enormous capital and currency reserves and did overcome the recent economic and financial crisis without major damage, but even helped other countries to do the same, and has established itself as a key member of the WTO. Mattlin (2010: 19) concludes: “China today needs the EU much less than it used to, while the EU needs China much more than it used to.” Due to China's economic and political power, it can realistically hardly be sanctioned in the case of human rights violations, because the EU and its member states do not have enough leverage. The only two remaining things that China really wants and the EU still does not concede are the granting of the market economy status to China and the lifting of the arms embargo which is still in force since 1989 (Mattlin 2010). The human rights dialogue between the EU and China was and still is, despite some discontinuity concerning the UN resolution, carried out with noticeable interest on both sides. However, it did not cause any considerable results and is criticized first, for being used as an instrument by China to avoid a resolution at the UN and, thereby, making it unofficially conditional upon the EU not tabling or co-sponsoring any resolution against China and second, for being used by the EU member states as a way to outsource human rights issues to the EU level which are not beneficial for their bilateral trade and economic relations with China. This whole dilemma of an UN resolution against China clearly demonstrates the incoherence of European behavior towards China as interests prevails over norms and principles (Algieri 2008). Further, the EU and its member states are strongly dependent on China regarding its role in the UN Security Council and economically too. To promote its views and position, China is very successful in establishing influential coalitions within the UN by lobbying and offering incentives to potential partners, which has led to the fact that China now disposes of a grand and influential coalition of partners at the UN which it often mobilized in contra of EU interests such as the blocking of a resolution on human rights (Berger et al. 2009). Because the coalitions are set-up for a specific matters such as trade or sovereignty, they are of tactical rather than strategic nature (Godement 2010), meaning that China seems to not care a lot about the countries with which it enters coalitions, what counts is that those countries have the same opinion on the issue concerned. China in turn argues that it would follow strategic goals with the establishment of coalitions. Especially western efforts to adopt a resolution against China were successfully blocked that way. Hence, the EU's approach has very little direct effect on influencing China's behavior.

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<sup>25</sup> Former EU Trade Commissioner Mandelson in China Daily 16.04.2008: [http://www.chinadaily.com.cn/china/2008-04/16/content\\_6620043.htm](http://www.chinadaily.com.cn/china/2008-04/16/content_6620043.htm).

The current negotiations of a PCA can be seen as exemplary for the situation: the EU is trying to integrate as much political cooperation as possible which would include the commitment to shared values and principles. China on the other hand, would like to limit the reach of the agreement to issues of trade and economic cooperation (Fox and Godement 2009). Richard Balme (2009: 1) accurately summarizes the development of relations between the EU and China, particularly with regard to human rights: “With the growing importance of China as a global player, these relations have gradually evolved from unilateral pressure to the accepted coexistence of two adjacent normative systems, allowing for non-confrontational dialogue and gradual change, but at the cost of accepting a slow pace of transformation of the human rights situation in China. This situation creates tension between the practice of EU diplomacy and its proclaimed values, as well as between the reality of human rights promotion in China and its understanding by European public opinion.” Besides this practical restriction of power, Lisbeth Aggestam (2009) challenges Manners' characterization of the EU's power as a “hegemonic, albeit benign, normative power” which “spreads like a 'contagion.’” According to her, the EU does not live up to this utopian image referring to recent research which has shown that “in some parts of the world, the EU does not even register on the radar screen as a global actor” (ibid.: 31) and pointing out the gap which exists between the EU's self-perception and the prevalent picture of it in the rest of the world with regard to its key principles. Elgström (2008 in ibid.: 33) found out that EU officials regarded the EU's foreign policy as “guided by altruistic, normative principles”, whereas it was characterized by external actors as “'demon', driven by self-interest and a 'hidden agenda’” and Karen Smith (2006: 132) points out that the EU is by no means regarded as a 'force of the good' by other countries within the UN as “in fact, some view it as neo-colonial and domineering, and the EU can spark the automatic opposition of developing countries to its statements or initiatives.”

To many, the definition of human rights and their universality within the UN seems unequivocally clear, but this is not as clear as it seems because some countries claim different interpretations of the contents, what makes it very difficult to explicitly identify and denounce human rights violations. Further, there are countries that just do not comply with their international commitments or that even refuse to sign any of those documents. The main problem might be the futility of human rights in consideration of the lack of value that governments and people put in them (Li C. 2003). Helene Sjørusen (2006a) points out the lack of an internationally accepted normative agreement as a possible obstacle for the EU's promotion of human rights. She criticizes the idea of a normative power Europe as biased, because it is “impossible to come to a rational agreement on universally acceptable norms” (ibid.: 247) and therefore, if at all, the EU can only sometimes act in a normative



or 'different' way than other international actors. She also cautions against the danger of falling into an imperialist image of Europe trying to promote its own, putative universal and thus superior norms and values, and against the hypocritical promotion of interests disguised as normative principles. To reveal this ambiguity, she proposes to carry out a more systematic empirical research, “yet it is problematic to imply, as such conceptualizations do, that the EU is a 'force for good' without identifying criteria and assessment standards that make it possible to qualify, substantiate or reject such a claim” (ibid.: 235). Also Nathalie Tocci (2007) refuses Manners' ethically neutral notion of 'normative' as “to define what passes for 'normal' in world politics” (Manners 2002: 253), implying that the actor with 'normative power' sets the standard of behavior for all other actors. Because only the “major international actors” (Tocci 2007: 2) have the potential to do this, it would mean that these kind of norms are more closely connected to power than being a “moral imperative” (ibid.) and that all major international actors do have normative power. Instead she proposes a non-neutral way of interpreting normative power. The first obstacle in the way here is subjectivity and assumed universality. A lot of times, a 'normative' foreign policy is mistakably equalized with 'ethically' or 'good', but what is considered 'good' is a matter of subjective perception vis-a-vis the respectively presumed universality. In order to not result in an “imperialist export of one's chosen form of political organization”, a normative foreign policy, besides not being ethically neutral, “must be based on set standards that are as universally accepted and legitimate as possible” (ibid.: 3). The principles promoted by a real normative power are considered to have a rational basis and are subject to an unbiased justification, “meaning that they can be defended in an open, free and rational debate (among all affected parties).” (ibid.: 174) Following on Jürgen Habermas (1995), these norms are seen as the product of a communicative process with all actors involved in which the better argument wins and which constantly underlies public scrutiny. In order to avoid the promotion of one's own interests and subjective values under the cover of universal norms, these norms themselves, and not just their empirical evidence, would need to be examined in a process of rational debate. And only if a norm cannot be reasonably rejected by any of the actors involved, it can be regarded as universally valid (Sjursen 2006a) or, to put it in Habermas words: “all affected can accept the consequences and the side effects its general observance can be anticipated to have for everyone's interest (and the consequences are preferred to those of known alternative possibilities for regulation).” (Habermas 1990 in ibid.: 243) Aggestam (2009) notes that the variety of different concepts, interpretations, and practices of rights contradicts an assumed universality of the principles promoted by the EU.

As Solana (2008 in Aggestam 2009: 35) stated in the *Report on the Implementation of the*

*European Security Strategy*: “globalization is accelerating shifts in power and is exposing differences in values.” But instead of understanding these different concepts as equally valuable, the EU privileges its own concept unreflectively as superior and accordingly “it implies a change in others, not of itself.” It regards itself as 'the example,' rather than as one amongst others. Further, even within only one single concept of universal principles there exists potential for conflict, that is between the norms it contains, for example human rights and democracy, whose promotion does not always go along with each other well and even may seriously contradict each other. And Sjørnsen (2006a) rightly adds that with regard to such a contradiction, the general universal validity of a norm cannot always ensure its adequacy in a particular situation. Therefore a norm can only be called valid in reference to a specific context.

In order to avoid hypocrisy and inconsistencies in the promotion of and compliance with norms, Sjørnsen suggests turning the attention on the kind of legal principles an actors behavior is based upon. The EU does claim for itself to put high value on international law and multilateralism and characterizes its goals as to develop a stronger international society, well-functioning international institutions and a rule-based international order<sup>26</sup> of which the center shall constitute a strong UN. A central problem of international law is its lack of enforceability, that it is not legally binding and therefore lacks the possibility of imposing sanctions. Mutually binding arrangements connected to sanctions do not exist in international law, so its compliance primarily depends on “the benevolence of the member states and in particular the benevolence of the most powerful states within the system” (Sjørnsen 2006a: 246). By shifting the focus away from conventional multilateralism concentrating on the state, Sjørnsen seeks to differentiate a cosmopolitan law concentrating on the individual, whose primary objective is not to protect the sovereign rights of states, but the individual rights of the people. Sjørnsen recommends judging the EU's normative power by the extent to which it promotes the reformation of traditional international power politics towards a more cosmopolitan order and its willingness to represent an abstract universal humanity. Accordingly, a normative power Europe with true normativity can only exist globally and if it is not just European, because all individuals worldwide would be its source of legitimacy.

## ***5 Conclusion and Policy Implications***

The EU is built upon a set of fundamental norms and principles, one of them respect for human

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<sup>26</sup> See for example: *European Security Strategy* (2003).

rights. This normative basis is also promoted in third countries through foreign policy. This paper has introduced the conceptualization of the EU as a foreign policy actor, particularly as a normative power, and the EU's human rights policy. According to this concept proposed by Ian Manners, what really matters in foreign policy is what the EU *is* and not what it *does* or what it *says*, emphasizing the EU's unique character, pooling sovereignty of the member states in common institutions, which predisposes it to act in a normative way in external relations. Manner assumes that the EU is able to function as an example in norms and principles which other actors want to imitate, because it is regarded as legitimate in promoting universally accepted norms of the UN. Further, he describes the ways through which the EU promotes these norms which follow a long-range approach and therefore should be normatively sustainable. The UN's conception of human rights philosophically derives from the concepts of moral universalism and a natural or primary law. Aristotle argues for a universal moral order that generates a universally accepted natural justice on the basis of which systems of justice and their legitimacy may be evaluated. Roman Stoics like Cicero argued similarly for a universal moral ethics, but identified the rational will of God as its source. Later, philosophers of the Enlightenment period like Hobbes, Locke, Rousseau, and Kant, proclaim the existence of some kind of natural or primary law beyond a natural moral order which exists a priori and independent of all society and whose corresponding rights are granted to every individual equally. According to the UDHR, which was drafted with the help of multi-cultural experts and is signed and thereby accepted by the majority of states, human rights are universal and apply to every person in the same way. Within the EU's legal framework, the treaties and several other official documents on foreign policy establish the promotion of human rights, and all of its other values and interests, abroad. The EU seeks to mainstream human rights through all of its policies in all areas with the help of instruments like dialogue, guidelines, and the human rights clause that is to be included in all agreements with third countries. In the case of China, one of the EU's most important partners, a trade agreement from 1985 is still in force. The incident in Tiananmen Square in 1989 deeply marked the relationship, after which the EU imposed sanctions like the arms embargo upon China and supported a resolution against China at the UN that due to disunity among the member states was never adopted. Besides, a specific human rights dialogue is held twice a year which until today has not produced any considerable outcome. The EC's communications on China prove evident the shift of importance from the human rights cause towards more economic and strategic interests. Currently both sides are negotiating a PCA.

Although China theoretically accepts the UN's concept of human rights, it offers alternative approaches too. On a theoretical-philosophical level, the Chinese understanding of human rights is

strongly influenced by Marxism and Confucianism. Marxism prioritizes the society as a whole over the individual person and considers law to be particular depending on the respective society and its conditions. Confucianism regards people mainly as social beings too, emphasizing societal and interpersonal relationships which are generally hierarchical and implicate duties as well as rights for both parties involved. Concerning the legal order, Confucianism foresees ruling by li, rituals determining how people should act, which functions through an emphasis of the community, internalization, and people's selflessness. Accordingly, a Chinese understanding of human rights has a different idea of human dignity from the western one, regarding it as a social ability rather than an indispensable characteristic of every human being, and generally neglects individual rights. The ultimate objective in Chinese society is complete harmony, whereas conflicts are thoroughly avoided. At this point the Chinese history of colonization also needs to be considered since it has led to a general aversion against modernization and western values, which human rights are often regarded to be. Human rights are completely integrated into the Chinese constitution, but limited through various restrictions and a lack of ways to enforce them. Since 2004, the constitution includes an article on the duty of the state to safeguard human rights, for which observation does not exist any guarantee. Since 1993, Chinese authorities actively promote their own distinctive concept of human rights whose main characteristics are the adjustment to a country's specific situation, the acceptance of all human rights as equally valid, but at the same time advocating a hierarchical order which prioritizes the rights to subsistence and development, the linkage of every right to a duty, and the rejection of any kind of foreign interference on this proclaimed national matter. China invokes its economic status of a developing country in order to justify human rights violations. Obviously, there exist contradictions within this concept. Further, China regularly criticizes other countries, and the EU's, human rights record, too. Subsequently, two other possible human rights concepts were presented. Zhao Tingyang proposes that every person should have equal rights, but as a credit, whose preservation can only be guaranteed through obedience to the respective duties. Others, like Onuma Yasuaki, advocate a dialogue between representatives from all different countries and cultures that ultimately leads to a consensus on the most basic norms which are accepted by a majority.

After getting to know the EU's international identity as a normative power, its human rights policy towards China, and some alternative concepts, the initial questions of this paper were analyzed. The first objective was to explore in a normative approach, whether and at which price the EU *should* promote human rights in China through its foreign policy in consideration of different points of conflict between its own and China's views. One aspect of disagreement is universality with respect

to relativism. While universality implies absolute validity and exclusivity, relativism means the particular conceptions and interpretations, in this case of the contents of international human rights agreements, with reference to every country's specific historical, cultural, and economic background. For example the relativist theory of Asian values claims the existence of particular values in Asian societies emphasizing the collective instead of the individual and prioritizing social and economic rights over civil and political ones. While the EU assumes universality of human rights as they are clearly defined in the UDHR, China regularly refers to the necessity to take into account a country's specific situation when implementing human rights on the ground and claims a hierarchical order of rights. But as long as China officially accepts universality with its signature of the UDHR, it has absolutely no right to claim diverging and relativist interpretations. The other point of conflict is the principle of national sovereignty and non-interference, anchored in international law as a fundamental principle in international relations. While most countries accept or even promote the limitation of national sovereignty through international interference in the case of a country seriously violating human rights, China rigorously rejects all kinds of restrictions to this principle and argues that human rights are an exclusively national matter. This is particularly important regarding China's steadily growing importance and influence within the international community. But since China does not comply with its international commitments, such as the implementation of human rights covenants, it cannot claim national sovereignty and non-interference of the international community either. Hence, the EU should definitely continue to promote one of its core norms, the respect for human rights, in China, because it has a moral as well as a legal commitment to do so and "Rather than being a contradiction in terms, the ability to define what passes for 'normal' in world politics is, ultimately, the greatest power of all." (Manners 2002: 253) Secondly, it was examined if the EU in practice *can* comply with its role as a normative power and successfully promote human rights in China in consideration of various internal and external limitations. Internal limitations are due to problems within the EU for carrying out a coherent and consistent human rights policy and presenting itself in a unified way and to national strategic and economic interest of member states which regularly superpose the human rights cause. Externally, the EU lacks leverage over an increasingly economically and politically important China, against whose human rights violations it can do little. First, because of the importance of the relation which it cannot simply cancel and second, because of the lack of an internationally accepted normative agreement and of instruments to enforce international law in case of violations. This part has shown that the EU's human rights policy faces numerous obstacles in China which limit its success. Some of them are self-restrictions that the EU can overcome by itself and others are external and therefore beyond its sphere of influence. On the basis of this information, what this limited realizability

implies for the EU's original claim and how an optimized EU human rights policy towards China may look like is finally analyzed. This time an interest-based approach was applied, balancing the normative claim against the practical limitations. Certainly, the normative theoretical claim of the EU to promote human rights beyond its borders is practically limited, but even in light of a reduced scope and success of the human rights policy, it should be continued anyway because in addition to the normative commitment it serves European interests as well. Or as Mattlin (2010: 21) puts it: "Let us be clear on one thing: being at its foundation a value-based community, the EU cannot 'drop' its normative nature. Doing so would over time undermine the whole community."

The EU's human rights policy towards China needs some modification and greater precision in order to adapt to already changed and further changing circumstances and thereby achieve an enhanced realizability and success. For this reason, some policy implications will be suggested below. First of all, the EU needs to comprehend the new situation of current international politics and critically examine its own strategy and policies towards China in consideration of its interest and possible impact too. Mattlin (2010: 6) proposes that if the EU really wants to act as a normative power, it should "put its own house in order first before criticising others," hinting at the EU's own human rights record which seems to play only a minor role in European politics compared to the critical observance of the situation of human rights in other parts of the world. Expectations should be lowered and restricted to issues which enjoy real consensus. A better coordinated and united approach of all member states and the EU is necessary to increase coherence and impact and prevent some member states' inclination to admit a special treatment to China due to economic and strategic interests. The EU should take a firm stand upon its own norms and principles and become more persistent in their adherence within its own borders. There is no reason to disavow the respect for and promotion of human rights as it is explicitly defined in international law, signed and thereby accepted by the EU as well as by China. But in doing so the EU should act carefully and show sensitivity to the authorities and the people on the ground, considering historical and cultural circumstances and recognizing that there do exist alternative concepts, too. In general the EU, and the UN as a whole, should try to reach greater consensus on and support for human rights as an universal value of the international community, especially regarding a country like China which is growing steadily in all aspects. An area of consent may be the promotion of social and economic rights which could be used to achieve some major common successes in this field. Besides focusing on cooperation, the EU should continue to proclaim its values and criticize their violations bilaterally and at the UN, while not accepting any restrictions which Chinese authorities try to impose upon its actions, like their intent to prohibit European politicians meeting with the Dalai

Lama. Instead of a too idealistic and holistic approach, the EU should rather identify its main objectives and then focus on some few, but realistic aspects whose accomplishment is realistically within the reach of EU human rights policy and enjoy at least a minimum of local support. This implies an individual approach towards each country according to its human rights situation, the relationship in general and the corresponding leverage at the EU's command. In the case of China, this would for example result in a revision of the appropriateness of the arms embargo. A good example for an effective and successful instrument would be the Sino-German legal dialogue, which mainly abstains from counter-productive critique which is regarded as overbearing and as an expression of double standards by many Chinese, considering the fact that China is totally aware of the underdevelopments of its legal system and willingly accepts advice and assistance (Blume 2008: 22). Corresponding to this more flexible approach which could possibly lead to a diluted human rights policy without any impact and a further decrease of the EU's credibility, besides clear and consistent objectives and instruments a set of red lines needs to be developed which define the EU's ultimate limits of tolerance and flexibility. This implies that a transgression of these limits by all means needs to cause strict consequences like the suspension of dialogue or, as a last step, of the relationship as a whole. Altogether, these modifications do theoretically imply a restriction of the EU's human rights policy by recognizing its limits of influence, but instead of creating goals that will never be achieved and reveal the EU's weakness, a limitation to a few but realistic objectives will lead to greater success and concrete improvements. The EU should regard China as a partner and treat it accordingly in order to improve relations and not lapse into an approach guided by doubt, regarding China as a challenge rather than as a chance.

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