The EU's promotion of human rights in China: a consistent and coordinated constructive engagement?

by

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Declaration

I declare that this thesis is my own work and that the material included in this dissertation is the result of new research.

I also declare that this thesis has not been submitted for a degree in another university.

Abstract

This thesis investigates whether the European Union and its member states have been able to balance normative priorities – specifically the promotion of human rights – and material priorities – specifically economic interests – within the strategy of constructive engagement towards China embraced since 1995. In order to respond to this central question this thesis originally elaborates a liberal intergovernmental approach for the study of the promotion of human rights within the EU's system of multilevel governance in external relations. Such an approach is applied to analyse the issues of consistency and coordination in the policies for the promotion of human rights in China elaborated by the European Community and three selected member states, namely Germany, France and the UK.

The choice of the country cases serves theoretical and analytical purposes. At a theoretical level it allows consideration as to whether the EU's overall policies were mainly influenced by the interests and policy preferences of the three selected member states, which had the most bargaining power and the highest stakes in China, as expected by liberal intergovernmentalism. At an analytical level, the choice of the country cases allows for consideration of whether the EC's policies for the promotion of human rights in China were coordinated with those of the three selected member states, which had the most conspicuous development assistance policies towards China and whose approaches to human rights in the country were broadly representative of the other member states. This supports the assessment of the achievement, or otherwise, of a significant EU promotion of human rights through development assistance in China.

From the study it emerges that the EC and its three selected member states have been unable to devise consistent and coordinated policies for the promotion of human rights in China. On the one hand these findings suggest that the EU and its member states have been unable to balance normative and material priorities in their relations with China. On the other hand this thesis illustrates that this was due to the influence of the material interests and policy preferences of Germany, France and the UK, thus supporting the expectations of liberal intergovernmentalism.

These findings form an original contribution to the study of the EU's promotion of norms because they suggest that the EU can promote human rights, as well as other norms, in a consistent, coordinated and ultimately strategic way, only if the member states with the most bargaining power and the highest stakes in a specific policy issue privilege normative interests over material ones.

At the same time this thesis offers an original contribution to EU-China studies on human rights, as it suggests that due to the present interests of the most influential member states, the EU's promotion of human rights should be reframed to address what Chinese authorities are willing to accommodate in the human rights field, namely give preference to the support of socio-economic rights, where a consensus among the EU's member states can more easily be built.

List of abbreviations

AFD:	*Agence Française du Développement*
AI:	Amnesty International
ALA:	Asia and Latin America
ASEM:	Asia Europe Meeting
BC:	British Council
BMZ:	German Ministry for Economic Cooperation and Development
CBTG:	China-Britain Trade Group
CCP:	Chinese Communist Party
CEECs:	Central and Eastern European Countries
CFSP:	Common Foreign and Security Policy
COHOM:	Working Party on Human Rights (European Council)
COREU:	*Correspondance Européenne*
CSP:	Country Strategy Paper
DfID:	Department for International Development
EC:	European Community (as established by the Maastricht Treaty)
ECDHR:	EU-China Dialogue on Human Rights
ECFR:	European Centre on Foreign Relations
ECHR:	European Court of Human Rights
ECJ:	European Court of Justice
EDF:	European Development Fund
EEC:	European Economic Community (pre-Maastricht Treaty)
EIDHR:	European Initiative for Democracy and Human Rights
EMU:	Economic and Monetary Union

ENP:	European Neighbourhood Policy
EP:	European Parliament
EPC:	European Political Cooperation
ESDP:	European Security and Defence Policy
ESS:	European Security Strategy
ETUC:	European Trade Union Confederation
EU:	European Union
FCO:	Foreign Commonwealth Office
FDIs:	Foreign Direct Investments
FES:	Friedrich Ebert *Stiftung*
FIDH:	*Fédération Internationale des ligues des Droits de l'Homme*
GAERC:	General Affairs and External Relations Council
GATT:	General Agreement on Tariffs and Trade
GBCC:	Great Britain-China Centre
GOF:	Global Opportunity Fund
GONGO:	Government-Operated Non-Governmental Organisations
GSP:	Generalised System of Preferences
GTZ:	*Gesellschaft für Technische Zusammenarbeit*
HRIC:	Human Rights in China
HRW:	Human Rights Watch
ICC:	International Criminal Court
ICCPR:	International Covenant for Civil and Political Rights
ICESCR:	International Covenant for Economic Social and Cultural Rights
ILO:	International Labour Organisation
INGO:	International Non-Governmental Organisations
LJC:	EU-China Legal and Judicial Cooperation Programme

KAS:	Konrad Adenauer *Stiftung*
KfW:	*Kreditanstalt für Wiederaufbau*
MEP:	Member of European Parliament
MFN:	Most Favoured Nation
MOCA:	China's Ministry of Civil Affairs
MOFCOM:	China's Ministry of Commerce (ex-MOFTEC)
MS:	Member States
NGO:	Non-Governmental Organisation
NPC:	China's National People's Congress
NPT:	Nuclear Non Proliferation Treaty
ODA:	Official Development Assistance
OECD:	Organisation for Economic Cooperation and Development
PCA:	Partnership and Cooperation Agreement
PRC:	People's Republic of China
PSB:	China's Public Security Bureau
SEA:	Single European Act
SIDA:	Swedish International Development Agency
SME:	Small and Medium Enterprises
TEU:	Treaty of the European Union (1992)
UDHR:	Universal Declaration of Human Rights
UNCHR:	United Nations Commission for Human Rights
UNDP:	United Nations Development Programme
VGT:	EU-China Village Governance Training Programme
WB:	World Bank
WTO:	World Trade Organization

Chapter 1 - Introduction

1.1 Thesis topic

In the aftermath of the Cold War, the advancement of the so-called "normative globalisation" [1] created new opportunities for the European Union (EU) to acquire further international legitimacy as a promoter of human rights. However, the unprecedented rise of an authoritarian China confronted the EU with perhaps the biggest challenge to prove its adherence to such a commitment. China's dramatic economic growth, its rapidly widening strategic influence on the world stage and its increasing assertiveness presented the EU with the daunting task of establishing a "strategic partnership" while attempting to put "human rights at the cornerstone of relations with China".[2]

This thesis investigates whether the EU and its member states have been able to balance normative priorities – specifically the promotion of human rights – and material priorities – specifically economic interests – within the strategy of the constructive engagement towards China embraced since 1995. In order to respond to this central question this thesis elaborates and applies a liberal intergovernmental approach to the study of the promotion of human rights within the EU's system of multilevel governance in external relations. The suitability and explanatory power of such an approach are compared and contrasted with the other main approaches to the study of the EU's promotion of norms, i.e. sociological institutionalism and constructivism.

[1] Jack Donnelly, 'Social Construction of International Human Rights', in Tim Dunne and Nicholas J. Wheeler (eds.), *Human Rights in Global Politics*, Cambridge, Cambridge University Press, 1999, p. 78.
[2] European Commission, *A long term policy for China-Europe Relations*, Commission Communication, COM (1995) 279 final, Brussels, 1995.

The theoretical and analytical approach developed is employed to primarily analyse and explain the issues of consistency and coordination in the policies for the promotion of human rights elaborated and implemented by the European Community (EC) and by three member states, namely Germany, France and the UK. The latter were the EU's main China partners and were broadly representative of the other EU member states' approaches towards human rights in China, as will be explained in Chapter 2.

Consistency and coordination are the indicators which will be used to assess the ability of the EU and its member states to balance normative and material priorities. The analysis of consistency intends to test the ability of European institutions, in particular the European Commission, to devise policies towards China in line, or at least not in contradiction, with the EU's objective to promote human rights. Similarly, the analysis of coordination intends to test the ability of the European institutions and the member states to devise a common, or at least complementary, policy for the promotion of human rights in China, as also repeatedly affirmed in several European Council declarations and Commission communications.

In order to make this study manageable and meaningful for generalisation, this thesis employs a conceptualisation of consistency which refers to the ability of the EC to devise economic and development policies consistent with one another and with the EU's objective to promote human rights in China. As the EU's strategy of constructive engagement of China on human rights was principally based on economic engagement and development assistance, a concentration on these two sectors appears wholly justifiable. The appropriateness of concentrating on the European Community is also supported by the fact that, within the EU's architecture, the EC has been primarily

entrusted with the task of devising and implementing consistent and coordinated policies for the promotion of human rights, in particular through economic instruments and development assistance. Similarly, this thesis conceptualises coordination as the ability of the EC and of the three member states selected to pursue development policies coordinated, or at least complementary, with one another in the pursuit of the promotion of human rights in the country.

The choice of the three country cases serves a theoretical and an analytical purpose, which will be made explicit in the research strategy presented in Chapter 2. In brief, Germany, France and the UK were the member states which had the most significant strategic and economic relations with China. Thus an analysis of their cases serves the theoretical purpose of assessing their influence, or otherwise, on the overall EU policies for the promotion of human rights in a liberal intergovernmental perspective. At the same time Germany, France and the UK were the member states giving the most significant development assistance to China and their approaches to human rights in the country were broadly representative of those of the other member states. Therefore the analysis of their policies for the promotion of human rights serves the analytical purpose of assessing the overall level of coordination of the member states' policies with those of the EC and thus assessing the achievement of a significant EU promotion of human rights through development assistance in China.

This thesis does not intend to prove that the EU and its member states' achievement of a consistent and coordinated strategy had a tangible impact on China's human rights record. Nor indeed to prove that China's human rights record did not improve due to the failure of devising such a strategy. As argued by Larry Diamond, Juan J. Linz and Seymour M. Lipset, "without doubts […] the course of political development and regime change [can be attributed]

primarily to internal structures and actions".[3] Additionally, the EU and its member states have clearly not been the only external actors to pursue the objective of promoting human rights in China. Other Western countries, international organisations such as the United Nations (UN) and the World Bank (WB), as well as international non-governmental organisations (INGOs) have all dealt with the issue of human rights in their relations with China.

In line with the liberal intergovernmental approach, which will be developed in Chapter 2, this thesis intends instead to show that the achievement, or otherwise, of consistent and coordinated EU policies for the promotion of human rights in China largely depended on the interests and policy preferences of the EU's member states with the most bargaining power and the highest stakes in China, i.e. Germany, France and the UK. This has broader implications for the study of the EU's external relations and norms promotion.

The study suggests that the EU is able to balance normative and material interests in its external relations and thus exert its clout in international norms promotion only when the member states with the most bargaining power and the highest stakes in a specific foreign policy issue (in this case human rights promotion in China) privilege normative interests over material ones. This in turn contrasts with the claims of sociological institutionalist and constructivist approaches, according to which the specific EU institutions, identity and norms influence the conduct of the EU and its member states' external relations. Similarly, it suggests that the EU's institutions may contribute to the socialisation of negative norms as well as positive ones, depending on the orientations of the member states with the most bargaining power and the highest stakes in a specific foreign policy issue.

[3] Larry Diamond, Juan J. Linz and Seymour M. Lipset (eds.), *Democracy in Developing Countries*, London, Adamantine, 1987-1989.

While originally contributing to the literature on the EU's external relations and human rights promotion, this thesis will also contribute to the study of the EU's promotion of human rights in China. First, it will do so by providing a more theoretically and analytically grounded discussion of EU-China relations. Secondly, it will provide a more accurate analysis of the actual EU strategy of constructive engagement by focusing on case studies often neglected by the main literature.

This Chapter presents an overview of the main themes which underline this thesis. The next section presents the core argument which provides the thrust of the thesis, and it shows the importance of developing an appropriate framework for the study of norms promotion in the EU's external relations. Section 1.3 provides a literature review of EU-China relations in general and the issue of human rights in particular, and it shows the original contribution of this research to such literature. Section 1.4 analyses China's human rights discourse and practice, in order to set the context against which to assess the EU's promotion of human rights in the country. Finally, section 1.5 introduces the structure of this thesis.

1.2 Core argument

In 1992 the signing of the Maastricht Treaty (also called the Treaty of the European Union – TEU) provided the basis for the development of a Common Foreign and Security Policy (CFSP), which had the objective to mainstream the European Community's external relations and coordinate the foreign policies of the member states. In the words of Mario Telò, the TEU had the double significance of creating a monetary and political Union, the latter in order to "correct the gap between the massive international importance of the European

Economic Community (EEC) as a global economic and trade actor and its relatively minor political role".[4]

The end of the Cold War created new opportunities for the development of the Common Foreign and Security Policy, as is exemplified by the transitions of Central and Eastern European Countries (CEECs) and the furthering of the process of globalisation. At the same time new international threats made the EU confront new challenges, in particular the revival of nationalistic tendencies, such as those occurring in the Balkans, and the menace of international terrorism.

These new opportunities and challenges in turn triggered further internal institutional developments throughout the 1990s. For example, they opened the way to the recent debate on the inclusion of a European Security and Defence Policy (ESDP). The external inputs combined with the institutional changes led the EU to intervene in international affairs on a broader range of thematic and geographical issues. These prompted the recognition of the EU as a significant political and economic international actor in world affairs.[5]

However, European officials have never been at ease with the neutral characterisation of the EU's actorness in world affairs. They have always strived to define its 'uniqueness' and the original contribution that it could bring to the international system. This can be captured in the constant institutional reference to the EU as a civilian power, inspired by an "ethic of responsibility", which can play the role of a stabilising power in contemporary world politics.[6]

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[4] Mario Telò, *Europe a Civilian Power? EU, Global Governance, World Order*, London, Palgrave, 2006, p. 203.
[5] See Charlotte Bretherton and John Vogler, *The European Union as a Global Actor*, London, Routledge, 1999.
[6] Sonia Lucarelli, 'Values, principles, identity and European Union foreign policy', in Sonia Lucarelli and Ian Manners (eds.), *Values and Principles in European Union Foreign Policy*, London, Routledge, 2006, p. 3.

Throughout the 1990s, the EU's external actions, or perhaps their interpretations, substantiated the institutional discourse in as varied instances as the democratisation of CEECs through the enlargement process, the stabilisation of the conflict in Kosovo, the inclusion of political conditionality in the EC's development assistance, and the EU's activism in promoting and supporting multilateral regimes such as the Kyoto Protocol, the Doha Round of the World Trade Organization (WTO) and the International Criminal Court (ICC).

The combination of rhetoric and action has been appreciated by the academia. Inspired by sociological institutionalist and constructivist approaches, an increasing number of works on the EU's international actorness have begun to focus on notions of "normative, value-driven external policy".[7] This is in opposition to the usual realist view of an EU unable to make its voice heard when real crises emerge, mostly due to its lack of military capabilities. Similarly, this literature contrasts with the criticism of proponents of the term "fortress Europe", for whom the EU merely serves as a vehicle to reinforce the member states' economic interests vis-à-vis the rest of the world. These works have given rise to concepts of 'civilian'[8], 'normative'[9], 'ethical'[10], 'gentle'[11] power Europe.

All these works point to the unique role that the EU has played and could play on the international stage as a promoter of its distinctive norms, which

[7] Richard Youngs, 'Normative Dynamics and Strategic Interests in the EU's External Identity', *Journal of Common Market Studies*, Vol. 42, No. 2, 2004, p. 415.
[8] The main proponent of this terminology is François Duchêne, 'Europe's Role in World Peace', in Robert Mayne (ed.) *Europe Tomorrow: Sixteen Europeans Look Ahead*, London, Fontana, 1972, pp. 32-47.
[9] The first scholar to put forward the conceptualisation of normative power Europe is Ian Manners, 'Normative Power Europe: a Contradiction in terms?', *Journal of Common Market Studies*, Vol. 40, No. 2, 2002, pp. 235-58.
[10] See the special issue of *International Affairs*, Vol. 84, No. 1, 2008 and the introduction by Lisbeth Aggestam, 'Introduction: Ethical Power Europe', *International Affairs*, Vol. 84, No. 1, 2008, pp. 1-11.
[11] Tommaso Padoa-Schioppa, *Europa, forza gentile*, Bologna, Il Mulino, 2001.

range from multilateralism to sustainable peace, from democracy to human rights and rule of law. These works maintain that focusing on the EU's distinct institutions, identity and norms, as they emerge from (i) the historical context in which it evolved, (ii) its hybrid polity and (iii) its political legal constitution[12], offers important insights to the discipline of European studies, which has been dominated for too long by approaches on the "hardware" rather than the "software" of the EU's foreign policy.[13]

Consequently, these works suggest that the EU's institutions, identity and norms play an important role in influencing the elaboration and conduct of the EU and its member states' external relations. For sociological institutionalist approaches the EU's institutions socialise the member states around the identity and norms, characterising the EU.[14] In this perspective, the institutions provide the EU with the ability to behave in a supranational way. For constructivist approaches the very identity and normative basis of the EU "predispose[s] it to act in a normative way in world politics".[15]

However the emphasis on the EU's normative power and the specific norms that it promotes has somehow sidelined more empirical enquiries on the actual normative policies pursued, their articulation within the system of multilevel governance in the EU's external relations and their appropriateness to the varying contexts in which they are carried out. Although most 'normative' authors admit that they are aware that the EU is not merely motivated by its values, principles and norms, they fail to establish how such values, principles

[12] Ian Manners, 'Normative Power Europe', p. 240.
[13] Sonia Lucarelli, *Values and Principles*, p. 3.
[14] Ibid.
[15] Ian Manners, 'Normative Power Europe', p. 252

and norms coexist along with material interests and how they influence the articulation of the EU's external relations.[16]

In response to these shortcomings several authors have recently embarked on the challenge of analysing what lies behind the EU's normative discourse and policies. In most of these studies it emerges that the EU often pursues strategic goals behind the language of norms. On one side some authors underline the security stance in European norm promotion. This is connected to the post-Cold War environment, where new security doctrines present normative policies, and particularly the promotion of democracy, human rights and the rule of law, as integral to attacking the roots of international instability. For example Richard Youngs argues that security-conditioned specificities often lie behind the EU's human rights promotion, and in particular behind the specific strategies and norms promoted and the instruments employed.[17]

On the other side some authors demonstrate the EU's attempts to pursue long-term economic goals behind the language of norms. This clearly emerges in accounts of the EU's trade policies both in multilateral and bilateral venues. Andrew Storey and Jan Orbie both separately come to the conclusion that although there is some plausibility to the argument of a normative power Europe, the normative policies of the EU appear to be informed by a neoliberal agenda.[18]

Besides attesting to the coexistence, and often the supremacy, of material interests in the EU's normative policies towards third countries, these empirical studies also point to the EU's inability (or unwillingness) to articulate consistent

[16] Richard Youngs, 'Normative Dynamics and Strategic Interests'.
[17] Ibid.
[18] Andrew Storey, 'Normative Power Europe? Economic Partnership Agreements and Africa', *Journal of Contemporary African Studies*, Vol. 24, No. 3, 2006, pp. 331-346. Jan Orbie and Lisa Tortell (eds.), *The European Union and the Social Dimension of Globalisation*, Oxford, Routledge Garnet Series Europe in the World, 2009.

policies with its normative objectives. For example, Gordon Crawford, in his analysis of the EU's democracy promotion in Central Asia, comes to the conclusion that security-related concerns and the ensuing policies have hindered the achievement of a consistent strategy of democracy promotion in the region. [19] Similarly, in a study on the EU's export of norms in the Mediterranean, Stefania Panebianco concludes that in the European Neighbourhood Policy (ENP) "economic liberalisation and the establishment of free markets […] seem to come before human rights and democratic principles".[20]

Other authors also contend that the EU and its member states have often been unable to coordinate their specific policies for the promotion of norms both at the CFSP and at the EC levels. For example, in his analysis of human rights in European foreign policy, Toby King argues that "despite the rhetoric of a common European commitment to human rights, member states' collective human rights diplomacy has remained extremely limited".[21] Similarly, in a study on the EU's democracy promotion in Ghana, Gordon Crawford demonstrates that the EC and four selected member states have been unable to coordinate their activities in support of democracy in the country, thus failing to achieve any concrete impact in the country's transition.[22]

[19] Gordon Crawford, 'The European Union and Democracy Promotion in Africa: the case of Ghana', *The European Journal of Development Research*, Vol. 17, No. 4, 2005, pp. 571-600 and Gordon Crawford, 'EU human rights and democracy promotion in Central Asia: from Lofty principles to Lowly self-interests', *Perspectives on European Politics and Society*, Vol. 9, No. 2, 2008, p. 189.

[20] Stefania Panebianco, 'The constraints on EU action as a 'norm exporter' in the Mediterranean', in Ole Elgström and Michael Smith, *The EU's Role in International Politics: Concepts and Analysis*, London, Routledge, 2006, p. 141.

[21] Toby King, 'Human Rights in European Foreign Policy: Success or Failure for Post-modern Diplomacy?', *European Journal of International Law*, Vol. 10, No. 2, p. 316.

[22] Gordon Crawford, 'The European Union and Democracy Promotion in Africa: the case of Ghana', *The European Journal of Development Research*, Vol. 17, No. 4, pp. 571-600.

These empirical analyses in the practice of the EU's normative power do not rule out the importance of conceptualising the EU as a normative power and identifying its norms. However, they compel analysts to move forward in the study of how the EU manages to balance idealistic motives with material interests and under what conditions the latter prevails over the former in the elaboration and implementation of the EU's normative policies in its external relations.

In order to do so and respond to the main question of this thesis it is necessary to find appropriate ways to study and explain the EU's normative policies in its external relations. This point will be elaborated in Chapter 2, which will draw from the contemporary theorising on the EU's external relations. Chapter 2 will show that human rights promotion, likewise the promotion of other norms, is still a fragmented and shared competence in the system of multilevel governance in the EU's external relations. Similarly, it will show that the EU's member states are far from being socialised in the promotion of human rights, despite their sharing of common histories, traditions and values.

Therefore, Chapter 2 will argue that the analysis and explanation of the EU's promotion of human rights can still largely benefit from the application of a liberal intergovernmental approach, which maintains that the national interests, policy preferences and bargaining powers of the most influential member states are the basis of the policy output in each level of the system of the EU's governance in external relations. This provides the original contribution of this thesis to the present literature on the EU's promotion of norms, as such an approach will be compared and contrasted with the prevalent sociological

institutionalist and constructivist approaches to the EU's promotion of human rights.

1.3 The literature on EU-China relations and human rights

Among EU-China scholars there is a widespread consensus that relations have progressed from being "derivative of the Cold War" [23] and at most "secondary" [24] to represent today a more independent, comprehensive and multidimensional partnership. [25] In the last thirty years, considering the aggregate economic relations of the member states, the EU has become China's single largest trading partner, and China the EU's second largest. Similarly, the EU has become China's fourth biggest investor. [26] While the economic dimension has remained predominant in EU-China relations, several academics have also pointed at their increased politicisation. The EU and China have created a dense framework for institutional and political exchanges, which includes regular bi-annual summits, high level trade and economic dialogue, and several technical dialogues.

Through these interactions the EU and China have broadened the scope of their relations. They now cover bilateral issues, such as trade, investment, and China's internal affairs, and global issues, such as non-proliferation, climate change and international crime. Today both sides have referred to their relations as a "strategic partnership"[27] and they are presently negotiating a PCA. This has

[23] This concept was proposed by David Shambaugh. David Shambaugh, *China and Europe: 1949-1995*, London, SOAS Contemporary Institute of Chinese Studies, No.11, 1996.
[24] This concept was proposed by Harish Kapur in Harish Kapur, *Distant Neighbours: China and Europe*, London, Pinter Publishers, 1990.
[25] Michael Yahuda, 'The Sino-European encounter', in David Shambaugh, Eberhard Sandschneider and Zhou Hong, *China-Europe Relations. Perceptions, policies and prospects*, London, Routledge, 2006, pp. 13-32.
[26] Robert Ash, 'Europe's commercial relations with China', in David Shambaugh et al., *China-Europe Relations. Perceptions, policies and prospects*, London, Routledge, 2006, p. 190.
[27] Council of the European Union, *Joint Statement of the Ninth EU-China Summit*, No. 12642/06, Brussels, 11 September 2006.

the declared objective to provide a more appropriate framework to "encompass the full scope of their bilateral relationship, including enhanced co-operation on political matters".[28]

At the same time, the growing interaction between the EU and China has been mirrored and reinforced by the increasing efforts of the member states, who have attempted to establish more meaningful bilateral political and economic relations with the PRC. On some issues, in particular the protection of the European market from the penetration of Chinese goods, the member states' policies supported those of the EU thanks to a "congruence of interests".[29] On other issues the member states have openly diverged and often competed with each other. This is particularly evident in the commercial and investment fields, where each member state has tried to engage China in order to promote its own national companies.

The EU and its member states' relations with China have thus expanded and deepened in the last thirty years. Economic, political and broad security interests towards China have grown consistently both as a function of China's rise and of the EU and its member states' increasing desire to assert themselves on the international stage and reap the benefits of a close cooperation with the PRC. Against such a backdrop what role did human rights play in the evolution of the EU and its member states' relations towards China? Were the EU and its member states able to adhere to their commitments to promote human rights in China while pursuing their growing economic and strategic objectives? How did they translate their rhetoric into practice?

[28] Joint Statement of the 10th China-EU Summit, Beijing, 28 November 2007, retrieved on July 15 2009, http://www.eu2007.pt/UE/vEN/Noticias_Documentos/20071202CHINA.htm.
[29] May-Britt Stumbaum, 'Engaging China – Uniting Europe? EU Foreign Policy Towards China', in Nicola Casarini and Costanza Mussu (eds.), *European foreign policy in an Evolving International System*, London, Palgrave-MacMillan, 2007, p. 58.

In order to address these issues it is necessary to locate the discussion against the recent, burgeoning literature on EU-China relations. To this purpose section 1.3.1 offers a simple tripartite categorisation of the main literature. Then, section 1.3.2 considers the more limited literature on human rights in EU-China relations, evidencing its main shortcomings and the heuristic usefulness of the previous categorisation. Finally, section 1.3.3 shows how the approach of this thesis originally contributes to the broader EU-China literature and specifically to the works on the EU and its member states' promotion of human rights in China.

1.3.1 Categorisation of EU-China literature

As maintained above, in the scholarly works there is a general agreement that the expansion and deepening of EU-China relations have brought economic, security and political dimensions into the bilateral partnership. However this is where the consensus ends. Scholars are divided on the meaning of the deepening and expansion of the EU-China partnership. For some EU-China relations represent a "new axis" in international affairs.[30] For others, after a long honeymoon during the 1990s, the EU and China have now reached a new stage in their relationship, which obliges them to "address more of the difficulties that stem from their different values and political systems".[31] Finally, for other scholars, EU-China relations represent "a great disillusion" *tout court*.[32]

What are the reasons for these different assessments? It is maintained here that these accounts diverge on the interpretation of the member states' interests and attitudes towards China and consequently of their readiness, or otherwise, to

[30] David Shambaugh, 'China and Europe: the Emerging Axis', *Current History*, September 2004.
[31] Michael Yahuda, 'The Sino-European encounter', p. 30.
[32] Jonathan Holslag, 'The European Union and China: the Great Disillusion', *European Foreign Affairs Review*, No. 11, 2006, pp. 555-580.

cooperate for the development of a common *European* approach towards China. These accounts can be categorised into EU-centred, member states-centred and balanced multilevel approaches.

Before proceeding with the description of the categorisation of the EU-China literature a small caveat is necessary. Most of the literature on EU-China relations is theoretically eclectic and it is mostly of a descriptive nature. Scholars on EU-China relations are mostly experts in international relations rather than in the more limited, but highly sophisticated, field of European studies. Consequently, their works are rarely informed by explicit theories of the EU's foreign policy and external relations. The following categorisation therefore does not seek to capture the theoretical standings of the authors considered, but it rather attempts to highlight their main analytical focuses.

Scholars who consider EU-China relations as a "new" or "strategic" axis in international relations either tend to overlook the member states level or to have a positive interpretation of their roles in the formulation of a common *European* China policy.[33] David Shambaugh's article on EU-China as a new axis in international relations is a good example of this literature. Shambaugh's prediction is based on a positive appreciation of the member states' role in building a common European approach towards the PRC. Shambaugh appears confident that "China-Europe relationship will continue to grow and develop at a steady pace" because in his opinion "the two levels of European interaction with China – the bilateral national level and the multilateral EU level – reinforce each other".[34]

[33] Among these works it is possible to include most of the Chapters included in the recent Stanley Crossick and Etienne Reuter, *China-EU: A Common Future*, Singapore, World Scientific, 2008. Similarly, see David Scott, 'China and the EU: A Strategic Axis for the Twenty-First Century?', *International Relations*, Vol. 21, No. 1, 2007, pp. 23-45.
[34] David Shambaugh, 'China and Europe: the Emerging Axis', p. 248.

Arguably Shambaugh's position and that of other scholars who support a similar argument represent a minority within EU-China scholarship. Another minority view, although perhaps more vocal, is at the opposite extreme. It stresses the divergences among the member states and their influential roles in determining inconsistent and uncoordinated European policies towards China. The work of May-Britt Stumbaum can be taken as an example of this attitude in the academia. Stumbaum maintains that so far the EU has not proven able to "build a Common Foreign and Security Policy capable of encompassing and co-ordinating the member states' activities, and of exploiting the full potential of Europe".[35] This opinion derives from the demonstration that "European policy towards China so far originates from a congruence of interests, rather than from a convergence of the foreign policies of the individual EU member states".[36] Stumbaum is negative on the evolution of EU-China relations because she predicts that the member states will continue to use the "European Union as an additional tool at their disposal to further their own national interests, even at the expense of a coherent European approach".[37]

Member states-centred works also find ample resonance and even more extreme positions in the policy briefs and reports of major European think tanks, which often highlight the lack of coordination among the member states as the single-most important explanation of the failing European approach towards China. The recent work of the European Centre on Foreign Relations (ECFR) is a good example of this position.[38] In early 2009 John Fox and François Godement produced one of the most comprehensive power audits of EU-China

[35] May-Britt Stumbaum, 'Engaging China – Uniting Europe?', p. 58.
[36] Ibid.
[37] Ibid. p. 74.
[38] John Fox and François Godement, *EU-China Relations: a Power Audit*, European Council on Foreign Relations, 2009.

relations, which is entirely based on research work on the twenty-seven member states of the EU and their approaches to China. In their study the two authors highlight the ongoing differences and divergences of the EU's member states. They categorise the twenty-seven odd approaches on the basis of two main issues: how to manage China's impact on the European economy and how to engage China politically. The four typologies that emerge show a depressing division among the EU's member states, which in the opinion of the authors has greatly contributed to the development of the European "unconditional engagement" towards China.[39]

Between the two extreme positions of EU-centred and member states-centred accounts in EU-China relations literature rest the majority of the recent scholarly works. It is difficult, if not impossible, to classify them on the basis of any specific analytical approach though, as they are mostly of a descriptive nature. However, at the risk of oversimplification, the majority of these works can be categorised as employing "balanced multilevel" approaches as they consider the interaction of the EU and the member states' levels without yet attributing any prominence to any of them.

Most of these studies subscribe to Franco Algieri's statement that the European approach is a function of its institutional framework. For Algieri the EU and its member states' relations with China can only be understood through the analysis of their competences, interests and instruments. In his analysis Algieri comes to the conclusion that "apart from the interests of single member

[39] The four typologies identified are: assertive industrialists, ideological free-traders, European followers, and accommodating mercantilists.

states, it is the EU's policy-making and institutionalisation pattern that matters" in defining Europe's China policy.[40]

From this brief discussion it emerges that scholars agree that EU-China relations have clearly expanded and deepened in scope. However an assessment of their significance and future evolution largely depends on whether observers assume that the member states can, or are willing to, achieve a common approach towards China and thus establish a real *European* China policy. The tripartite categorisation of EU-China works is useful for the study of the more limited literature on EU-China relations and human rights, as is shown in the section below.

1.3.2 Human rights in EU-China literature

Despite the numerous monographs and edited volumes on EU-China relations none of them has so far explicitly and comprehensively dealt with human rights and only a few dedicated articles, policy briefs and book chapters exist on the topic. Obviously, scholars have opted to cover more mundane subjects reflecting the evolution of EU-China relations.

In the few cases when human rights have been considered in the literature on EU-China relations, scholars have produced two types of works: studies logging the various policy initiatives carried out by the EU and researches analysing specific cases, mostly the resolutions of the United Nations Commission on Human Rights (UNCHR) or the arms embargo. In both these types of works scholars generally agree that the EU and its member states failed to promote human rights in China in a consistent and coordinated manner.

[40] Franco Algieri, 'It is the system that matters. Institutionalization and making of EU policy toward China', in David Shambaugh et al., *China-Europe Relations*, p. 79.

These accounts diverge in their analytical focus, which can be referred to the previous categorisation of EU-China studies. For the majority of scholars such a failure is due to the EU institutions' prioritisation of economic and strategic interests. These works belong to the category of EU-centred works. In analysing the issue of human rights in EU-China relations these works show that the EU has been unable to prioritise human rights issues over economic and security concerns towards China. For example Richard Youngs argues that in the EU's relations with China "the coordination between the governance, commercial and democracy agenda was weak".[41] Similarly, Stefania Panebianco shows that in the EU's policy towards China, concrete action in defence of human rights and democracy "lags behind overriding security and economic interests".[42]

For other authors the role of the member states with their divergent political and economic interests towards China explains the EU's inability to establish a coordinated policy for the promotion of human rights in China.[43] These works fall into the category of member states-centred approaches. These works mostly consider the cases of the resolutions of the United Nations Commission on Human Rights and the arms embargo. In the latter, Jennifer Erickson shows the shortcomings of the socialisation of member states within the CFSP. Erickson maintains that "basic differences between members in how they conceive their proper role in the world, as well as their domestic interests and values, are more

[41] Richard Youngs, *The European Union and the Promotion of Democracy: Europe's Mediterranean and Asian Policies*, Oxford, Oxford University Press, 2001, p. 189.
[42] Stefania Panebianco, 'Promoting human rights and democracy in European Union relations with Russia and China', in Sonia Lucarelli and Ian Manners (eds.), *Values and Principles*, p. 131.
[43] See, among others, Richard Youngs, *The European Union and the Promotion of Democracy*; and Stefania Panebianco, 'Promoting human rights and democracy in European Union relations with Russia and China', in Sonia Lucarelli and Ian Manners (eds.), *Values and Principles*.

influential in determining their positions on the EU's external policy than any sense, shared or otherwise, of the EU's external identity".[44]

Similar conclusions are shared by Philip Baker's seminal study on the member states' positions towards China at the UNCHR.[45] In Baker's work the economic, mostly commercial, interests of the member states seem to have played an important role in changing the EU's position within the UNCHR at the critical juncture of 1997. Since that year no resolution has ever been tabled by any of the EU's member states. For Baker the disbandment at the UNCHR shows that from the point of view of the EU's policy at CFSP level, "relations with China might be viewed as a case study of the failure to maintain a collective front and the ability of a few member states, driven possibly by commercial motives, to overturn a more principled policy".[46]

Finally, another set of authors identify in the European institutional framework the reasons for the EU and its member states' failure to promote human rights in China. These studies clearly fall into the category of works with a balanced multilevel approach to EU-China relations. They are not only focused on the issue of human rights but they tend to consider human rights as just another important contentious issue in EU-China relations. Within these works one can also include several comprehensive reports by some of the most influential Brussels-based NGOs dealing with human rights in China, such as Amnesty International, Human Rights in China, Human Rights Watch.

Due to their analytical eclecticism it is impossible to review or take into account all these works. An example is Carol Glen and Richard Murgo's work,

[44] Jennifer Erickson, 'Market Imperative Meets Normative Power: Human Rights and European Arms Transfer Policy', Paper presented at the Sixth Pan-European International Relations Conference, Turin, 15 July 2007, p. 27.
[45] Philip Baker, 'Human Rights, Europe and the People's Republic of China', *The China Quarterly*, No. 169, 2002, pp. 45-63.
[46] Ibid. p. 47.

which has the objective to assess "whether political constraints have prevented the EU from taking advantage of the opportunities presented by the new Chinese economy".[47] These authors describe the institutional constraints of the EU and the divergences of the member states. Through this perspective they analyse the EU's economic and political policies towards China. Eventually they conclude that a combination of economic rivalry among the member states and the underdeveloped nature of the EU's foreign policy machinery "prevents the EU from creating and sustaining a consistent policy position on human rights".[48]

1.3.3 Consistency and coordination

As shown above most studies on EU-China relations on the issue of human rights agree on the failure of the EU and its member states to elaborate consistent and coordinated policies for the promotion of human rights in China. However, this thesis argues that the issues of consistency and coordination rarely refer to the actual EU and member states' commitments within their strategy of constructive engagement towards China. Chapter 3 will show that such a strategy principally relied on positive policies for the promotion of human rights, i.e. economic engagement, dialogue and development assistance, while sanctioning policies lost their prominence.

As shown above, most works have only considered the consistency of the EU's position at the UNCHR and the arms embargo with the other EU's economic and security policies. The UNCHR and the arms embargo fall into the sanctioning policy of the EU. However, Chapter 3 will argue that the EU has instead clearly committed to constructively engage China through a positive

[47] Carol Glen and Richard Murgo, 'EU-China Relations: Balancing Political Challenges with Economic Opportunities', *Asia-Europe Journal*, No. 5, 2007, pp. 332.
[48] Ibid. p. 343.

approach. Therefore, studying the consistency of the sanctioning policies automatically leads to proving that the EU has been inconsistent in its human rights policy towards China. This approach fails to analyse the actual consistency of the constructive engagement on human rights, which is broadly based on economic engagement, dialogue and development assistance.

This thesis addresses this shortcoming by concentrating on the consistency of the EC's economic engagement and development assistance. Within the strategy of constructive engagement the EU and its member states have been in favour of opening up the Chinese economy and helping its transition towards a market economy with an efficient rule of law. However, economic reform and opening up to international trade and investments may have significant effects on the political and social structure of a country and thus on the improvement of human rights. Therefore, it is necessary to consider whether the EC has combined its economic approach with a proactive policy in support of human rights through development assistance. Answering this question allows discussing as to whether the EC's development projects were consistent with its economic policies towards China and whether these two policies were ultimately consistent with the objective of promoting human rights in the country.

Similarly, the issue of coordination should also be reconsidered in light of the EU and its member states' commitments to constructively engage China. Most studies have not considered the coordination of the EU's positive policies for the promotion of human rights in China, i.e. the economic policies, bilateral dialogues and development projects, with those of its member states. The member states only appeared in some researches which showed their lack of

coordination in devising specific sanctions towards China, such as their positions at the UNCHR and the arms embargo.

However, as will be illustrated in Chapter 3, the EU and its member states' constructive engagement towards China on human rights is mostly based on economic engagement, dialogue and development assistance. Therefore coordination should actually be considered in the articulation of these policies. In the EU context coordination is the ability of the EU and its member states to devise common, or at least complementary, policies in pursuit of a specific objective, in this case the promotion of human rights. Thus in order to provide an appropriate analysis of coordination, this thesis addresses the coordination of the EC's development policies for the promotion of human rights in China with those of the three selected representative EU member states: Germany, France and the UK.

As mentioned in section 1.2, in order to explain the policy outputs of the EU and its member states' promotion of human rights in China within their strategy of constructive engagement, this thesis will apply a liberal intergovernmental approach. This theoretical approach will be combined with an analytical focus on the system of multilevel governance in the EU's external relations. In this way this thesis will offer an original contribution to the EU-China literature on the issue of human rights by providing a more accurate analysis of the actual strategy of constructive engagement and by explaining it through a framework developed on the basis of the contemporary theorising on the EU's external relations. This provides the main contribution of this thesis to the EU-China literature on human rights.

While considering the consistency and coordination of the EC and the three selected member states' policies, this thesis will also, although secondarily,

consider their appropriateness to the specific context of the country. Although the EU may have at times produced consistent and coordinated economic and development policies towards China, these are not sufficient to achieve success. The latter depends significantly on the ability to devise and pursue strategies in line with the country's needs and internal situation.

Most studies presuppose that the EU's policies are appropriate to the situation in China. They do so because only rarely do they study the actual positive policies carried out and their relation with China's internal development. Almost no study on the EU's approach to human rights in China has provided any analysis of the projects in the field and the dialogues.[49] Similarly most of the EU-China literature subscribes to the EU's argument: more political and economic interaction leads to the improvement of human rights.

However this is an argument which is far from proven. First, economic reform and opening have a substantial effect on the social and political situation of a country, which may be positive or otherwise for human rights. Second, economic growth may, at least in the short term, favour the survival of authoritarian regimes. The authoritarian development system of some Asian states is the best evidence of this.

In summation, while closely analysing the consistency and coordination of the EC and the three selected member states' policies for the promotion of human rights in China, this thesis will also reflect on their appropriateness to the Chinese context. The combined analysis of consistency, coordination and, to a lesser extent, appropriateness of the EU and the three selected member states'

[49] A recent exception is Richard Balme's article on The European Union, China and Human Rights. See Richard Balme, 'The European Union, China and Human Rights', in Zaki Laïdi, (ed.), *EU Foreign Policy in a Globalized World. Normative Power and Social Preferences.* London, Routledge, 2008, pp. 143-173.

policies for the promotion of human rights will be used to assess the EU's ability to balance normative and material priorities in its constructive engagement of China. In order to set the context against which to assess the appropriateness of the policies for the promotion of human rights in China, the next section discusses the Chinese human rights discourse and practice.

1.4 The Chinese human rights discourse and practice

The emergence and affirmation of the People's Republic of China (PRC), its resilience to external influence and its affirmation of a counter-paradigm, the so-called Beijing Consensus, seem to be posing perhaps the most potentially relevant challenge to the affirmation of human rights worldwide. China's involvement and adherence to these principles have become paramount to their future credibility because of both China's economic, strategic and demographic clout and its regional as well as international assertiveness.

Consequently the 'international community' has concentrated a lot of effort and energy in 'integrating' the Chinese exception. Tough confrontation and positive engagement have been the two main approaches adopted by multilateral organisations and Western democracies since the Tiananmen Massacre. The Chinese government has responded to these pressures by repeatedly modifying its attitudes and by strategically and selectively accepting some changes. Simultaneously it has kept unchanged its belief in non-interference in matters of sovereignty and its determination to adapt human rights concepts to its specific historical, cultural, political and socio-economic situation. This is also motivated by the Chinese government's attempts to increase its legitimacy and respond to its people's requests for more rights in connection with the evolution of the country's reform process.

Ever since its comeback on the international stage in 1971, China has made no secret of its unwillingness to subject its national sovereignty and thus its political system to the pressures of any external actor. However China's reluctance to expose its human rights situation and to concede to international pressures was strongly confronted by Western governments and international advocacy groups in 1989.

For the first time since the inception of the 'open-door policy', China's human rights record and internal polity was brought to the centre of international attention during the Tiananmen Massacre. If, as argued by Ann Kent, between the time of China's reinstatement in the UN in 1971 and the Tiananmen Massacre, China's human rights violations and lack of democracy failed to draw international attention, this all changed afterwards.[50]

Throughout the 1990s, pressures on China were mounted in multilateral as well as bilateral *fora*. In the latter Western democracies pressed the Chinese government during high-level political visits and conditioned the lifting of the arms embargo imposed in the aftermath of the Tiananmen Massacre to the improvement of their human rights record. Similarly, prior to 1997 Western democracies made several attempts at passing resolutions at the annual sessions of the UN Commission on Human Rights and pressing China to sign international covenants on human rights. However starting from the mid-1990s, most Western countries embraced constructive attitudes and only maintained sporadic pressure mostly during behind-the-door meetings.[51] Western countries engaged China through political dialogues on economic reform and human

[50] Ann Kent, *China, the United Nations and Human Rights: the Limits of Compliance*, Philadelphia, University of Pennsylvania Press, 1999.

[51] See Andrew Nathan, 'China and the international human rights regime', in Elizabeth Economy and Michel Oksenberg (eds), *China Joins the World: Progress and Prospects*, NewYork, Council on Foreign Relations, 1999, pp. 136-170.

rights and supported them through development assistance programmes and projects.

The combination of pressure and engagement had some impact on China and led to a partial socialisation of the country within the international human rights regime. In a study on China's interaction with the United Nations human rights regime, Ann Kent distinguishes three chronological phases, which coincide with China's evolving socialisation to human rights.[52] In the first two phases, from 1971 to 1979 and from 1979 to 1989, the Chinese government was able to maintain its control over the nature of its participation in the UN human rights regime mostly due to a lack of significant multilateral pressures. However after the Tiananmen Massacre, the growing activism of Western democracies and international advocacy groups made the Chinese government lose such control and obliged it to substantively confront and engage with the international human rights regime.

Initially the Chinese government countered these pressures by denying and rejecting the UN human rights norms. However in the early 1990s the Chinese authorities embarked on a strategy of human rights diplomacy, which mixed strategic concessions, the use of material incentives to avoid sanctions and rhetorical revisionism. As accounted by Rosemary Foot, the Chinese government offered some tactical concessions by signing international human rights covenants, freeing some high profile political prisoners and accepting dialogues and projects.[53]

At the same time when push came to shove the Chinese government was quick to return to *realpolitik* instruments to deflect criticism as amply demonstrated by its attitudes at the UNCHR. Finally, tactical concessions and

[52] Ann Kent, *China, the United Nations and Human Rights*.
[53] Rosemary Foot, *Rights Beyond Borders*, Oxford, Oxford University Press, 2000.

use of material incentives were combined with the development of a reformist rhetoric, which was aimed at stressing the historical, cultural and socio-economic differences of China to justify the prioritisation of socio-economic rights over civil and political ones. This rhetoric also found favour among several other developing countries.

The combination of tactical concessions, use of incentives and reformist rhetoric explain what Ann Kent has referred to as "the limits of compliance" of the Chinese government to the international human rights regime. Such limits have been further investigated in Caroline Fleay's study on the influence of the transnational human rights network on China. By applying the spiral model developed by Thomas Risse, Stephen C. Ropp and Katryn Sikkink[54] to analyse how norms violating states respond, adapt and are socialised to human rights norms, Fleay shows that China is stuck in the third phase: 'tactical concessions'.[55] For the author it is likely that China will remain in this phase for a long time due to two factors: the ability of a powerful Chinese government to put forward counter-criticism and the lack of powerful domestic agents of change to press it into a normative course.[56]

Interestingly, Fleay also suggests that in the specific case of China the spiral model should be extended to also account for the influence of the norm violating state on the human rights regime. On the one hand this is clearly

[54] The authors' model categorises the response of norm-violating states to human rights criticism into five phases: phase one, which implies repression and activation of network; phase two, which implies denial by the incumbent government; phase three, which refers to tactical concessions; phase four, which features prescriptive status and phase five, which entails rule-consistent behaviour. For the authors collaboration between domestic change agents and international human rights actors is essential for progress because it induces argumentative self-entrapment by governments. Thomas Risse, Stephen C. Ropp and Katryn Sikkink (eds.), *The Power of Human Rights. International Norms and Domestic Change*, Cambridge, Cambridge University Press, 1999.

[55] Caroline Fleay, 'Human Rights, Transnational Actors and the Chinese Government: another look at the spiral model', *Journal of Global Ethics*, Vol. 2, No. 1, 2006, pp. 43-65.

[56] Ibid. p. 58.

motivated by the fact that China is a powerful country. On the other hand this is also explained by the fact that China has indeed 'digested', re-elaborated and appropriated the principles of human rights, imposing on them a peculiar Chinese flavour, often referred to in the official jargon as "Chinese characteristics". This requires appreciating the internal reasons for the evolution of the Chinese government's human rights discourse and how the latter is functional to increase its legitimacy and respond to societal requests emerging in response to the reform of the country.

Chinese authorities have elaborated a systematic and dynamic view of human rights, which were introduced into the Chinese constitution in 2004. In a growing body of documents Chinese officials, taking their cue from the fact that China is a developing country, maintain that China upholds, respects and safeguards all human rights but gives priority to its people's rights to subsistence as well as other fundamental economic and social rights, and only at a later stage will it be able to grant fully-fledged political and civil ones. This way of arguing is also compounded by frequent references to cultural, historical, ideological and social conditions, which in turn justify a different understanding and practice of human rights.[57]

Major examples are the concepts of democracy and rule of law closely related to human rights. Notwithstanding the present lack of political and civil rights, the authorities still maintain that the government unrelentingly pursues democracy, as was recently confirmed by the publication of the *White Paper on Political Democracy* in China. Similarly, since the early 1980s the Chinese Communist Party (CCP) has affirmed the importance of the rule of law, which

[57] See Marina Svensson, *Debating Human Rights in China: A Conceptual and Political History*, Lanham, Maryland, Rowman and Littlefield Publishers, 2002.

was eventually enshrined in the Constitution in 1999. However, it is unclear whether China is pursuing the rule of law, albeit of a thin sort, or rather practicing the rule by law.[58]

The evolution of the CCP's discourse on human rights and its insistence on subsistence rights, socio-economic development as well as on the creation of a rule of law responds to the long-standing dissatisfaction of the population with the growing inequalities, the dismantling of social and economic provisions and the widespread corruption of officials, which the reform process has triggered. These complaints have been a common feature of the process of economic reform and they are closely interlinked with it, as is stressed by Chinese intellectuals belonging to the influential New Left.[59]

With the deepening of economic reforms in the 1990s these complaints have been further exacerbated and the Chinese government has been unable to concretely tackle them. For Ann Kent this is due to the fact that the Chinese government has embraced the market rule "without its antibiotics" such as social justice, rule of law and human rights.[60] Therefore behind the Chinese government's human rights discourse lie attempts to address, at least at a rhetorical level, the main socio-economic requests of its people, thus acquiring legitimacy while at the same time denying any request for more political and civil freedoms.

From this section it appears clear that confronted with Western pressures China had to make some concessions on human rights. However the continuing presence of counter-criticism and the effective use of material incentives show

[58] See Randall Peerenboom, *China's Long March Towards the Rule of Law*, Cambridge, Cambridge University Press, 2002.
[59] See on this point the illuminating discussion of the New Left thinking in Mark Leonard, *What does China think?*, London, Fourth Estate, 2008.
[60] Ann Kent, 'China's Growth Treadmill: Globalization, Human Rights and International Relations', *The Review of International Relations*, Vol. 3, No. 4, 2004, pp. 524-543.

that the Chinese government is still stuck at the level of 'tactical concessions' and it is not wholly socialised in the international human rights regime. While this can be attributed to China's might there is also another important factor, that is China's appropriation, re-elaboration and adoption of a human rights language to tackle the risks of a governance crisis due to the imbalances caused by thirty years of reforms. It is at the intersection of external pressures for change and the internal requests for social equality that it is possible to understand the Chinese government's human rights discourse, its openness to improving the protection of its citizens' human rights and consequently the appropriateness of the EU and the three selected member states' policies.

A deeper analysis of the actual human rights situation in China would be outside the scope of this thesis. However, on the basis of the above discussion it is possible to maintain that an 'appropriate' human rights policy towards China has to combine and balance the promotion of political and civil rights with the promotion of social and economic rights. This approach can take into account the political constraints of the Chinese leadership, its attempts to implement better social and economic rights through such strategies as the 'Harmonious Society'[61], its opening to foreign support in these sectors, as well as the main societal requests being voiced in China.

This argument is widely shared by Chinese and European academics, as it has emerged during interviews[62] as well as through the consultation of the main academic literature.[63] Similarly, in the case of EU-China relations, the opening

[61] For a discussion of the concept of the Harmonious Society see Gudrun Wacker, and Matthis Kaiser, 'Sustainability Chinese Style. The Concept of the Harmonious Society', SWP Research Paper, August 2008, Berlin.
[62] Interviews 27 and 31 with Chinese academics.
[63] See also the policy recommendations for Germany and the EU in Gudrun Wacker and Matthis Kaiser, 'Sustainability Chinese Style', pp. 24-25. Similarly, see the discussion in Richard Balme, 'The European Union, China and Human Rights'.

of the Chinese authorities in these fields is represented by China's 2003 EU White Paper, which expressly requests the deepening of "cooperation in protecting, inter alia, citizens' social and cultural rights and the rights of the disadvantaged".[64] Finally, an increased focus on social and economic rights also appears to be the main recommendation underlying one of the most influential reports on human rights promotion in China produced by several outstanding international academics and policy practitioners gathered by the Open Society and HRIC in 2001.[65] References to this argument will be made in the analysis of the case studies throughout the thesis and in the final conclusions.

1.5 Plan of the thesis

This Chapter has offered a brief introduction to the main themes that will underline this thesis. Chapter 2 will develop the theoretical and analytical tools to study human rights in the system of multilevel governance in the EU's external relations. In particular it will show the necessity to focus on the issues of consistency and coordination in the study of the EC and its member states' policies for the promotion of human rights. The Chapter will propose a liberal intergovernmental approach, which explains the policy outputs through reference to the member states' interests and policy preferences at the various levels of governance in the EU's system of external relations. This will serve to elaborate the specific and appropriate research strategy and methodology for the study of human rights in EU-China relations.

Chapter 3 will analyse the evolution of EU-China relations. It will show the growing economic and security interests of the EU and its member states towards China and how they led to the embracement of the strategy of

[64] Chinese Ministry of Foreign Affairs, *China's EU White Paper*, 2003.
[65] Open Society and HRIC, *Promoting Human Rights in China. Report of the China Human Rights Strategy Study Group*, November 2001.

constructive engagement. In particular it will show the influence of the three selected member states, i.e. Germany, France and the UK, and their representativeness of the EU's member states' approach towards human rights in China.

At the same time Chapter 3 will consider the traditional case studies adopted by the main literature on EU-China relations and human rights in order to develop two major points for the research on consistency and coordination: the embracement of the strategy of constructive engagement led the EU and its member states to abandon critical stances towards China on human rights; the member states were divided on the best way to engage China and they could only agree on common positions with a very low common denominator, mostly influenced by the strategic and economic interests of the main China partners in the EU. Since the sanctioning policies were mostly located within the CFSP, the Chapter underpins the expectations of the liberal intergovernmental approach. Further it suggests, without yet proving it, that the CFSP may have contributed to the socialisation of negative norms, as also member states more critical towards China abandoned sanctioning policies in two out of the three cases analysed.

Chapters 4 and 5 will provide the empirical analysis of the consistency and coordination of the EC and its member states' economic and development policies for the promotion of human rights in China. In order to analyse the consistency of the EC's policies, Chapter 4 will consider the EC's economic and development policies towards China and whether they reflected the EU's identity and norms, as expected by sociological institutionalist and constructivist approaches, or the interests of the member states and in particular

those of Germany, France and the UK, as expected by a liberal intergovernmental approach.

In order to analyse the issue of coordination, Chapter 5 will consider the development policies of the three selected member states within the context of their bilateral relations with China. The Chapter will analyse whether these policies converged with or were complementary to those of the EC, as expected by sociological institutionalist and constructivist approaches, or alternatively, if they differed from and contrasted with them in order to respond to the interests of the three selected member states, as expected by liberal intergovernmental approaches.

Chapter 6 will conclude the thesis by summing up the results of the analysis of consistency and coordination in the EU and in the three member states' policies for the promotion of human rights in China. The Chapter will also elaborate on the specific research hypothesis of this thesis, which will be introduced in the Chapter 2, and discuss whether the EU and its member states were able to balance their normative and material interests towards China. Finally Chapter 6 will present elements for future research and elaborate on the possible future scenarios for the EU and its member states' promotion of human rights in China.

Chapter 2 - Human rights promotion in the EU's external relations

2.1 Introduction

The evolution and institutionalisation of human rights in the EU's external relations has been a long and arduous path, often characterised by setbacks. The member states have played a pivotal role in constructing the EU's international identity based on respect for human rights through their declaratory policies and the inclusion of respect for human rights as essential requirements in the various enlargements of the EU. Similarly, the agency of the institutions of the EU, combined with the activities of some member states, has played an important role in furthering the institutionalisation of human rights in the EU's external relations.

The combination of the EU institutions and the member states' agency has brought about traditional and non-traditional instruments for the promotion of human rights in the EU's external relations. Despite this evolution, human rights promotion remains a fragmented and shared competence within the system of multilevel governance in the EU's external relations. The pillarisation of competences in the Maastricht Treaty bears witness to this problem. Similar to the other major objectives of the Common Foreign and Security Policy, human rights promotion has not been *Europeanised* in the EU's external relations.

This poses two major problems for the analysis of the consistency and coordination of the EU's policies for human rights promotion. First, it requires identifying the most appropriate level or levels of analysis for the study of human rights promotion in the EU's external relations. These may be the CFSP, the EC and the member states levels taken separately or a combination of more

than one of them. Second, it requires identifying an independent variable which can explain the policy output. This generally implies that the analyst has to choose to concentrate either on member states, institutions, or ideas in a liberal intergovernmental, sociological institutionalist or constructivist perspective.

These themes will be considered below, where how to study the EU's human rights promotion against contemporary theorising on the EU's external relations will be discussed. The Chapter proposes to frame the analysis of the promotion of human rights through the notion of a system of multilevel governance in the EU's external relations and to explain the consistency and coordination of the policy output through a liberal intergovernmental perspective.

This Chapter opens with a brief introduction to the evolution of the EU's human rights policy. It identifies the identity and normative basis of the EU, its instruments for human rights promotion, and the relevance of the two interrelated issues of consistency and coordination. Section 2.3 draws from the literature on the EU's external relations and it elaborates a liberal intergovernmental approach to study consistency and coordination in the system of multilevel governance in the EU's external relations. Section 2.4.1 applies the insights developed in section 2.3 to the study of the EC and its member states' promotion of human rights. Finally sections 2.4.2 and 2.4.3 merge the arguments elaborated in the previous sections and propose an appropriate research strategy and methodology for the study of the EU's promotion of human rights in China.

2.2 Human rights in the EU's external relations

2.2.1 The EU's identity and normative basis

The Lisbon Treaty states that the EU's external action

> shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human rights, the principles of equality, and respect for the principles of the United Nations Charter and international law.[1]

According to the Treaty the presence of human rights in the EU and its member states' external relations is therefore a function of the internal evolution of the protection of human rights within the EU and of the increasing assertiveness of the EU to define and give substance to its international role within the evolving framework of international law.

Within the EU, the consolidation of respect for human rights was driven by a combination of the EU institutions and the member states' activities. First, the activities of the European Court of Justice (ECJ) and the European Parliament (EP) were instrumental in eroding the sovereignty of the member states and in *de facto* formalising respect for human rights within their national borders. Secondly, in order to provide international legitimacy to the 'European enterprise' the member states repeatedly affirmed that the EU's international identity was (and is) grounded, among others, on respect for human rights. This was further strengthened by making entry into the EU conditional on respect for human rights during the various enlargement rounds.[2]

Externally, the end of the Cold War and the affirmation of "normative globalisation" provided the EU with the opportunity to "assume a more proactive international role by drawing on international ethics", which was

[1] European Union, 'Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community: Lisbon Treaty', *Official Journal of the European Union*, No. C 306, 2007, pp. 1–271, Ch. 1, Article 10 A.1.

[2] Elena Fierro, *The EU's Approach to Human Rights Conditionality in Practice*, The Hague, Martinus Nijhoff Publishers, 2004.

emerging in those years.[3] For example, the affirmation of the human rights' approach to development gave substance to the EU's rhetoric, through the EU's involvement in human rights promotion in developing countries.

The development of an internal normative basis and its combination with the new opportunities offered by the international system after the end of the Cold War strengthened the EU's international identity centred on human rights protection and promotion. According to Alston and Weiler "a strong commitment to human rights is one of the principal characteristics of the European Union".[4]

Considering that the EU's international identity is the product of the internal interaction of the EU institutions with the member states and their external interaction with the international arena, it is possible to argue that the EU and its member states share common norms, principles and objectives in human rights protection and promotion. However, such norms, principles and objectives are not completely homogeneous to those of the international human rights regime and they maintain some European peculiarities, which characterise the alleged European distinctiveness in human rights promotion and protection worldwide often referred to in the academic literature.

As argued by Charles Leben, the EU upholds universal "rights called sacrosanct from which no derogation is permitted", such as, for example, the right to life, liberty and security, the prohibition of torture, slavery and other degrading treatment or punishment, equality before the law and the legality of

[3] Lisbeth Aggestam, 'Introduction: Ethical Power Europe?', p. 4.
[4] Philip Alston and John Weiler, 'An Ever Closer Union in Need of a Human Rights Policy: the European Union and Human Rights', in Philip Alston (ed.), *The EU and Human Rights*, Oxford, Oxford University Press, 1999, p. 6.

punishment.[5] These rights are to be found almost identically in the Universal Declaration on Human Rights (UDHR) and in the Charter of Human Rights signed in 2000 at the Nice Council.

At the same time the EU makes it explicit that it subscribes to the 1993 Vienna Convention stressing the universality, indivisibility and interdependence of all human rights. In this respect the EU has been described as helping to "harden international human rights law".[6] These points have been clearly highlighted in the previous quote from the Lisbon Treaty. However the quote also points at the distinctiveness of the EU in the promotion of human rights and it refers it to the integration process that characterised the evolution of the EU.

The peculiar norms which feature in the EU's normative basis appear to make the EU able to contribute in innovative ways to the international human rights regime. This is evident for example in the EU's insistence on second-generation human rights, which derives from the social democratic traditions of the member states.[7] As Ian Manners notes, the EU's interpretation of human rights must be described as promoting "associative human rights", where not just individual but also collective rights are protected.[8] Similarly for Manners, the prohibition of the death penalty that derives from the existence of the ECHR, which played an important role in the elimination of the death penalty

[5] Charles Leben, 'Is there a European Approach to Human Rights?', Philip Alston (ed.), *The European Union and Human Rights*, Oxford, Oxford University Press, 1999, p. 77.
[6] Karen Smith, *European Union Foreign Policy in a Changing World*, Cambridge, Polity Press, 2003, p. 107.
[7] The EU Charter of Human Rights has expressly included Chapter IV, Solidarity, that enshrines the social rights of European Union citizens, such as, for example, the right of collective bargaining and action (art. 28), the right to social security and assistance (art. 34), the right to health care (art. 35).
[8] Ian Manners, 'The Constitutive nature of values, images and principles in the European Union', in Sonia Lucarelli and Ian Manners (eds.) , *Values and Principles*.

among all the EU member states, has been one of the most significant cases of the EU's contribution to the international human rights regime.[9]

2.2.2 Institutions and instruments

The combination of internal and external factors, which brought about the EU's normative basis and international identity centred on human rights, required the EU to deploy concrete efforts to provide substance to the emerging rhetoric on its unique role in international affairs. Once again the development of appropriate instruments for the promotion of human rights was the outcome of the activism of the member states and of the EU institutions.

The member states introduced human rights as an objective of their foreign and development policies. The Scandinavian countries and the Netherlands included human rights promotion in their foreign policies in the 1970s. Similarly, after the end of the Cold War, France, the United Kingdom and Germany were among the first Western countries to introduce political conditionality to their development assistance.[10] In turn these countries, with the support of the EU institutions, in particular the European Parliament and the Commission, promoted the inclusion of human rights in the early activities of the European Political Cooperation (EPC) and then formalised it in the Maastricht Treaty.

The TEU included human rights both as an objective of the newly-established Common Foreign and Security Policy and as an objective of the European Community development policy. As far as the CFSP is concerned, Article J.1(2) states that development and consolidation of democracy and the rule of law, and respect for human rights and fundamental freedoms is one of

[9] Ian Manners, 'Normative Power Europe'.
[10] Karen Smith, *European Union Foreign Policy in a Changing World*, p. 105.

the principal objectives of the EU's external relations. Similarly, the TEU posited respect for human rights as a general principle of Community law.

In order to translate these objectives into appropriate policies, the EU has developed several traditional and non-traditional instruments. The traditional ones include the use of declarations and *démarches*, the application of negative measures, such as commercial embargoes, and political aid. The non-traditional ones include the presence of human rights clauses in agreements with third countries, the establishment of human rights dialogues and specific budget lines for the promotion of human rights, most notably the European Initiative on Democracy and Human Rights (EIDHR).

However these instruments are located within all three levels of governance in the EU's external relations, i.e. the CFSP, the EC and the member states' levels. The CFSP level, which can be *grosso modo* described as the intergovernmental level, has allegedly been attributed the role of guiding the external relations of the EU, and to some extent those of its member states, through the achievement of common positions and joint actions. At the same time the CFSP is also in charge of conducting critical human rights dialogue and deciding upon sanctions.

Political dialogues comprise diplomatic contacts among officials and governments both at bilateral and regional level. Additionally the EU engages some countries in so-called 'critical' human rights dialogues. These apply to countries with which the EU has not stipulated agreements with human rights essential clauses and where particularly blatant violations of democratic principles and human rights occur. So far the EU has only entered into critical human rights dialogues with China and more discontinuously with Iran.

Sanctions fall into the EU's punitive measures and they mainly include arms embargoes and restrictive economic measures. The procedures to suspend arms transfers and trade were formalised through the treaties' provisions, in particular Article 301 of the EEC Treaty, and the 1998 Code of Conduct on arms sales.[11] Since then embargoes have been utilised several times by the EU and its member states to punish the behaviour of third countries.[12] In most cases the arms embargoes were applied on security-based considerations to prevent wars or situations that could bring regional instability (Argentina, Iran-Iraq war, Libya for terrorism, Iraq for the invasion of Kuwait, Yugoslavian war, Sudan, Ethiopia-Eritrea conflict). Only in fewer other cases were arms embargoes declared to punish grave violations of human rights (South Africa, China, Nigeria, Indonesia and Zimbabwe).

The EC is entrusted with the implementation of CFSP positions through the instruments of economic sanctions and embargoes. Similarly, the EC can devise concrete policies for the promotion of human rights through inclusion of human rights clauses in agreements, trade provisions and development assistance. Since the mid-1990s, association and cooperation agreements contain political and human rights clauses, which allow the EC's monitoring of and effective response to violations, thus translating principled positions in actual policies.[13] At the same time the EC disposes of trade instruments and development assistance to promote human rights.

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[11] Council of the European Union, *European Union Code of Conduct on Arms Exports*, 1998.
[12] Argentina (1982), Iran and Iraq (1984), South Africa (1985), Libya (1986), China (1989), Iraq (1990), Yugoslavia, Slovenia, Croatia, FYR Macedonia, Bosnia Herzegovina (1991), Azerbaijan and Armenia (1992), Zaire (DRC) and Nigeria (1993), Sudan (1994), Afghanistan (1996), Ethiopia, Eritrea, Indonesia (1999), Zimbabwe (2002).
[13] Elena Fierro, *The EU's Approach to Human Rights Conditionality in Practice*. Andrew Williams, *EU Human Rights Policies: A Study in Irony*, Oxford, Oxford University Press, 2006.

According to the 2002 Commission, Communication on *Trade and Development: assisting developing countries to benefit from trade*, a trade policy must be integrated in such a way that it contributes to the fundamental objectives of poverty reduction and sustainable development. It should foster equitable growth, promote human development, and ensure the proper management of natural resources and the protection of the environment.[14] In order to make it effective for the promotion of human rights the EC uses trade concessions, such as the Generalized System of Preferences (GSP), special incentives as well as technical assistance.

Development assistance is by far the EU's preferred approach for the promotion of human rights. As argued by Carlos Santiso, the EU privileges a constructive engagement.[15] Indeed the EU has always made it clear that it prefers a positive approach to political conditionality and thus development assistance appears as the most significant instrument at its disposal. Art. 130u of the TEU clarifies that "Community policy […] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms".[16]

During the 1990s, new budget lines were created and old ones strengthened for human rights promotion both geographically and thematically, following proposals advanced by the EP and in line with art. 177 of the Maastricht Treaty. In particular the European Initiative for Democracy and Human Rights was created in 1994 to gather previously scattered thematic budget lines and ever

[14] European Commission, *Trade and Development: assisting developing countries to benefit from trade*, Commission Communication, COM (2002) 513 final, Brussels, 18 September 2002.
[15] Carlos Santiso, 'Sisyphus in the Castle: Improving European Union Strategies for Democracy Promotion and Governance Conditionality', *The European Journal of Development Research*, Vol. 15, No. 1, 2003, pp. 1-28.
[16] European Union, *Consolidated versions of the treaty on European Union and of the treaty establishing the European Community*, Official Journal of the European Union, C 321 E/1, 2006.

since it has annually financed projects amounting on average to EUR 120 million.

However, the complexity of the policy-making procedures, the institutional fragmentation of aid programmes and the lack of transparency and accountability that are often underlined in analyses of the EC's development assistance also affect the field of political aid.[17] It is difficult to verify the precise amount disbursed through regional budget lines for human rights promotion, given their fragmentation. Yet, it is possible to point out that such budget lines have a top-down approach, which privileges institution building programmes, while the EIDHR is especially focused on the support of civil society in a bottom-up approach. Concentration on civil society is also confirmed by the EIDHR's strategy for 2007-2013. However, it should be noted that the overall funds for political aid still represent only a limited part of European development assistance.

In its policies, the EC subscribes to the universality and indivisibility of human rights, thus rhetorically upholding all of them. However this does not automatically translate into the promotion of all human rights, at least not with the same degree of commitment. The EC's policies have often proven skewed towards support for political and civil rights. However the EC contends that it pursues socio-economic rights through development and sometimes trade policies rather than through political aid.

The EC's political aid is only a part of the overall European political aid due to the coexistence of significant member states' activity in the field. The EC level has not received exclusive competence in development assistance and the

[17] See on this topic Gordon Crawford, 'European Union Development Cooperation and the Promotion of Democracy', in Peter Burnell (ed.), *Democracy Assistance. International Cooperation for Democratization*, London, Frank Cass, 2000, pp. 90-127.

member states carry out their activities parallel to those of the EC. Already in 1991 because of these reasons a Council Regulation prescribed that "the Community and its member states will explicitly introduce the consideration of human rights as an element of their relations with developing countries".[18] Further the member states are involved in bilateral human rights promotion both through their own bilateral dialogues and through their activities in multilateral *fora* where they have maintained their seats and voting rights.

According to a recent survey among the member states Germany is the biggest provider of political aid in absolute terms with EUR 200 million a year while Sweden is the largest donor in relative terms with 11% of its aid budget going to democracy and human rights. In the late 1990s and early 2000s the United Kingdom and France also increased their political aid, although France remains one of the least committed in this field in the EU.[19] However, there is still little coordination among the various development cooperation agencies and the EC, despite frequent pledges to increase coordination.

2.2.3 Consistency and coordination

The presence of the objective of human rights promotion within the CFSP, EC and member states' levels has been considered problematic for several reasons. The first relates to the fact that each level of governance may prioritise policy issues in a different way due to the specific procedures involved. Second, the presence of several member states with very distinct historical experiences, policy preferences and interests complicate the adoption of just a single approach to human rights promotion. These aspects can give rise to inconsistent

[18] Council of the European Union, 'Resolution on Human Rights, Democracy and Development', November 1991.
[19] Richard Youngs (ed.), *Survey of European Democracy Promotion Policies, 2000-2006*, Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE), 2006.

and uncoordinated policies.[20] Lack of consistency and coordination may in turn undermine the possibility to elaborate appropriate strategies for the promotion of human rights in a third country.[21]

For these reasons throughout the 1990s the EU institutions and the member states have often reiterated the necessity of promoting the principles of consistency and coordination in the EU's human rights policy while providing a more strategic approach to the promotion of human rights in the European Union's relations with third countries. In 2001 the Commission's Communication on the *European Union's role in promoting human rights and democratisation in third countries* made these points explicit. According to the Communication the Commission was entrusted with

> promoting coherent and consistent policies in support of human rights and democratisation. This applies both to coherence between European Community policies, and between those policies and other EU action, especially the Common Foreign and Security Policy. It also relates to the promotion of consistent and complementary action by the EU and Member States, in particular in the promotion and mainstreaming of human rights through development and other official assistance.[22]

As the Communication clearly shows, there is ample awareness that the promotion of human rights should be consistently integrated into "all aspects of the EU policy decision-making and implementation". Similarly, the Communication points to the necessity of developing coordinated and complementary development strategies.

Secondly the Communication made explicit the need to formulate a more strategic approach to human rights promotion

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[20] Karen Smith, *European Union Foreign Policy in a Changing World*.
[21] Gordon Crawford, 'European Union Development Cooperation and the Promotion of Democracy'.
[22] European Commission, *The European Union's role in promoting human rights and democratisation in third countries*, Commission Communication COM (01) 252, 2001, p. 5.

> by using the opportunities offered by political dialogue, trade and external assistance; [and] by adopting a more strategic approach to the European Initiative for Democracy and Human Rights, matching programmes and projects in the field with EU commitments on human rights and democracy.[23]

In particular this commitment reflected the awareness that the EU's approach had previously been merely "ad hoc", "reactive" to the applicant's request and "limited to a menu approach", as pointed out by several commentators.[24] To this end the Communication pointed out that the "most effective way of achieving change" was "a positive and constructive partnership […] based on dialogue, support and encouragement" with governments that "are genuinely ready to co-operate" while the use of "negative measures" was appropriate with government that did not display such a commitment.[25]

These points have been further refined in two recent documents. The 2003 *European Security Strategy* (ESS) argues that "the best protection for our security is a world of well-governed democratic states".[26] It then goes on to declare that "protecting human rights" is among the best means of strengthening the international order. For the ESS the joint efforts of the EU institutions and the member states could effectively contribute to achieving this goal. As the ESS maintains "greater coherence is needed not only among the EU's instruments but also embracing the external activities of the individual member states".[27]

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[23] Ibid.
[24] Gordon Crawford, *op.cit.*. Tanja A. Börzel and Thomas Risse, 'One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law', paper presented at the Workshop on Democracy Promotion, Stanford University, 4-5 October 2004.
[25] European Commission, *The European Union's role in promoting human rights and democratisation in third countries*, p. 8.
[26] Council of the European Union, *A Secure Europe in a Better World*, European Security Strategy, 2003, p. 10.
[27] Ibid. p. 12.

Similarly, in the *European Consensus on Development* it is affirmed that "progress in the protection of human rights, good governance and democratisation is fundamental for poverty reduction and sustainable development".[28] Again, this objective requires the combination of the EU institutions and the member states' efforts most of all through their development activities. For the improvement of its delivery methods the Council agrees that "in the spirit of the Treaty, the Community and the Member States will improve coordination and complementarity".[29]

From this section it emerges that while the EU and its member states have been able to build a common, and to some extent unique, EU identity and normative basis and to set up several instruments for the promotion of human rights in their external relations, they are still divided and far from socialised on the best ways to promote human rights. Consequently they have been unable to articulate an actual *European* human rights policy into a coherent and coordinated institutional architecture. This in turn often leads to the elaboration of policies which do not reflect a clear strategic approach and are thus often inappropriate to the third country. In order to take into account these major issues, the next section proposes a liberal intergovernmental approach to study human rights promotion in the system of multilevel governance in the EU's external relations.

2.3 The study of the EU's external relations

The previous introduction of the evolution and institutionalisation of human rights promotion in the EU's external relations compels analysts to refrain from adopting narrow conceptualisations of external relations in the EU context. To

[28] Council of the European Union, *The European Consensus on Development*, Joint Statement, C 46, 2006, p. 13.
[29] Ibid., p. 6.

this end this thesis makes use of the notion of multilevel governance in external relations. This analytical approach better allows taking into account the issues of consistency and coordination that have been described above as critical for the formulation and implementation of appropriate strategies for the promotion of human rights in the EU's external relations.

Similarly, in order to account for and explain the issues of consistency and coordination this section proposes a liberal intergovernmental approach, because the member states have been shown to still be divided on the best ways to promote human rights. Multilevel governance and liberal intergovernmentalism offer powerful insights into the issues of consistency and coordination in the EU's promotion of human rights as it will be elaborated in the sections below.

2.3.1 The EU's system of multilevel governance

The necessity to consider broad concepts of the EU's external relations was already present in Christopher Hill's early works. For Hill European external relations was "the sum of what the EU and its member states do in international relations".[30] This broad conception has been subsequently revived by the work of Brian White. White describes Europe as a "unique but also non unitary international actor […] constituted for foreign policy purposes by three different types of policy".[31]

Differing from other authors who consider the EU as a unitary international actor, or that merely focus on the CFSP and the member states' levels, White's approach appreciates the multiple realities of Europe for which "European foreign policy as a whole is conceived as an interacting foreign policy system"

[30] Christopher Hill, 'Closing the Capability-Expectations Gap?' in John Peterson and Helene Sjursen (eds.), *A Foreign Policy for Europe?*, London, Routledge, 1998, p. 18.
[31] Brian White, *Understanding European Foreign Policy*, New York, Palgrave, 2001, p. 24.

where "three types of policy are regarded as the subsystems that constitute and possibly dominate it".[32] White points out that European governance in external relations appears to be carried out on three levels: the European Community, which is the most integrated and supranational level and is mainly concerned with economic foreign policy, namely trade and development assistance; the European Union, which can be roughly identified with the CFSP and has recently moved from intergovernmental to more supranational procedures; and the member states, which formulate their policies under the increasing influence of the EU.

From this White derives that European international actorness as well as its external relations should be seen as *the dynamic combination of the three types of policy*, namely the CFSP, the EC and the member states' levels, which interact within the European system of external relations. White's conceptualisation also finds resonance and further definition in the more recent work of Paolo Foradori *et al*, which explicitly applies a multilevel governance approach to the study of European foreign policy. For these authors European foreign policy is

> a combination of integrated policies (those regarding the first pillar), policies only partially integrated, or to a lesser extent (the sector covered by CFSP/ESDP) and finally national foreign policies, which despite maintaining a strong state-centred connotation have tended to Europeanise themselves in the course of the evolution of the EPC/CFSP.[33]

These authors, along with White, appreciate the importance of embracing broad conceptualisations of foreign policy in the European context and avoiding the reification of the EU through a single actor approach. In this way they take

[32] Ibid.
[33] Paolo Foradori et al (eds.), *Managing a Multilevel Foreign Policy: the EU in International Affairs*, Plymouth, Lexington Books, 2007, pp. 7-8.

distance from the majority of works on the EU's external relations, which either focus on the CFSP level or identify the EU as a single international actor.

Today works merely focusing on the CFSP level have become less frequent owing to their obvious limits. First, the focus and interpretations of works concentrating on the CFSP have often reflected a limited concept of foreign policy, which is the one repeatedly presented by the member states in their attempts to distinguish 'high politics' from 'low politics' and maintain their power. Second, studies on CFSP have tended to privilege an understanding of foreign policy as limited to the fields of diplomacy, defence and security, leaving aside the analysis of the EU's economic policy. Third, focusing the analysis solely on the CFSP level fails to take into account the important level of the external relations carried out by the EC. As argued by Ben Tonra and Thomas Christiansen "the link between foreign policy, on the one side, and the Union's trade, enlargement, economic assistance and humanitarian aid policies, on the other, has been increasingly difficult to ignore".[34] Therefore there is a growing consensus that the CFSP and the EC levels must be considered together in an analysis of the EU's external relations.

This is the interpretation of most contemporary EU studies that concentrate on the EU's international actorness. Contributions to the study of the EU's international actorness range widely from those that are of a neutral character and those that intend to define what kind of international actor the EU has become. On the one hand broad conceptions of the EU's external relations allow some authors to attest to the increasingly significant role of the EU in

[34] Ben Tonra and Thomas Christiansen, *Rethinking European Union Foreign Policy*, Manchester, Manchester University Press, 2004, p. 2.

international affairs both in geographical areas[35] and in terms of the instruments utilised.[36] On the other hand other authors attempt to define what kind of international actor the EU has become. These works can be categorised on the basis of the explanatory variables that they choose to take into account for the EU's international actorness. These are mainly: (i) its identity, (ii) its means and instruments, and (iii) its political constitution and foreign policy decision-making system.[37]

According to Foradori *et al.*, though, these studies presuppose that

> the practices, rules, and institutions set up by the member states for managing European foreign policy have had an unexpected effect, which has brought about a redefinition of national identities and interests, favouring a process of common foreign policy building.[38]

For Foradori *et al.* this assumption does not take in due account the analysis of the member states' internal divergences in the definition of the EU's external relations as well as in the conduct of their own external relations. As has been shown in moments of crises such as the Balkans and the Iraq wars, the member states are far from being totally socialised within the EU's system of external relations. Similarly, the member states still maintain important prerogatives in external relations and their bilateral policies often diverge from those adopted by the EU.

The criticism to CFSP-centred and EU-centred approaches applies even more stringently to the case of human rights promotion, which occurs on all three levels of governance within the system of the EU's external relations, as has

[35] For an example of a "geo-issue area approach" see Hazel Smith, *European Union. What it is and what it does*, London, Pluto, 2002.
[36] Karen Smith, *European Union Foreign Policy in a Changing World*.
[37] This distinction is proposed by Ole Elgström and Michael Smith, *Introduction*, in Ole Elgström and Michael Smith (eds.), *The European Union's Roles in International Politics. Concepts and Analysis*, London, Routledge, 2006, p. 5.
[38] Paolo Foradori et al., *Managing a Multilevel Foreign Policy*, p. 7.

been shown in the previous section. Secondly, the appropriateness of a multilevel governance approach is further reinforced by recent works on the EU's promotion of norms. These studies identify at least three main actors in the EU's promotion of human rights: the Commission as a "policy entrepreneur", the European Parliament as a "watchdog" and the Council as a "pragmatic body", led by political considerations.[39]

To the three actors identified by the recent literature, which broadly correspond to the CFSP and the EC levels, the previous section has shown the necessity to add the member states as they still guard several prerogatives in human rights policy, namely through bilateral dialogues and political aid, and they maintain important control powers on the activities of the CFSP and the EC levels. Finally, embracing such a broad notion of governance also allows better considering the principles of consistency and coordination, which, as has been shown above, are two key concepts for human rights promotion in the EU context.

Therefore in order to avoid the main shortcomings of the literature on the EU's external relations and find an appropriate analytical approach to the study of human rights in the EU's external relations, this thesis embraces the concept of Europe as a system of multilevel governance in external relations. However in order to reflect on how consistency and coordination can be achieved in the promotion of human rights within the system of multilevel governance in the EU's external relations it is necessary to identify the independent variable through which to analyse the policy output within the three levels of governance.

[39] Stefania Panebianco, 'The constraints on EU action as a 'norm exporter' in the Mediterranean', in Ole Elgström and Michael Smith (eds.), *The European Union's Roles in International Politics. Concepts and Analysis*, pp. 143-144.

2.3.2 Liberal intergovernmentalism in the EU's external relations

An approach that considers the system of multilevel governance in the EU's external relations assumes that each level of governance is characterised by specific actors, identities, interests, decision-making rules and policy preferences. The combination of these factors generally determines the policy output at each level. However, in order to simplify the complexity of this system and identify a single independent variable which can be considered for a scientific approach, this thesis proposes to concentrate on the member states as the unit basis in a liberal intergovernmental perspective.

The importance of liberal intergovernmentalism in the study of the EU's external relations derives from studies on European integration. Moving away from realists' and neorealists' insistence on systemic approaches, liberal intergovernmentalists, while maintaining the primacy of the member states in the integration process, have articulated their explanations by opening the member states' 'black boxes'. Starting from positivist assumptions on the rationality of states, intergovernmentalists describe the European integration process as a bargain made between state governments.

This approach rests on the assumption that state behaviours reflects the rational actions of governments constrained at home by societal pressure and abroad by their strategic environment. In the importance given to domestic or societal pressures on state governments, intergovernmentalists of liberal and neoliberal inspiration distance themselves from realist and neorealist accounts. They do not consider states as having fixed preferences for wealth, security or power, but assume that states formulate their goals and objectives in response to shifting pressures from domestic, economic and social groups.

If this theoretical assumption concerns the formation of interests and policy preferences, the second theoretical assumption that is shared by intergovernmentalists is that within an international regime to which the EU can be broadly likened, state governments engage in a bargaining process, which can be described through the existence of the relative bargaining power of governments and the creation of coalitions, issue-linkages and side-payments. Therefore what describes this process is a two-level game where national governments serve as the crucial link between the domestic and the international levels. As clearly explained by Andrew Moravsick, "the primary source of integration lies in the interests of the states' themselves and the relative power each brings to Brussels".[40]

In the study of the EU's external relations, liberal intergovernmentalism is largely used to explain the CFSP level. In this perspective the CFSP deliberations are predicted to follow the lowest common denominator, given the unanimity required. When this does not appear to be the case then the influence of the biggest major players in the EU context, such as France, Germany and the UK, or the possibility of issue-linkages and side-payments are considered as possible variants.

Liberal intergovernmentalism is also applied to analyse the field of the European Community policy, which falls into the domain of the Commission. Although this level is often referred to as the supranational one, in reality the Commission is under the strict supervision of the member states through their representatives at the Council and through the possibility of sharing competences in certain policy fields not yet supranationalised, such as

[40] Andrew Moravcsik, 'Negotiating the Single European Act', in Robert Kehoane and Stanley Hoffmann (eds.), *The New European Community: Decision-making and Institutional Change*, Boulder, Westview Press, 1991, p. 75.

development assistance. What emerges from member state-centred accounts is that the Commission's activities reflect the interests and policy preferences of the most influential member states, although the Commission may at times strategically use divisions among them to acquire further competences and promote its own bureaucratic interests.

Finally, liberal intergovernmentalism applies to the study of the member states' bilateral activities. Within the system of multilevel governance in the EU's external relations, member states maintain ample room to manoeuvre in devising their own external relations as well as in defining their positions within the EU institutions. According to liberal intergovernmental perspectives the bilateral activities of the member states still respond to long ingrained national, rather than European, beliefs, identities and interests. This is testified by the little coordination that appears to exist among the member states in the formulation and implementation of their external relations.[41]

A liberal intergovernmental approach differs from sociological institutionalist and constructivist approaches, which highlight the affirmation of norms of political cooperation in the EU and have inspired the recent works on the EU's value-driven foreign policy. For these authors, shared European identity and norms would reorient the member states towards a logic of appropriate behaviour, as opposed to a bargaining style of decision making, in the EU's external relations. In particular, sociological institutionalist approaches insist on the socialising effects of institutions in the member states' elaboration of the EU's external relations, while constructivist approaches tend to explain the EU's behaviour on the basis of its identity and normative basis.

[41] See the early works of Christopher Hill, *The Actors in Europe's Foreign Policy*, London, Routledge, 1996 and the more recent work by Ian Manners and Richard Whitman (eds.), *The Foreign Policies of European Union Member States*, Manchester, Manchester University Press, 2000.

However rather than openly contrasting liberal intergovernmentalism, sociological institutionalist and constructivist approaches generally accept the liberal intergovernmental assumptions on the agency of the member states. Sociological institutionalist and constructivist approaches do not replace liberal intergovernmental approaches but rather add to them the influence that institutions and ideas play, as it emerges in the analysis of some specific case studies.

For example, Frank Schimmelfennig's famous concept of 'rhetorical entrapment' rests on the assumption that the member states do not share the same identities, interests and policy preferences. A rhetorical entrapment only occurs when some EU institutions and member states make strategic use of the EU's identity through rhetorical action.[42] Similarly, an EU interest does not exist *tout court*, but it is rather the combination of discreet negotiations among the member states within the EU institutions. For sociological institutionalists and constructivists, the EU's identity and norms only create an enabling environment where the use of rhetorical action by the EU institutions and the member states can lead to the adoption of policies in line with such a common identity and interest.

If the agency of the member states is important to explain the policy output at CFSP and EC levels, this is also true at the bilateral levels. Sociological institutionalist and constructivist approaches have proposed paying more attention to processes of Europeanization, which show how national foreign

[42] Frank Schimmelfennig, 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', *International Organizations*, Vol. 55, No. 1, 2001, p. 59.

policies are impacted by the EU's institutions.[43] These may merely refer to changes in domestic structures and institutions, as in the case of ministries of foreign affairs being reshaped in their bureaucratic structures. But they can also touch upon an adaptation, Brusselisation or externalisation of certain foreign policy prerogatives to the EU level.

However these processes largely depend on the issues that are at stake, as is often also claimed by sociological institutionalists and constructivists. Historical traditions, special relations, specific identities, international role conceptions and national economic interests often determine the EU and the member states' positions on specific issues. Similarly, the member states' adaptation can also conceal a strategic calculation. The member states can use the EU level to delegate foreign policy responsibilities and to shield themselves from third countries' criticism. Finally the member states can use the EU level to increase the impact of their policy preferences and thus reaching politics of scale.

Therefore, while sociological institutionalism and constructivism can offer significant insights for the study of some specific cases and issues, liberal intergovernmentalism maintains its broad explanatory power in the study of the EU's external relations. Besides, liberal intergovernmentalism allows for considerations of how the EU institutions may contribute to the socialisation of negative norms as well as positive norms, depending on the orientations of the most influential member states in the elaboration of the policies. This is one of the major shortcomings of sociological institutionalist and constructivist approaches, which often tend to overlook the cases of negative socialisation,

[43] For a discussion of Europeanisation theories see Reuben Wong, 'The Europeanization of Foreign Policy', in Christopher Hill and Michael Smith, *International Relations and the European Union*, Oxford, Oxford University Press, 2005, pp. 134-153.

where the EU's normative policies respond more to the strategic and economic interests of some member states rather than to the EU's identity and norms.

As shown in the previous Chapter, recent studies on the EU's promotion of norms demonstrate that the alleged normative EU policies conceal strategic and economic interests. While these policies are difficult to explain by sociological institutionalist and constructivist approaches, an intergovernmental approach can make sense of them by considering the interaction of the EU institutions and the member states' interests. In a liberal intergovernmental perspective the materially-informed approaches of the most influential member states may find the support of the EU's institutions to affirm European normative policies which conceal strategic and economic concerns.

For this reason this thesis employs a liberal intergovernmental approach for the analysis of the policy output of the system of multilevel governance in the EU's external relations. A liberal intergovernmental approach allows taking into account the complexity of the EU's external relations system where several, often contrasting, identities and interests coexist and interact within a system of multilevel governance in the EU's external relations. The next section discusses the application of the theoretical analytical tools developed in this section with reference to the concepts of consistency and coordination in the promotion of human rights within the system of multilevel governance in the EU's external relations.

2.4 Key Concepts, Research Strategy and Methodology

2.4.1 Consistency and coordination

In Simon Nuttal's classical study of consistency in the EU's international policy-making three main definitions of consistency can be identified. The first

concerns "horizontal consistency" and it implies that "the policies pursued by the different part of the EU machine, in pursuit of different objectives, should be coherent with each other".[44] The second concerns "institutional consistency" and it implies that in the pursuit of a given objective the EU institutions should be able to articulate a common, or at least complementary, approach. Finally the third definition concerns "vertical consistency", that is the ability of the EU and its member states to coordinate their policies in the pursuit of a given objective.

For heuristic purposes, in this thesis the term consistency will merge the first and the second definitions elaborated by Nuttal, while vertical consistency will be referred to as coordination. In the specific case of the analysis of the EU's promotion of human rights, consistency thus refers to how the EU institutions, namely the Council and the Commission, and only marginally the European Parliament, have devised and implemented economic and development policies consistent with the objective to promote human rights.

Similarly, coordination refers to the ability of the EU institutions and the member states to elaborate and implement coherent, or at least complementary, policies for the promotion of human rights. This refers to the well-rehearsed principle of combining the EU's actions with those of the member states so that they reciprocally support each other to reach a given goal, in this case the promotion of human rights.

An approach that combines the analysis of the system of multilevel governance in the EU's external relations with a liberal intergovernmental approach is suitable to analyse the issues of consistency and coordination in the promotion of human rights. First, the member states' existing differences in their attitudes towards the promotion of human rights create several problems in

[44] Simon Nuttal, 'Coherence and Consistency', in Christopher Hill and Michael Smith, *International Relations and the European Union*, p. 92.

devising consistent EU policies. The common positions at CFSP level, which follow the intergovernmental practice, may be at odds with the policies devised within the EC level, which follows a more integrated process. Similarly, even at the more integrated EC level, the different interests of the member states towards a third country, and thus their varying influence on specific issues, may give rise to EC policies that are inconsistent with one another.

Second, the member states' divergences on human rights promotion may become even more evident in the formulation of their national policies vis-à-vis those of the EU, thus undermining the achievement of coordination. At a bilateral level the member states may prioritise different policies on the basis of their specific interests. Similarly, they may use the EU level in an instrumental way to delegate responsibilities in order to avoid their national constituencies' pressures and invoke European compromises as justifications for their conduct.

In order to maintain this study within manageable proportions, the issues of consistency and coordination which will be investigated have to be further delimited. Therefore rather than studying the consistency of the EU's policies that emerge from the CFSP and EC levels, this thesis will only concentrate on the latter. Three main reasons explain this choice. They are inspired by the EU's strategy of constructive engagement of China based on economic engagement, dialogue, and development assistance, which will be illustrated in Chapter 3.

First economic engagement and development assistance, allegedly the most important tools set in place by the EU to promote human rights in China, belong in the EC's competence and thus it is easier to test consistency within just one level of governance. Second, within the strategy of constructive engagement, the CFSP level is mostly involved in political dialogue, which is infamously known for being secretive and lacking transparency. This hampers a thorough

investigation into the issues discussed and the participants' opinions on them. Third, the strategy of constructive engagement abandoned sanctions, such as the resolutions at the UNCHR, which are mainly decided at CFSP level.

Further, drawing on the above discussion, coordination will only be referred to the EC and the member states' development policies for the promotion of human rights in China. The EC and its member states can coordinate their policies through the joint formulation of declaratory or concrete policies. Alternatively the EC and its member states can coordinate their policies through the joint implementation of activities. Finally coordination can also be achieved when the EC takes the lead and devises policies which complement those of the member states. Coordination at the EC and the member states' levels is an important indicator of the actual commitment of the EU and its member states to their policies for the promotion of human rights. Conversely, uncoordinated policies may be an important signal of a division or delegation of labour between the EU institutions and member states, which can also lead to contrasting stances.

This section has shown the suitability of a liberal intergovernmental approach to the study of consistency and coordination in the promotion of human rights within the EU's system of multilevel governance in external relations. At the same time this section has further delimited the scope of this research by identifying the appropriate level of analysis to conduct a rigorous research worthy of generalisation. This refers to the EC's economic and development assistance policies and their relation with the member states' policies, in particular in development assistance. The next section will then explicit the research strategy and the methodology which will be employed.

2.4.2 Research Strategy

This thesis employs a deductive research strategy as it tests the assumptions of liberal intergovernmentalism that the EU and its member states' promotion of human rights largely depends on the latter's interests and policy preferences, in particular on those member states that have the most bargaining power and the highest stakes in a specific foreign policy issue.

Combining the insights of Chapter 1 on EU-China relations with the theoretical and analytical framework developed in this Chapter, the specific hypothesis of this thesis is that *the EU's constructive engagement of China on human rights reflected the prevalence of strategic and economic interests over idealistic ones in the attitudes of Germany, France and the UK towards China.* This hypothesis is addressed by answering two main research questions:

1. Did the EC elaborate and implement consistent economic and development policies to promote human rights in China?
2. Did the EC and the three selected member states elaborate and implement coordinated development policies for the promotion of human rights in China?

The choice of the three country cases serves theoretical and analytical purposes. First, the three member states have been from the outset the most influential countries in the EU and those with the most significant strategic and economic interests towards China. A liberal intergovernmental approach expects that these countries' interests and policy preferences strongly influenced the formulation of the EC's policies as well as their own national policies for the promotion of human rights in China. Alternatively, sociological institutionalism and constructivism would expect that the policies of the three

member states converged with those of the EC through the influence of institutions or through socialisation around shared identity and norms.

Therefore the analysis of these three member states allows for a consideration of whether the EU's policies for the promotion of human rights in China were mostly influenced by the three member states' interests and policy preferences, or by the socialising effects of the EU institutions, identity and norms. As the three selected member states had stable and long-lasting government leaders and coalitions in the decade under scrutiny (from 1995 to 2006)[45] this allows for a testing of the influence of the EU institutions on them free from the additional variable of changes to the ruling governments.

Secondly, Germany, France and the UK were the member states which had the largest development assistance in China. Development assistance is one of the main tools employed by the EU and its member states to promote human rights in developing countries. At the same time the approaches of Germany, France and the UK to China's human rights were broadly representative of the EU's member states, as will be shown in Chapter 3.

Germany maintained a mildly-critical approach and it privileged practical actions, such as projects on the rule of law and dialogue. France's approach to China showed only a faint echo of human rights concerns and it broadly delegated their promotion to the EU level, a feature shared with several Mediterranean EU member states. Finally, the UK's approach was more critical of China's human rights record and it employed specific instruments for the support of human rights, a position that is largely shared by the EU's Nordic member states. Therefore the analysis of the EC and of the selected member

[45] Chancellor Schröder in Germany with his Social Democratic/Green coalition (1998-2002 and 2002-2005); President Chirac in France with his Neo-Gaullist Party (1995-2002 and 2002-2007); and Prime Minister Tony Blair in the United Kingdom with the Labour Party (1997-2001, 2001-2005 and 2005-2007).

states' development policies can contribute to assess whether their overall efforts to promote human rights in China were coordinated and consequently whether the EU achieved a significant promotion of human rights through development assistance in China.

By choosing to focus on the three selected member states' interests and policy preferences in the elaboration and implementation of the overall EU's constructive engagement of China, this thesis would appear to predetermine its findings, i.e. the interests and policy preferences of the three selected member states drove the EU's approach to promoting human rights in China and determined inconsistent and uncoordinated policies. However this is the very point that needs to be addressed through the analysis of the issues of consistency and coordination. To this end this thesis will compare and contrast the expectations of the liberal intergovernmental approach with those of sociological institutionalist and constructivist approaches.

Specifically, to answer research question 1, this thesis investigates whether the EC's economic and development policies towards China have been consistent with one another and ultimately with the objective of putting human rights at the cornerstone of relations. This would be expected by sociological institutionalist and constructivist approaches. Showing the inconsistency of the EC's approach will require searching for an alternative explanation. This can reside in the material interests of the member states, in particular those of the three selected ones. This point can be illustrated by showing that the EC's policies reflected the interests and policy preferences of the three member states.

Secondly, to answer research question 2, this thesis investigates the specific policies that the EC and its member states devised and applied for the promotion

of human rights, thus showing the institutional efforts to achieve coordination. Sociological institutionalist and constructivist approaches would expect an increased coordination of the EC and the member states' policies through the modification of the latter's, i.e. through a top-down process of influence or *Europeanisation* of the member states' policies. Alternatively, a lack of coordination can support the expectations of liberal intergovernmentalism for which the member states carry out policies differing or even contrasting with those of the EC in order to pursue their national interests.

In order to analyse the issues of consistency and coordination this thesis mostly considers the economic and development policies carried out by the EC and the three selected member states in the period between 1995 and 2006. The year 1995 represents the inception of the constructive engagement of China while 2006 represents the turn towards a strategic partnership, which preludes to a formal upgrade of China and thus to an abandonment of any attempts to modify its political trajectory. Given the time-frame of the research this thesis mostly focuses on the pre-enlargement EU-15.

In the analysis of the human rights policies employed by the EC and its three member states it would be extremely reductive to only focus on some human rights. The EU and its member states accept the universality and indivisibility of all human rights, as it has been shown above. However, contemporary analyses show that today the EU prioritises the promotion of civil and political human rights over the promotion of economic and social rights. The latter, though, are usually promoted through the use of development assistance.

The analysis of the promotion of human rights requires taking into consideration the promotion of political and civil rights as well as the promotion of social and economic rights, which occur through several means. This is even

more important given the human rights situation in China as established in Chapter 1 and the argument that an appropriate approach to human rights promotion in China requires a balance between the promotion of political and civil rights and the promotion of social and economic rights.

Thus this thesis limits the analysis to the policies devised, i.e. economic engagement and development projects, rather than to the types of human rights promoted. Economic engagement and development projects fall within the positive approach, which the EU privileges for fostering the principles of rule of law and human rights worldwide. In analysing the economic engagement and development projects this thesis investigates which types of human rights were generally targeted at the EC and member states levels. Similarly, it considers the human rights which were more often promoted or pointed out in the EU and member states' interactions with China.

With regards to economic engagement this thesis considers two specific case studies, i.e. the GSP and the negotiations for China's accession to the WTO. These two case studies are particularly meaningful in assessing how the EC included human rights concerns in its economic engagement of China and the influence of the three member states. First of all, as shown above, the GSP offers the possibility to the EC to impose sanctions and to propose incentives to further social and economic rights. Secondly, WTO negotiations offered the EC the possibility to link China's accession to the WTO to the improvement of the rule of law and good governance in some specific sectors, while also providing technical assistance to support such reforms. Thirdly, while the EC has broad competences on the GSP and in the WTO negotiations, it also strongly depends on the member states for the approval of its policies. Therefore, these two case

studies also offer the possibility to analyse the influence of the three selected member states on the EC's economic policies.

With regards to development assistance and in particular political aid a caveat is necessary at this point: differing from many developing countries, China has never been dependent on development assistance both because of its sheer size and economic might and because of the level of direct foreign investments that from the very beginning of the 'open-door policy' it was able to attract. Even at the early stages of reform, the ratio of development assistance to China was never higher than 1% of its GDP. Thus, influencing China through such marginal assistance seems a daunting task, and even more an academic futility to focus on it.

Yet, in the rhetoric of the Commission, the EC's programmes and projects in support of democracy, human rights and good governance were portrayed as one of the two pillars, together with economic engagement, of the overall EU's efforts in influencing the trajectory of China's political development and transformation. As throughout the years the EC's development assistance in this sector was the most conspicuous in China, and two of the programmes implemented were by far the biggest of their kind in the country, a closer analysis seems wholly justifiable, in order to test the EU's consistency in the promotion of human rights.

At the same time, the EC's competence in development assistance is also under the strong scrutiny of the member states, who have the power to approve its programmes and projects. Therefore, the analysis of the EC's development policies also allows considering the influence of the three selected member states. Similarly, looking at the development policies of the three member states, which were the most conspicuous in China, it is possible to analyse the

overall coordination of the EC and member states' programmes and projects for the promotion of human rights in China and assess whether they achieved any significant mass.

In summation, the analysis of consistency and coordination allows discerning the actual nature of the EU and its member states' constructive engagement of China, their ability to balance normative and material priorities in their human rights policies towards China, and the latter's appropriateness to the country's situation. In so doing this thesis primarily shows the conditions under which normative and material priorities can coexist in the EU's external relations and it secondarily suggests that the EU's framework may contribute to the socialisation of negative norms as well as positive ones, depending on the interests and policy preferences of the most influential member states.

2.4.3 Research Methodology

In order to analyse the EC and its member states' policies in support of human rights in China, this thesis draws on the analysis of primary documentary sources, such as project documents and internal reports. Yet the paucity of these sources would not allow achieving the research objectives. Therefore this study also makes extensive use of secondary documentary sources such as Commission Communications, Council Resolutions and Parliament Reports. Finally, this work makes ample use of tertiary documentary sources.

The research has cross-checked the main documentary sources in order to identify the most authoritative authors in EU-China relations. Similarly, in the case of sources on human rights in China, this thesis relies on the most-quoted authors and human rights specialists in the academia. At the same time it complements these sources with international advocacy groups' reports on

human rights. Among them three main organisations can be identified: Amnesty International (AI), Human Rights Watch (HRW) and Human Rights in China (HRIC).

Finally, in order to show the validity of the interpretations, which emerge by a combined use of primary, secondary and tertiary documentary sources, this research includes *élite* interviews mostly with European officials and policy practitioners. The research draws on interviews with the EU Commission officials, member states' representatives and NGO representatives in China. This thesis has only included a few Chinese interviewees, mostly from the academia, for two reasons. First Chinese officials are often hesitant to answer questions on the issue of human rights. Second, this thesis does not intend to assess the impact of policies but it rather investigates them and their rationale. Interviews with Chinese academics on EU-China relations and human rights, though, have been used to better understand the appropriateness of the EU's policies against the backdrop of the Chinese government's attitudes to human rights and the Chinese citizens' claims.

Chapter 3 – The long march towards constructive engagement

3.1 Introduction

The previous Chapter has provided the theoretical and analytical building blocks and formulated the research strategy which Chapters 4 and 5 will use for an empirical analysis of the consistency and coordination in the EC and its member states' promotion of human rights in China through economic engagement and development assistance. However before moving on to the empirical analysis it is necessary to show in more depth the suitability of the theoretical approach and analytical focus embraced for broader EU-China relations.

This Chapter serves this purpose as it first shows the relevance of the member states and their economic, and to a lesser extent strategic interests, in the elaboration of the EU's strategy of constructive engagement. In particular it shows the prominence of the material interests of Germany, France and the UK and how they influenced the abandonment of sanctioning policies at CFSP level. Later, it explains the reasons behind the selection of the policies of economic engagement and development assistance for the study of the EU and its member states' promotion of human rights in China.

This Chapter first provides an introduction to the evolution of relations between the EU, its member states and China up to the embracement of the strategy of constructive engagement in 1995. Sections 3.2 and 3.3 put into focus two essential arguments drawn from the main literature. First, the prominence of the economic, and to a lesser extent of the strategic and security dimensions over the normative one in the approaches of the member states, and in particular

of Germany, France and the UK. Second, the deep divisions of the member states on how to handle the issue of human rights in their relations with China. These two themes underpin the focus on the member states, and in particular on the three selected ones, in the analysis of EU-China relations in line with the liberal intergovernmental approach elaborated in Chapter 2.

These two themes are in turn considered in section 3.4, which focuses on the three avenues of the constructive engagement on human rights that are often considered by the main EU-China literature on human rights, i.e. the member states' positions at the UNCHR, the EU-China Human Rights Dialogue and the Arms Embargo. Section 3.4 shows how Germany, France and the UK's approaches to human rights in China were representative of those of the other EU member states. Then, contrary to most of the literature on the topic, section 3.4 does not intend to use these cases as evidence of the failure of the EU and its member states to constructively engage China. In fact these cases show that the EU and its member states have adopted policies in line with the strategy of constructive engagement, i.e. they have largely abandoned sanctioning policies and adopted positive policies, such as economic engagement, dialogue and development assistance to promote human rights in China.

This latter point supports the validity of the analytical focus on the specific cases of economic engagement and development assistance at the EC and member states levels. At the same time the abandonment of sanctioning policies supports the theoretical validity of the liberal intergovernmental approach, because it is shown that the positive approach was mostly influenced by Germany, France and the UK. Such a policy output at CFSP level suggests, without proving it, a negative socialisation of those member states more prone

to sanctioning China in two case studies out of the three considered in this Chapter.

3.2 From opening to Tiananmen

The EU, at that time the European Economic Community (EEC), and China established formal relations in 1975, following the beginning of Washington's *trilateral strategy* in Asia. The formalisation of diplomatic relations at EEC level followed, and sometimes anticipated, the formalisation of China's relations with the individual member states. However, in those years, most academics referred to the EEC and its member states' relations with China as "derivative" and "secondary" to those with the United States and the Soviet Union in the Cold War context.[1] Before the establishment of the European Union, China's recovery from the Tiananmen Massacre and Deng Xiaoping's reforms in 1992, the EEC, its member states and China remained "distant neighbours" as poignantly stated by Harish Kapur.[2]

The only field that somewhat escaped the influence of the Cold War scheming was the economic one. Most accounts identified the growing economic interaction as the most meaningful feature of EEC-China relations before the 1990s. In addition, due to the underdeveloped nature of the EEC, most accounts show a strong balance between the EEC and the member states levels, as the evolution of the EEC's relations with China was considered complementary to the evolution of some member states' relations with the PRC. Within this context the issue of human rights remained marginal and even the

[1] David Shambaugh, *China and Europe, 1949-1995* and Michael Yahuda, 'China and Europe: the Significance of a Secondary Relationship', in Thomas Robinson and David Shambaugh (eds.), *Chinese Foreign Policy: Theory and Practice*, London, Clarendon Paperback, 1994, pp. 266-282.
[2] Harish Kapur, *Distant Neighbours: China and Europe*.

Tiananmen Massacre only minimally stirred the waters of Europe-China relations both at the EEC and at the member states level.

3.2.1 The Cold War: expanding economic ties

The PRC was the first Communist country to recognise the EEC. After the ravages of the Cultural Revolution, Chinese politicians resumed their efforts to find an independent space for China through envisioning a multipolar world. Blinded by a dose of wishful thinking, which was compounded by a limited knowledge of the EEC and its member states, they saw in the construction of a stronger EEC a potential ally and a new pole for the creation of a multipolar world.[3]

Secondly, the fact that China and the EEC countries were bordering with the Soviet Union made China's officials believe in the possibility of coordinating their actions in containing Soviet expansionism. Thirdly, the Chinese leaders were quick to underline that, unlike China's other major partners, the United States, the Soviet Union and Japan, neither fundamental conflicts of interests nor obstacles existed for the full development of the relational potential between China and the EEC. In China these elements were positively interpreted as opening possibilities for cooperation and coordination in bringing about stability and creating world peace.[4]

Yet, during the 1970s and 1980s most observers argued that the EEC and its member states' policies towards China were strategically bound to those of the United States. For example the Chinese attempts at undermining the East-West *détente* encountered deaf ears in the member states, willing to push forward with it. Similarly, in accounts of the member states' bilateral relations it clearly

[3] Interview 31.
[4] Interview 32.

appears that none of them used the 'China card' at any specific moment throughout the 1980s. Thus, the possibilities offered by the Cold War politics conflicted with the actual constraints that it created towards the fully-fledged development of the EEC and its member states' relations with China.

EEC-China relations could only progress in the less-politicised economic domain.[5] China and the EEC shared a common interest in the development of their economic relations in the early 1980s. On the one hand, Deng Xiaoping's 'open door' strategy was highly dependent on the acquisition of advanced foreign technology. On the other, European businessmen were lured by the attractiveness of the Chinese market and its potential, in particular during the years of stagnation which characterized the European economy then.

In 1985 the EEC and China signed the Economic and Cooperation Agreement, which still represents the main legal framework for EU-China relations. More specifically, the Agreement's objective was "not only to promote and intensify trade but also to encourage the steady expansion of economic cooperation".[6] Moreover, the Agreement created a Joint Committee, which became "a forum where practically everything non-political that concerns the two parties was discussed".[7]

Behind a renewed EEC activism towards China lay the member states' growing economic interests in the country. By 1979 all the EEC member states, with the only exception being Ireland, had signed economic cooperation agreements with China. Similarly some member states' trade and investments with China had begun to rise as the Cold War confrontation softened following

[5] On the relations between the EEC and the People's Republic of China before 1989 see Harish Kapur, *China and the EEC: the new connection*, Geneva, Martinus Nijhoff Publishers, 1986.
[6] Der-Ching Horng, 'The EU's New China Policy: The Dimension of Trade Relations', *Issues & Studies*, Vol. 34, No.7, 1998, pp. 94-95.
[7] Harish Kapur, *Distant Neighbours: China and Europe*, p. 172.

the processes of *perestroika* and *glasnost* promoted by Gorbachev in the Soviet Union. Germany was by far the most active member state, enjoying its first 'China boom', followed by the UK who eased relations with the PRC through the signing of the 1984 Joint Statement on the handover of Hong Kong to the Mainland, and Italy that increased its investments in the country.

The economic relations were slower to take off in the field of European direct investments in China. With the exception of the United Kingdom, the other member states continued to lag far behind the main investors in the country. For this reason since 1985 some member states, especially Germany and France, have gone to great lengths in supporting their companies' penetration into the Chinese market, through both credit guarantees and the provision of concessional loans to China, tied to the acquisition of goods and services of European origin. Throughout the 1980s the total EEC member states' contribution in concessional loans to the country stood at more than 20% of all European loans to China.

Following the formalisation of diplomatic relations, the EEC and its member states' relations with China progressed in the economic field throughout the 1980s but remained very limited at political level. The development of the EEC's China activities reflected and complemented the activities of its member states. For Harish Kapur the rising economic interaction between the EEC, its member states and China depended on a combination of the Economic and Cooperation Agreement and the member states' bilateral dynamism in China.

In 1995, David Shambaugh argued that "it must be remembered that the EU's China initiative is in no way a replacement for bilateral relationships and policies of the member states, but rather should be seen as a supplement and

framework for individual national policies".[8] Thus up to the early 1990s the Europe-China literature shows two main themes in the development of the relations between the EEC, its member states and China: the progress of the economic dimension and the mutual reinforcement of the EEC and member states' activities for the development of economic relations with China. Where were human rights then?

3.2.2 Human rights up to 1989

Up to 1989 commentators only provide brief digressions on the issues of human rights and when they do they often underline the pragmatism and lack of missionary zeal of the EEC and its member states compared to the US approach. The EEC and its member states never raised Chinese domestic and political issues in those years. Little attention seems also to have been paid by European officials to China's internal political situation *tout court*.

As it is noted by Baker, between 1985 and 1989 only four documents relating to China and human rights can be found among policy statements on European foreign policy, and these are all questions in the European Parliament on issues as varied as Taiwan, Tibet, mass execution and the situation of Chinese Catholic priests. [9] Although a few International Non-Governmental Organisations monitored the human rights and democratic situation in China, little heed was paid to their reports.

This reflected the EEC's lack of any competence in such areas of external relations and the divisions of its member states. The EEC's policy in support of human rights and the rule of law acquired a mature shape only in the early 1990s with their inclusion in the Maastricht Treaty, and even more importantly

[8] David Shambaugh, *China and Europe, 1949-1995*, p. 4.
[9] Philip Baker, 'Human Rights, Europe and the People's Republic of China'.

in the EC's development assistance. Similarly, divergences among the member states on the best way to deal with China, due to their historical legacies and ongoing concerns, must not be underestimated. For example during the 1980s the United Kingdom had an outstanding issue with China: the return of Hong Kong.

Besides the institutional shortcomings and the internal divisions between the EEC and its member states, another factor cannot be overlooked. Deng's economic reforms were viewed positively in the West and overshadowed problems in the field. [10] Interestingly, against the backdrop of future developments, the European Parliament was one of the institutions most supportive of China's rise and reform. As has been shown, the Cold War constraints led the EEC to see Beijing as leverage over Moscow, therefore overlooking any conflictive issue.[11]

Things apparently changed in 1989. The Tiananmen massacre woke the international community, the EEC and its member states from their quiet slumber. Within days, the European Council issued a joint declaration which condemned the bloodshed and was immediately followed by the adoption of diplomatic and economic measures.[12] Most significant were: (i) raising the issue of human rights in China in the appropriate international fora; (ii) interruption by member states of military cooperation and an embargo on trade in arms with China; (iii) suspension of bilateral ministerial and high level contacts; (iv) postponement by the EEC and its member states of new cooperation projects.

[10] Interview 33.
[11] Ming Wan, *Human Rights in Chinese foreign relations: defining and defending national interest*, University of Pennsylvania Press, Philadelphia, 2002, p. 67.
[12] The Tiananmen events took place during the French Presidency of the European Community. On 6 June the Twelve meeting in Madrid issued a joint statement condemning the violent repression and suggesting that the continuation of repressive action would greatly prejudice China's international standing.

The politicisation of the human rights issue on the EEC agenda on China was not conflict-free. The member states were not all on the same wavelength in applying sanctions to China because of their different strategic, economic and ethical interests. The UK's ongoing discussions with China over the Hong Kong handover represented a strong motive against the use of harsh sanctions. For Germany and Italy it was rather the pressure of business lobbies which hindered the pursuit of a critical stance. As for France the arms embargo was damaging its arms industry, already badly affected by the end of the Cold War. The division was also deep between the Nordic member states, which were traditionally in favour of a strong stance on the promotion of human rights and the Southern member states, which were more inclined to embrace a softer approach.

These differences were already present during the negotiations for the Joint Declaration issued by the Council in 1989 and the sanctions decided against China. Some analysts and Members of the European Parliament (MEPs) pointed to the document as a mildly-worded statement. Similarly, the sanctions adopted were criticised for being of a mostly symbolic nature and for not including any real material cost to the Chinese government.[13] Strikingly, considering the already significant level of EEC-China economic interaction and the leverage that the EEC possessed at that time, trade sanctions were not imposed. More specifically trade and investments were not even mentioned among the possible future sanctions under consideration by the member states.[14]

[13] The document was regarded by many as too timid. In particular Members of the European Parliament pointed out that divisions soon emerged on the sanctions to be adopted within the Council. See Question no. H-153/89 (EFPB document no. 89/204) as quoted in Philip Baker, 'Human Rights, Europe and the People's Republic of China', p. 50.

[14] In fact, most EEC countries' trade with China did not suffer any setback and in some cases even grew.

As argued by David Shambaugh "the sanctions were never intended to inhibit European businesses from continuing their projects or starting new ones".[15] Although most of the sanctions had been lifted by 1991, with the notable and thorny exception of the arms embargo, from 1989 the issues connected to China's internal political arrangements, such as human rights, democracy and the rule of law, had entered into the EEC's debate and more importantly become a point of concern in the EEC-China relations. However the next section will ask how this new concern coexisted with the increasing economic interests of some member states and how the divisions were composed within the EEC, which was soon to become the EU.

3.3 The strategy of constructive engagement

Throughout the 1990s, China and Europe underwent paramount changes. The People's Republic of China received a decisive reformist boost by Deng Xiaoping, whose 1992 tour of Southern China opened the way to a thriving "socialist market economy". The PRC's economy grew at an impressive rate and this reinvigorating performance increased its assertiveness as a regional and even global actor. As a further sign of a strong reformist will, China's bid to enter a General Agreement on Tariffs and Trade (GATT) was convincingly pursued in Beijing and the GATT negotiations were resumed in 1992, thus mending the 1989 Tiananmen setback.[16]

Similarly, changes in the international arena prompted path-breaking developments in Europe, leading to the creation of the European Union. The early 1990s witnessed the most significant step in the redefinition of the

[15] David Shambaugh, *China and Europe, 1949-1995*, p. 7.
[16] In this regard, China proposed to slash tariffs and open up its markets for agricultural products and services. Hongyi Harry Lai, 'Behind China's World Trade Organization agreement with the USA', *Third World Quarterly*, Vol.22, no. 2, 2001, pp. 237-255.

European political and economic integration – the Maastricht Treaty. The Treaty was signed in 1992 and entered into force in 1993. Among its achievements were the realisation of the Economic and Monetary Union (EMU) and the introduction of a Common Foreign and Security Policy, a first move toward a more integrated European foreign policy.

The deepening of the process of integration in Europe emboldened the newly-created EU to embrace a more proactive strategy in its external relations. Similarly, Deng Xiaoping's successful fight to intensify reform opened up new opportunities. The early 1990s were thus the years when the two distant neighbours began to come closer, encouraged by a strengthening economic relation. However, as the main academic literature shows, it was mostly some member states' economic interests that dominated the relation and determined the establishment of the strategy of constructive engagement.

This was also reflected in the actual constructive engagement embraced. As will be shown, there is ample agreement that it prioritised economic issues, gave importance to strategic issues broadly identified and only marginally made reference to human rights. When it did, though, it was mostly through a positive and engaging approach, devoid of any sanctioning policy.

3.3.1 Towards constructive engagement

Within two years after the Tiananmen massacre all the sanctions imposed on China had been abandoned, the only exception being the arms embargo. The end of the Cold War, the revival of reforms in China, and the growing economic interaction between the EU and China induced a development of the relation. The prominence of some member states' economic interests towards China drove the Commission to take the lead in the EU's relations with China.

Starting from the early 1990s, the Commission began to work on the two increasingly pressing issues in the EU's relations with China, which had begun to bedevil officials and member states alike: the EU's lesser position in the Chinese market vis-à-vis the United States and other Asian countries[17] and the widening trade deficit between the EU and China.[18]

Starting already from October 1991, the Joint Committee, established by the 1985 Cooperation Agreement, resumed its work. High on the agenda was the establishment of a working group which would be responsible for studying the growing trade imbalances between the two entities and proposing adjustments. Although no punitive measures were contemplated, it soon emerged that Europeans attributed such a state of affairs to the over-protectionist Chinese market and the unfair government subsidies for export.

As the EU was losing economic opportunities in China, and in order to enhance the EU's presence in the country, the Commission little by little began to appreciate the importance of integrating China within the international trading system. This aimed at reducing the advantages acquired by the US and China's Asian partners through their prolonged interactions with the country and creating a level playing field.

Accordingly, in the first part of the 1990s, the Commission signalled a new supportive attitude towards China's entry into the GATT/WTO. As far back as 1992, European leaders and Commission officials began to talk about using transitional periods to smooth China's accession. Although at an early stage these proposals were not met with favour by Washington, they nonetheless marked the inception of a more flexible European approach towards China and

[17] For example in 1993 European investments ranked only fifth behind Hong Kong, Taiwan, the US and Japan.
[18] Markus Taube, 'Economic Relations Between the PRC and the States of Europe', in *The China Quarterly*, Special Issue, Europe and China, 2002.

eventually represented the biggest contribution of the EU to China's entry into the WTO.[19]

The necessity to integrate China was justified by the rising fears of some member states for their increasing trade deficits with China and their complaints about the unfairness of the Chinese business environment. The role of the Commission was to promote at EU level the positions of some EU member states, i.e. those which had more economic relations with China, in particular Germany, France and Italy. Similarly, and with hindsight, it is possible to argue that, before that was even the case, the Commission began to present China as a growing economic power, a menace to the EU's market but also an opportunity for European businesses (see Tables 1 and 2).

Table 1: The EEC/EU trade with China (1980-2008)

Years	*Export to China from the EU*	*China share in the EU's export*	*Imports from China*	*China share in the EU's import*	*Balance*
1980	1.70	0.80%	1.9	0.70%	-0.20
1985	6.50	1.70%	3.8	1%	2.70
1990	5.30	1.30%	10.6	2.30%	-5.30
1995	14.70	2.60%	26.3	4.80%	-11.60
2000	25.50	2.70%	70.3	6.80%	-44.80
2005	51.80	4.84%	158	13.40%	-106.20
2008	71.50	5.65%	228.7	16.10%	-157.20

Sources: Eurostat, External and Intra-EU Trade 1958-2006, 2006 and Eurostat, External and Intra-EU Trade Monthly Statistics, Issue No. 4/2008. Own calculations. ECU/Euro billion.

Table 2: The EEC/EU FDI to China (1985-2008)

Years	*Total FDI*	*EU share of China FDI*
1985	165.33	8.45%
1990	159.78	4.58%
1995	2,131.31	5.68%
2000	4,479.46	11.00%
2005	7,440.00	10.28%
2008*	12,120.00	9.00%

* For the year 2008 the data also include FDI in Hong Kong. Source: National Bureau of Statistics, various years. Own calculations. US$ million.

[19] Interview 34.

In fact, a different story, which was willingly underplayed by Commission officials, explains the commercial and investment issues raised by some member states. First the deficit figures were not shocking, in particular if compared to the trade deficits of other partners of China. Klaus Rupprecht goes so far as to suggest that in Europe the "trade deficit with China has never led to political problems, due to the fact that trade with China makes up only a relatively small percentage of the overall EU trade".[20] Second, the deterioration of the terms of trade for the EU was closely linked to the delocalisation of European firms in China. Third, China's prominence in the GSP also played an important role. According to Rupprecht's calculation "the value of imports to the EU member countries that fell under the GSP scheme in 1995 amounted to 53.6 per cent of the total EU imports from China".[21]

Important historical reasons explain the European delay in investing in China. In particular, the developments in Europe after the fall of the Berlin Wall, which included the speeding up of the process of European integration, the German reunification as well as the new possibility to access Eastern European markets. These all absorbed substantial amounts of capital and management capacity that otherwise might have been allocated to ventures in China.

Therefore it can be maintained that the Commission's rhetoric and actions were mostly supporting the stances of China's major partners in the EU rather than a shared European interest. In particular the story that has been described above can easily be interpreted as a story mainly concerning Germany, France, the UK, Italy and the Netherlands. The Nordic member states as well as Ireland

[20] Klaus Rupprecht, 'European and American Approaches Towards China as an Emerging Power', *China Aktuell*, 2001, pp. 170-171.
[21] Klaus Rupprecht, 'European and American Approaches Towards China', pp.81-83.

and Spain only developed significant economic interests towards China in the late 1990s. Similarly, not all the member states had worrying levels of trade deficit with China.

While stressing the economic dimension in order to please the most powerful member states and simultaneously increasing its powers, the Commission sidelined human rights concerns, embarking on a rhetoric which premised the development of human rights as a result of the economic improvements. From the very start the Commission's narrowly focused economic approach encountered some resistance from the European Parliament, which asserted a more principled position on China in line with its growing involvement in human rights and democracy. Commissioners were often called to answer Parliamentary questions on China and the whole Commission was sometimes criticised by the Parliament for its "soft" approach, which paid little attention to human rights and democratic concerns.[22]

3.3.2 The strategic dimension of constructive engagement

The internal debate between sanctioning China or engaging with it which confronted the Parliament and the Commission fell within the EU's internal debate over a more strategic projection toward the whole Asian continent which began in the early 1990s. Once again the discussion was led by only some member states, in particular Germany and France.[23] These countries were also supported by the Trade Commissioner, Leon Brittan. The growing interest in Asia was eventually translated into the EU's publication of its first Asia Policy titled *Towards a New Asia Policy*, which was endorsed by the Council meeting in Essen.

[22] Interview 7.
[23] In that same year Germany published its first *Asien Konzept*, which will be discussed in Chapter 5.

Accordingly, notwithstanding the tension between the Commission and the Parliament over the best way to deal with China, the Commission, instructed by the Council, began to propose building a more coherent political framework in its relations with the PRC, which could somehow synthesise the different approaches and interests. This new orientation was formalised in 1994 with the creation of a framework for institutional and political exchanges and the publication of the first Commission's Communication on China titled *A Long Term Policy for China-European Relations*, which was adopted by the Council's Conclusions of the same year and has since remained the reference policy paper for the subsequent Communications.

The Communication occurred in the year of the tenth anniversary of the signing of the first Trade and Cooperation Agreement between the EU and China and it coincided with the 20th anniversary of the establishment of formal diplomatic relations. The Communication recognised that "China's rise was unmatched among national experiences since the Second World War". Hence the need for Europe to "develop a long-term relationship with China" based on a "constructive engagement" and a "result-oriented approach", which would "encourage China to become fully integrated in the international community", "contribute to reform inside China" and "intensify ties [mostly in the business sectors] between the European Union and China".

Several authors have underlined that the 1995 Communication was mostly centred on the prioritisation of commercial relations and the development of "business-to-business links".[24] Such dimensions in the Communication appear natural considering the developments occurred in the early 1990s. In that period,

[24] Richard Youngs, *The European Union and the Promotion of Democracy*, pp. 166-167.

following easing of the Tiananmen sanctions, Shambaugh noted that "commerce has taken priority in Europe's relations with the PRC".[25]

In the Commission Communication China was represented as a growing powerhouse, manufacturing enormous amounts of goods, becoming an important base for investments and offering opportunities to European businesses. Portraying China as an opportunity that European companies were losing both in terms of exports and investments led to a tougher and more narrowly-focused European approach.

As Brittan emphatically stated when presenting the Commission Paper "the aim of the new policy is to give European industry more access to the Chinese economy and to nudge Beijing along on its political reforms through public pressure, formal private discussions and practical cooperation".[26] He then went on to say "I am convinced that it is in Europe's vital interest to steer China into the world economic and political mainstream away from isolation".[27]

The prioritisation of commercial issues also represented the accomplishment of the Commission's strategy to emphasise the economic dimension of China's growth and relegate its domestic political development. The Communication suggested that the integration of China within the international economic system would lock its reform process, making it irreversible. Similarly, the PRC's opening to external influences could give rise to a dynamic and reformist middle class, thus improving respect for human rights.

Besides the economic dimension, the Communication should also be considered for its strategic scope as for the first time it attempted to establish a wide framework for Europe's China relations. Several authors have underlined

[25] David Shambaugh, *China and Europe, 1949-1995*, p. 15.
[26] Leon Brittan, 'Europe, China and East Asia: Growing Closer through Trade', *International Herald Tribune*, 28 February 1994.
[27] Ibid.

the broadening of EU-China relations in concurrence with the 1995 Commission Communication. [28] Since 1995 several topics, spanning international terrorism and arms non-proliferation, UN architecture and so forth, have entered the EU agenda. These issues were also discussed and to some extent institutionalised in several technical dialogues.

However, only little improvement occurred in these new areas, with most of the meetings concluding with great rhetorical emphasis but producing little concrete progress.[29] For these reasons it is possible to argue that the EU has remained a distant neighbour for China on broadly-defined strategic and security matters. The lack of an EU military presence in the Asian region and its several divisions in multilateral regimes has further hindered such developments. For example the security dimension has remained mostly bilateral and national in nature and only those member states which have significant stakes and capabilities in the security field have achieved meaningful bilateral relations with China on these issues.

3.3.3 The human rights dimension

While stressing the economic dimension and trying to open a new chapter in the strategic and security dimensions, the Communication dealt with the issue of human rights. The Communication underlined the importance of China's domestic evolution toward the rule of law, respect for human rights and protection of fundamental freedoms. Aware of the shortcomings of a purely declaratory policy on these issues, the Communication proposed a three-pronged approach based on *effectiveness*: (i) concretely support the opening up

[28] See the recent Liu Fei and David Kerr (eds.), *The International Politics of EU-China Relations*, Oxford, Oxford University Press, 2007.
[29] This opinion also emerged among Chinese observers of EU-China relations. Interviews 30 and 34.

of all sectors of civil life in order to strengthen the infant civil society and promote the rule of law, including through development cooperation, (ii) raise human rights issues during bilateral dialogues and, (iii) engage the international community in the dialogue through multilateral fora. Naturally, all these efforts could not be borne by the EU alone but needed wide coordination with member states.

Such an approach somewhat contrasted with that of the US. The Communication was unveiled at a time when the United States' relations with China were at their lowest because of Beijing's fury over Taiwanese President Lee Teng-hui's visit to the United States in June and Washington's anger over the arrest on espionage charges of US human rights activist Harry Wu. The EU officials, although reassuring that they did not want to compete against the United States, distanced themselves from America's way of doing business in China. Leon Brittan expressed it clearly by saying that Western governments should not denounce China's human rights record just to win "easy popularity at home". In his words "strident Western criticism either dilutes the message or leads to knee-jerk reactions from the Chinese government".[30]

In 1995, the EU and its member states seemed poised to face positively the challenges of promoting human rights in China. Following the 1995 Communication, the political dialogue between the EU and China was strengthened over a broad range of issues, which also included human rights, on which a specific dialogue was initiated in 1996, following a Chinese request submitted in 1994. In that same year, the EU member states continued the practice of co-sponsoring the resolution on human rights violations against China in the United Nations Commission on Human Rights and almost passed

[30] Leon Brittan, 'Europe, China and East Asia: Growing Closer through Trade'.

it. Finally, discussions between European and Chinese officials began on the possibility of financing programmes and projects aimed at improving Chinese rule of law and sustaining its infant civil society.

However, most of the promises of the Communication were doomed to failure. In the coming years the UNCHR was abandoned, an EU-China dialogue on human rights was restarted but its procedures became highly criticised. Finally the arms embargo remained but divisions became deep among the EU member states. These shifts had been motivated by the two underlying themes in EU-China relations which had been present during the Cold War and became even more obvious in the aftermath of the Maastricht Treaty: the prioritisation of economic concerns for those member states with deeper relations with China and the deep divisions of member states on how to handle the issue of human rights in China.

The next section highlights such themes in the main sanctioning policies of the EU towards China on human rights. It also serves to show that the strategy of constructive engagement of China did not rely on sanctions but mostly on practical actions in the form of economic engagement, dialogue and development assistance. Similarly, it shows that Germany, France and the UK's approaches towards China's human rights were representative of those of the other EU member states. Finally, it supports the expectations of liberal intergovernmentalism because it shows that the abandonment of sanctioning policies was influenced by Germany, France and the UK. Further, it suggests, without proving it, that the member states with more critical stances towards China might have been negatively socialised in the CFSP.

3.4 UNCHR, Dialogue and Arms Embargo

The 1995 Commission Communication pointed to the necessity to promote human rights in China through a mix of critical stances and engagement policies, primarily dialogue and development assistance. However, the brief presentation of the evolution of EU-China relations in the 1980s and the early 1990s shows an increasing focus on the economic dimension and several divisions among member states. These two trends were at the basis of the evolution of the strategy of constructive engagement in the ensuing years, which privileged economic interests, refused sanctioning policies and allowed only practical activities for the support of human rights in the country.

3.4.1 UNCHR

Among the sanctions decided on in the wake of the Tiananmen events, the then twelve members of the EEC, in line with other Western countries, agreed to raise the issue of human rights violations in China at the annual meetings of the Third Sub-Committee of the UN General Assembly and of the UNCHR. Except for the 1991 UNCHR meeting – where a resolution against China was not tabled by Western countries in order to garner its support for the war against Iraq following its invasion of Kuwait – in the ensuing years the twelve maintained a common position on China at the UNCHR.

As Philip Baker notes, all the draft resolutions tabled against China were co-sponsored by all the member states taking part in the workings of the UNCHR from 1992 to 1996.[31] Although the common position presented by the EU member states did not lead to the passing of any resolution at the UNCHR due to the no-action motions proposed mostly by developing countries, the firm

[31] Philip Baker, 'Human Rights, Europe and the People's Republic of China', pp. 45-63.

stance of the member states represented an important base on which they and other UNCHR members built their criticism against China at the UNCHR meetings from 1992 to 1996. This was also confirmed by the 1995 Commission Communication, which pointed out that as far as the UNCHR was concerned "the level of international support attracted for the resolution criticizing the situation in China in February 1995 suggests that it is bearing fruit".[32]

However, the approach of the 1995 Commission Communication was soon to be changed and the strong united stance of the EU member states frayed in the following two years, leading to the eventual disbandment of the common position on China at UNCHR in 1997. The Chinese authorities, having escaped by one vote the UNCHR resolution of 1995, mounted an even stronger campaign against it and in particular towards the EU member states.[33] They pursued this objective and showed their dissatisfaction with the EU and its member states by suspending in 1996 the ECDHR begun a year earlier, and in addition, they continued, and ostensibly increased, their attempts to divide member states with promises of economic rewards.

These tactics would probably not have brought about the expected results if it were not for the changing conditions in the EU member states. The most important was the election of President Jacques Chirac in France in 1995 and his stated desire to pursue a closer partnership with China. Chirac's strategy of joining hands with China in the pursuit of a multipolar system and to increase French commercial and investment ties with the PRC in an attempt to catch up with Germany and the UK made him very attentive to the Chinese offers.

[32] European Commission, *A long term policy for China-European Relations*, p. 6.
[33] The Chinese irritation at the resolutions tabled within the UNCHR has been mentioned in several interviews with Chinese scholars. Interviews 23 and 26.

The example of France was not missed by its direct European competitor on the Chinese market, Helmut Kohl's Germany, which had begun to pursue a more strategic approach towards China as early as 1994 with the publication of the *Asien Konzept*. The limited commitment to the human rights cause in China, already demonstrated in the early 1990s with Germany's quick re-starting of ministerial exchanges and development projects, compounded with the possibility to reap the economic benefits of such a symbolic gesture, easily convinced the German Chancellor to follow the French lead.

France and Germany were not alone in reconsidering their positions at the UNCHR. The importance of penetrating the Chinese market shared by these two countries also reflected the opinions of other EU member states' governments, Italy and Spain in particular. In the early 1990s the majority of the EU member states had begun to acknowledge that they were losing ground in the competition to enter the Chinese market, and that they were being outdistanced both by the US and China's Asian partners. This, among other factors, was also attributed to the European confrontational attitude on human rights. In fact this situation did not reflect the human rights stance of the EU member states but primarily the way they had lagged behind in entering the Chinese market, mostly due to geographical and historical reasons as shown in the previous section.

The changing perspective on the tabling of the resolution was obvious in the irreconcilable division that appeared at the Council meeting of 1997. The Netherlands, a country generally in favour of a strong stance for the promotion of human rights, held the Presidency and proposed the tabling of a new resolution against China at the following UNCHR meeting. However, the division, which emerged between France, Germany and southern European

states on the one side and the UK, Sweden and other Nordic countries on the other, remained.[34]

This division was reflected in the UNCHR meeting of that year where the resolution tabled by Denmark was not co-sponsored by all the EU member states present, leading to an even clearer defeat of the resolution.[35] Ominously the Chinese government carried out the threat of sanctions against Denmark, which it had issued before the UNCHR meeting, by suspending some economic contracts.

The outcome of the UNCHR meeting sparked outrage among some European officials, above all the MEPs, who adopted various resolutions condemning the EU member states' inability to reach a common position.[36] International advocacy groups also expressed strong criticism about the EU member states' failure to achieve unanimity at the UNCHR and questioned both the EU's human rights policy and the effectiveness of the newly-constituted CFSP. In September 1997 Human Rights Watch wrote an open letter to the members of the EP where it stated that the EU should continue to put pressure on China, demanding it should keep its promises regarding respect for human rights.[37]

However, 1997 proved, at least according to EU officials, a very rewarding year for the softer approach maintained in Geneva. At the end of 1997 as proposed by Beijing in February of that year the ECDHR resumed, in exchange for a softer approach at the UNCHR. Looking for a simple justification, the EU

[34] At one point the Dutch Presidency threatened EU Member States that it would not table any resolution against any country at the Geneva session of the UNCHR in order not to show double-standards towards large, influential countries vs. poor and peripheral ones. Eventually, though, the threat did not materialise. Interview 20.
[35] During the April 1997 Meeting of the UN Human Rights Commission France decided not to table the resolution drafted by the Netherlands on behalf of the EU and presented by Denmark. On the European Union side the resolution was supported by Sweden, Ireland, and the Netherlands, whereas Germany, Spain and Italy followed the example of France insisting on engaging China through a positive approach.
[36] Interview 7.
[37] Agence Europe, Brussels, 9 September 1997.

officials noted that the results of the first ECDHR were very positive as they had led to China's agreement on (i) EC-funded cooperation programmes on human rights, (ii) establishment of a bilateral team of experts to deal with issues related to the signature and ratification of the two main International Covenants on human rights, (iii) a visit of the Troika to Tibet and (iv) an early visit of the UN High Commissioner for Human Rights to China.[38] Confident of such results the EU officials and member states in favour of the policy shift felt reassured that they could proceed in the direction they had set for themselves.[39]

If the disbandment at the UNCHR meeting of 1997 was striking, even more so was the Council's decision in 1998. Ironically, the Council listened to the requests of the EP to harmonise member states' attitudes and speak with a single voice on human rights violations in China. Despite criticism, under the Presidency of the UK, the Council institutionalised in 1998, the 1997 practice and concluded that neither the Presidency nor member states "should table or co-sponsor a draft resolution at the UNCHR".[40] So much for proponents of a single voice. As Andrew Clapham laconically commented "it is disturbing that the first time the Council formalized its position with regard to an impending country resolution at the UN, it was to announce that the Union would not be acting, and nor would its member states".[41]

In order to justify the new policy, the Council and its member states referred to the concept of *effectiveness*, which had initially been put forward by those member states in favour of abandoning the resolution. Although framing it in

[38] Leon Brittan quoted in Elena Fierro, *The EU's approach to human rights*, p. 204.
[39] Despite all the allegedly positive results obtained by the EU-China Dialogue on Human Rights, the year 1998 proved one of the bloodiest in China due to a harsh crackdown over political dissidents and Falun Gong members as reported in Amnesty International, *Human Rights in the World Report 1998*, London, Amnesty Publishing House, 1999.
[40] General Affairs and External Relations Council, *Council Conclusions*, 23 February 1998.
[41] Andrew Clapham, 'Where is the EU's Human Rights Common Foreign Policy, and How is it Manifested in Multilateral Fora?, in Philip Alston (ed.), *The EU and Human Rights*, p. 647.

human rights terms, they argued that human rights promotion through the UNCHR was not working. This was indirectly confirmed in the 1998 Commission Communication, which dropped reference to a multilateral approach for the promotion of human rights in China.[42] The EU and its member states agreed that economic engagement, dialogues and development assistance would be the most effective means to promote human rights in the country.

All in all, in the case of the UNCHR the combination of economic motives and the divisions among member states led to the abandonment of the sanctioning policy embraced after the Tiananmen Massacre. Yet the appeasing approach of the EU institutions and the member states that was decided in 1998 shows that despite differences the member states eventually found a very low compromise according to which sanctions towards China would be abandoned and concrete policies adopted to promote human rights in the country. Such a compromise greatly derived from the influence exerted by the main partners of China in the EU, namely France and Germany, and to a lesser extent the UK. Considering the previous approaches of the EU's Nordic countries this also suggests that the latter countries might have been negatively socialised into abandoning the UNCHR resolution.

3.4.2 ECDHR

The importance of promoting human rights in China through a bilateral dialogue was included among the policy actions of the 1995 Commission Communication. However, as was the case with several other Western countries, the Chinese conditioned the inception and continuation of the dialogue to the dropping of the UNCHR resolution. The EU's official stance on

[42] European Commission, *Building a Comprehensive Partnership with China*, Commission Communication COM (1998) 181, 1998.

the resumption of the ECDHR in 1997 never pointed to the fact that it was a 'reward' for the dropping of the UNCHR resolution. In fact the 1998 Commission Communication expressly noted that "the resumption of the EU-China human rights dialogue [would be accepted] without any precondition".[43]

Yet it is difficult to believe that this was the case in consideration of the Chinese manoeuvrings to coerce the EU, its member states and other Western countries to move from public shaming to private dialogues. Similarly, in an answer to a written question from an MEP, the Council clearly stated that "the results of the dialogue will be taken into account when the Union will decide the step to follow at the UNCHR".[44]

Since 1997, the ECDHR has been held twice a year between European high officials (officials from the country holding the Presidency, representative for human rights from COHOM[45] and the political head of the Commission Delegation in China) and representatives of the Chinese Ministry of Foreign Affairs at directorate level.[46] According to the EU's human rights reports, which have been issued annually since 1999, the 'wish list' of the EU's areas of concern presented at the bilateral dialogue remained broadly the same and included (i) freedom of opinion, expression and assembly, (ii) extensive use of

[43] Ibid.
[44] Elena Fierro, *The EU's Approach to Human Rights*, p. 201.
[45] The Agenda for the Dialogue is formulated within the COHOM Committee for Human Rights, which is linked to the European Council. The COHOM is presided by the incumbent Presidency of the Council but all member states are represented. In China at local level, little coordination apart from informal meetings of Political Counsellors takes place. There is an exchange of information on the procedures and results of the bilateral dialogues but this is as far as it goes. The Agenda is then discussed and agreed with the Chinese counterpart, which is the Ministry of Foreign Affairs.
[46] Sometimes representatives of Chinese line ministries, such as the Ministry of Justice, Ministry of Public Security and Ministry of Civil Affairs, took part to the meetings. Interestingly no other participants from European or Chinese civil society took part in the ECDHR.

the death penalty and torture, (iii) arbitrary detention and the use of labour camps, and (iv) the treatment of religious and cultural minorities.[47]

Interestingly, in light of what Ian Manners refers to as the EU's commitment to second-generation human rights, it is important to notice that labour rights were discussed for the first time only in 2007.[48] Similarly, the list of the main human rights concerns of the EU's representatives at the ECDHR seems out of tune with the societal requests emerging in China for more protection of social and economic rights, as underlined in Chapter 1 and also pointed out by several Chinese human rights experts.[49]

Through the dialogue process, the EU also raised concerns about the lack of due process of law in China's 'reform through labour' system, and the broad definition of crimes endangering state security, despite the dropping of counterrevolutionary crimes in the 1997 criminal law. At the same time, the ECDHR was used as a venue for EU officials to convey the EU's support for China's further involvement in the international human rights mechanisms. Noting China's signing and ratification of the International Covenant for Economic Social and Cultural Rights (ICESCR) (1997) and its signing of the International Covenant for Civil and Political Rights (ICCPR) (1998), the EU established the EU-China Human Rights Network (Network).

The Network's over-arching aim was to provide China with human rights expertise at the highest academic level in order to support the process of ratification of the ICCPR and the implementation of both human rights

[47] In the occasion of particularly blatant violations such as national campaigns against minorities or religious groups, the EU often expressed specific concerns. These included the situation in Tibet, including the 'patriotic education campaign', the crackdown on the Uighur minority in Xinjiang, which was fanned by the intensification of the 'strike-hard' campaign in connection with China's fight against terrorism, and the issue of freedom of religion against the backdrop of a growing persecution of Falun Gong's members, which intensified during the late 1990s, and the deteriorating situation of Chinese Christians.
[48] Interview 6.
[49] Interview 26 and Interview 27.

covenants.[50] In addition to these independent activities, since 2001 the Network has also taken over responsibility for the organisation of the biannual seminars connected to the ECDHR on behalf of the European Commission, the Chinese Ministry of Foreign Affairs and the Presidency of the European Union.

The seminars had been organised twice a year from 1997 and have received the support of the European Initiative on Democracy and Human Rights. Their aim was to complement the EU-China Human Rights Dialogue with *ad-hoc* discussions on various issues of concern. The following were covered: women's rights, administration of justice, minor crimes and trade union rights, death penalty, prohibition and prevention of torture and right to education, ratification and implementation of the ICCPR, right to health and freedom of expression.

However the decision to move to more private forms of engagement led to little information being made public on the real extent, scope and level of the discussions that take place, apart from the official press statements, the Council's conclusions and the EU's annual human rights reports. The ambiguous results of the dialogue were underlined by a 2004 Council evaluation. Although this document is notable for its absence among all the electronic material available on the EU's website, the Council's conclusions that followed the presentation of the evaluation document affirmed that "the overall assessment of developments showed a mixed picture of progress in some areas and continuing concerns in others".[51]

A harsher position was expressed by academics as well as practitioners, who also pointed out the ineffectiveness of giving up on the sponsoring of the

[50] Activities included seminars, researches, development of training materials, delivery of training and other follow-up activities, as well as a series of exchanges and internships coordinated by the Human Rights Institute in Ireland and the Human Rights Centre established within the Chinese Academy of Social Science.

[51] European Council, *Council Conclusions on EU-China Human Rights Dialogue*, No. 13216/04, Brussels, 8 October 2004.

UNCHR resolution.[52] To a certain extent, the negative opinion on the results of the ECDHR was indirectly confirmed by the Chinese. In China's 2003 *EU Policy Paper* it was argued that "[China] stands ready to continue dialogue, exchange and cooperation on human rights with the EU on the basis of equality and mutual respect so as to share information, enhance mutual understanding and deepen cooperation".[53] However, they expressed the wish that such a dialogue and exchange could be focused on "protecting citizens' social and cultural rights and the rights of the disadvantaged", thus forgetting to mention civil and political rights, which form the very core of the EU's objectives for the ECDHR. Similarly, while wishing to receive more European aid in such sectors as environmental protection, public health, poverty alleviation and education, the Chinese authorities once again omitted any reference to projects in support of good governance, the rule of law and human rights.

Another interesting point that seems to confirm the limits of such a platform emerged during interviews. Embassy officials referred to the continuous requests of the Chinese authorities to eliminate bilateral human rights dialogues with the member states because of the presence of the ECDHR.[54] This also confirms the instrumentality behind the Chinese participation to the ECDHR, as expressed by some Chinese commentators.[55]

Finally, it should be pointed out that some member states did start bilateral dialogues with China on human rights but they were not coordinated and each member state seemed to pursue its own national goals.[56] For example Germany

[52] These concerns have been raised by European participants to the technical dialogues. Interviews 21 and 22.
[53] Chinese Ministry of Foreign Affairs, *China's EU White Paper*, 2003.
[54] This was in particular the case of Sweden, which has an informal dialogue with China. Interview 19.
[55] Interviews 26 and 27.
[56] According to interviews with EU and member states' embassy officials little coordination, apart from sharing of information, exists among the various dialogues. Interviews 2, 6, 8 and 14.

started a Rule of Law Dialogue and a Human Rights Dialogue in 1999. However from the research it appears that its contents were not shared with other member states and the main issues discussed concerned the rule of law.[57] Similarly, the UK started a bilateral dialogue in 1999. However the dialogues seemed to be stressing issues of concern for the UK without any connection with those pursued at EU level.[58]

In summation, from the analysis of the EU-China Dialogue on Human Rights and those of the main EU member states with China, it emerges that the economic motives and the division among member states made such exercises very inefficient. Overall they lacked a real enforcing power, mostly served as platforms to exchange information without ensuring any accountability of the participants' promises, and they were badly coordinated, thus granting the Chinese an easy way to escape criticism and pressure. It is important to underline that the adoption of dialogues created a side venue, where human rights could comfortably be discussed without risking any spill-overs into other growing fields of the EU and its member states' relations with China. Despite the clear limits of this platform, it emerged during several interviews that member states did not request its abandonment or suspension.[59] This suggests an overall socialisation of all member states into supporting and conducting an inefficient EU policy for the promotion of human rights in China.

3.4.3 Arms Embargo

The arms embargo is a legacy of the sanctions imposed on China in the wake of the Tiananmen massacre. Arms embargoes are part of the restrictive measures that the EU has consistently developed in order to take action against

[57] Interviews 10.
[58] Interview 14.
[59] Interviews 2, 6 and 20.

human rights violations and promote their protection. However, arms embargoes are peculiar types of sanctions in terms of their implementation, because they have not been 'unionised'. Thus in the case of the EU's arms embargo towards China, which was adopted following the procedures of EPC, the legal foundation is shaky at best. According to Joacquim Kreutz "there is not an EU arms embargo in place against China, but rather an EU-wide set of national arms embargoes".[60] To complicate matters, the ban does not provide for a detailed specification of the arms included.[61]

In fact, European arms sales to China have been ongoing for years (see Table 3 below). For example, in 2006, the EU reported that the member states had approved arms sales to China worth EUR 292 million for military list exports, which can include weapons and other equipment with possible military applications. Among these, France issued 135 licenses worth EUR 251 million, the UK issued 348 licences worth EUR 30 million, Germany issued 25 licences worth EUR 2.5 million and Italy issued 5 licences worth EUR 1.7 million.[62] These figures represent a four-fold increase compared to 2001 when licences were issued worth $72 million. Although licenses do not always translate into sales and there is scant information on what is actually delivered, the increase suggests that European governments became more inclined to authorise exports to China.

[60] Joacquim Kreutz, 'Hard Measures by a Soft Power?' Sanctions Policy of the European Union 1981-2004', Bonn International Center for Conversion, Paper 45, 2005, p. 4.
[61] In fact it does not cover dual-use nor non-lethal equipment, therefore leaving EU companies quite a broad room for circumventing it and for member states to interpret it. Even with the adoption of the 1998 Code of Conduct on Arms Export, several loopholes have remained.
[62] Council of the European Union, 'Ninth annual report according to operative provision 8 of the European Union Code of Conduct on Arms Exports', No. 12919, Brussels 25 September 2007.

Table 3: Deliveries of major conventional weapons to China (1989-2007)

Actual deliveries of major conventional weapons to China, 1989-2007																				
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Total
France	74	54	68	47	42	85	90	96	59	46	77	52	46	48	44	73	75	49	48	1173
Germany (FRG)	12	12	12	12	12	16	12	17	7	12	17	12	13	11	13	25	17	13	5	250
Israel		28	28	28	28	28	28	28	28	38	38	28	28							350
Italy		5	12			5	10	5	3		10		3							52
Japan	15	30																		45
Russia				1098	1077	130	498	1115	628	166	1446	1718	3037	2429	1996	2735	3132	3498	1290	25992
UK									4	8	34	24	34	4	4	30	30	30	30	232
USA					1	14	3	3			31									52
Total	101	209	252	1202	1232	288	641	1274	741	292	1684	1874	3234	2636	2068	2906	3346	3719	1424	29124
Figures are SIPRI Trend Indicator Values (TIVs) expressed in US$ m. at constant (1990) prices. Source: SIPRI Arms Transfers Database																				

The unanimity behind maintaining the arms embargo began to fray as early as 1997 when for the first time French authorities discussed the issue with Jiang Zemin.[63] However, after having encountered strong criticism from the EP, French officials did not manage to gather consensus among other member states to push the discussion further. After 1997, the European internal debates as well as Chinese requests were silenced by the more pressing issue of China's WTO accession.

The debate briefly resurfaced in 2002 but it gained an incredible momentum in 2003 with the publication of China's *EU Policy Paper*. The paper approached the issue in two main ways: the first was that in order to be on an equal footing the two partners should iron out divergences through mutual understanding, thus implying the symbolic importance of lifting the embargo; the second was that lifting the arms embargo would open the door to greater bilateral cooperation, i.e. sales, in the defence industry and technologies.[64]

[63] This occurred almost concomitantly with France's decision not to table the resolution at the UNCHR and thus coincided with a more general breaking down of the EU unanimous position on China and human rights.

[64] Among Chinese authorities the arms embargo imposed by the EU became a crucial issue in the early 2000s according to Chinese academics interviews. Interviews 30 and 31.

Attracted by these opportunities French President Jacques Chirac and German Chancellor Gerhard Schröder began an aggressive campaign in favour of Beijing's request starting from the end of 2003. Other member states supported their stance by referring to China as a responsible country[65] and a very important partner for Europe while at the same time justifying the lifting of the embargo on the basis of the improvements that had occurred in the Chinese human rights record since the Tiananmen Massacre. Notwithstanding the pressures and the diplomatic efforts spent by French and German diplomats, the EU member states remained split on the issue throughout 2003 and 2004.

The main proponents of staying the course and maintaining the arms embargo against China were the Scandinavian countries, the Netherlands and Ireland. A more difficult situation confronted Prime Minister Blair's government. There the arms lobby – Britain is the EU's second exporter of arms to China - was active in trying to convince the Prime Minister of the advantages of lifting the arms embargo. At the same time Blair had to face not only his opposition and party members but also the UK's powerful ally, the US.

Interestingly, the split was not only at the level of the member states but also between the two most powerful figures of the EU: Javier Solana, the European Union's High Representative for Foreign Policy, who wanted the embargo lifted, and Chris Patten, the Commissioner for External Relations, who wanted it to stay and demanded further concessions on human rights from Beijing.[66] The EP also lobbied strenuously against the lifting.[67]

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[65] In December 2003, during a visit to China, Schröder began discussing the issue affirming that he believed that China had become a responsible international actor and that consequently most European heads of states were in favour of the lifting.

[66] John Power, 'Don't arm China, for all our sakes', *South China Morning Post*, 15 October 2004.

[67] MEP Coveney, the drafter of an EP report on the issue, noted that "given its lack of progress in the area of human rights, I am appalled and very disappointed that both the European Commission and Council have once again put trade before human rights, with the

Eventually after some hesitancy and numerous set-backs the Council achieved some agreement in December 2004, when it declared that it would lift the embargo imposed in 1989. At the same time, the Council affirmed that it would apply a stronger version of the Code of Conduct introduced in 1998, which would provide an even stronger control regime than the existing embargo, among other reasons, because it would broaden the range of issues relevant to the authorisation of arms sales, including political oppression, threats to regional stability and the concerns of partners and allies.[68]

While initially it seemed that the position of those member states in favour of lifting the arms embargo had got the upper hand, strong external reactions to this move and the internal situation of some member states led in 2005 to the eventual decision to postpone the lifting. Reactions from the US on the likely lifting of the ban were very strong due to the strategic concerns of the US in Asia, for which the 'China threat' was a very concrete issue, unlike for the EU member states. Throughout 2004 and 2005 US pressure against lifting the embargo had increased.

The US initiative certainly played an important role in influencing the final decision of the EU member states. Yet another variable should be factored in: China's passing of the 'anti-secession law' in 2005, authorising military force against Taiwan if it declared formal independence from Beijing. EU officials began to feel uneasy faced with such a move and European national parliaments in the Scandinavian countries, and also in Germany, became very vocal against such an action.

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announcement that the EU may lift the arms embargo on China. 'Human Rights: MEPs seeks tougher approach', *Europe Information New Neighbours*, 11 April 2005

[68] At that time it was believed that before lifting the arms embargo the EU would proceed with three political gestures: (i) a political statement that Europe doesn't desire to sell arms to China, (ii) a strengthened EU code of conduct that would continue to proscribe sales of lethal weapons, and (iii) strengthened export controls on such items as dual-use technologies.

The combination of external events and internal opposition within some member states, combined with the attempts of member states to reach consensus on the issue, led to the postponement of the lifting of the arms embargo, which allowed an important gesture by the EU: closely linking the lifting with improvement in human rights. After some internal squabbles, the EU reached a new level of unity on the human rights issue, which also earned it the praise of AI.[69]

In summary, although all member states involved in the debate framed their position in human rights terms, it emerges that their policy preferences on the arms embargo differed greatly. For Jennifer Erickson this shows that "member positions on the China issue in particular do not seem to emerge from socialisation into the EU's norms".[70]

All in all, the issue of the arms embargo shows that the economic interests of some member states and the divisions among member states on how to deal with human rights in China once again led to a compromise of a very low common denominator. This also implied the defusing of the sanctioning power of the arms embargo towards China. In several interviews it has emerged that the Chinese authorities are convinced that the EU maintains the embargo due to its inefficient decision-making procedures, rather than because of a real commitment to the human rights cause.[71] Similarly, arms exchanges continue despite the embargo.

[69] After more than a year of internal debate, the EU and its member states reached a common position on the lifting of the arms embargo towards China, which was linked to the Chinese compliance with four main requirements: (i) the need for Chinese authorities to release citizens imprisoned in connection with the suppression of the 1989 pro-democracy movement; (ii) the need to ease media censorship; (iii) the need for reform of China's "Re-education through Labour" (RTL) system; and (iv) the need for the PRC to ratify the International Covenant on Civil and Political Rights (ICCPR).
[70] Jennifer Erickson, 'Market Imperative Meets Normative Power', p. 34.
[71] Interviews 32 and 33.

3.5 Conclusions

This Chapter has shown that there has been a clear development in EU-China relations since the Maastricht Treaty. What throughout the 1980s was a mostly economic relation matured into acquiring new strategic and political dimensions, although the latter have remained rather underdeveloped. The embracing of such a broad approach was strongly supported by the efforts of Germany and France, and to a lesser extent of the UK. These efforts were also compounded by the activities of the Commission. This is reflected in the adoption of the strategy of constructive engagement proposed by the 1995 Commission Communication.

The analysis of the strategy of constructive engagement shows two major themes. First, the importance of the economic dimension in EU-China relations. Despite the 1995 Commission Communication attempting to create a broad framework for the institutionalisation of EU-China relations, academics agree that it was mostly focused on the rising economic concerns of some EU member states towards China. Second, the divisions of the member states. The Commission Communication represents a clear attempt to *Europeanise* the positions of those member states that had deeper relations with China.

The prevalence of economic interests and the member states' divisions were at the basis of the end of the sanctioning policy on human rights in two out of the three cases shown above. Due to their differing interests the member states split on the best way to promote human rights in China. On one side those member states privileging their strategic and economic interests argued on the basis of *effectiveness* and highlighted the improvements occurring on the ground. On the other side those member states with more radical positions and

normative interests highlighted little improvements in the country's human rights situation and the necessity to apply negative measures.

Germany, France and the UK were representative of the overall EU member states' approaches towards human rights in China. Germany mildly criticised China in public and privileged a positive approach combining dialogue and projects. France did little to maintain public pressure on China's human rights situation and preferred to delegate responsibilities to the EU, a position shared by other Mediterranean EU member states, such as Italy and Spain. The UK maintained a balanced critical public position on human rights in China, as testified by the support of the UNCHR resolution in 1997 and of the arms embargo, but it also proved ready to start practical activities, such as a human rights dialogue and specific human rights projects, a position shared by the Netherlands and the Nordic EU member states. These divergences show that little socialisation occurred around the issue of human rights promotion towards China, thus showing the pertinence of applying a liberal intergovernmental approach to the study of the topic.

However, the three cases show that despite different interests and policy preferences the EU managed to maintain a common position in all the three issues of the UNCHR resolution, the ECDHR and the arms embargo. Such positions though were of a very low common denominator and signalled the end of the sanctioning policy of the EU and its member states towards China within their strategy of constructive engagement. The latter was largely influenced by the interests and policy preferences of the main partners of China in the EU, most notably France and Germany. This supports the validity of the liberal intergovernmental approach. In turn it contrasts the expectations of sociological institutionalist and constructivist approaches, which would have predicted more

socialisation of the member states around the importance of promoting human rights in China.

Finally, the achievement of compromises of very low common denominators even suggests, without yet proving it, that the EU institutions may have contributed to the socialisation of negative norms, somehow making even the more critical member states accept the end of the sanctioning policy, as in the cases of the UNCHR resolution and of the ECDHR.

The end of the sanctioning policy is an aspect often overlooked by the literature on EU-China relations and the issue of human rights. However it is essential to consider it, because the analysis of consistency and coordination in the EU and its member states' promotion of human rights in China should be premised on such an aspect. For this reason the next two Chapters analyse the consistency and coordination of the economic engagement and development assistance devised by the EC and its member states to promote human rights in China. These were the main policies put in place to promote human rights in China within the EU's strategy of constructive engagement.

In order to analyse the consistency and coordination of these policies the next two Chapters will apply the framework elaborated in Chapter 2, whose explanatory power has been illustrated in this Chapter. It has shown the importance of Germany, France and the UK's strategic and economic interests in the development of the EU's strategy of constructive engagement towards China and the broad divisions of the member states on the best way to deal with human rights in China at CFSP level.

Chapter 4 – Consistency in the promotion of human rights

4.1 Introduction

The previous Chapter has shown that the EU's strategy of constructive engagement emerged in response to a growing interest in the economic potential of China. Such interest was particularly strong in some of the member states, namely Germany, France, Italy and the UK. These member states joined with the European Commission to impose a strategy of constructive engagement at EU level, somehow also negatively socialising those member states with a more critical stance towards China's human rights situation. This has been illustrated in two out of the three CFSP cases analysed in the previous Chapter.

The strategy that emerged was not limited to the economic field but it also had the ambitious goal of expanding relations in other strategic and security fields. However, since the European institutions were lacking the relevant competences and there was also a lack of will by the member states to cede them further powers in external relations, the full development of relations in these sectors was hindered.

The rising economic interest of some member states, the attempts to broaden the EU-China relations into new fields, and the divisions existing among the member states on the best way to deal with human rights in China sidelined criticism on the issue of human rights in most high level and public venues in EU-China relations. In fact high-level political meetings between the EU and Chinese representatives continued to focus on human rights but this mostly occurred behind closed doors in the ECDHR. This created a side venue, where

human rights could be comfortably discussed without risking spill-overs affecting the development of relations in other fields.

The sidelining of human rights from high-level political and public exchanges compelled the EU and the member states' officials to push for more practical actions on the ground. The rhetoric of the Commission's constructive engagement focused on the significance of its economic engagement and development assistance to support and contribute to the evolution of China towards a more free society. Similarly the member states' officials pointed at their bilateral development assistance to prove their commitment to promoting human rights in China in an effective way.

Chapters 4 and 5 intend to put such claims under analysis. The present Chapter tests the consistency of the EC's economic engagement and development policies with the objective of promoting human rights. Chapter 5 analyses the policies of China's three main partners in the EU in order to assess the coordination of their efforts and those of the EC to promote human rights in China through development assistance.

In line with the analytical approach developed in Chapter 2, the present and following Chapter distinguish between the two selected levels of governance in the EU's external relations: the EC and the member states. At each level great attention is paid to assess whether the policy output was mostly influenced by the specific interests and policy preferences of the three member states, as expected by the liberal intergovernmental perspective elaborated in Chapter 2, or alternatively by the EU institutions' identity and norms, as expected by sociological institutionalist and constructivist approaches.

4.2 Economic engagement for the promotion of human rights

EU-China relations have been mostly centred on the economic dimension. Throughout the thirty years of relations between the EU and China significant progress has occurred in the economic field, making the EU China's single largest trading partner, and China the EU's second largest. Further, the EU has become China's fourth biggest investor.[1]

Yet little attention has been paid to whether within the economic dimension political concerns linked with human rights and the rule of law were ever pursued. As argued in Chapter 1, the Chinese authorities are rhetorically more concerned with economic and social rights. These are also the fields where major concerns emerge in the Chinese civil society. Similarly, in Chapter 2, it has been shown that the EU often portrays itself as a promoter of second-generation human rights, i.e. social and economic rights. Therefore focusing on the economic relation allows analysing whether in this dimension the EC was able to deploy consistent and appropriate policies to promote human rights through economic engagement.

These are the issues that this section addresses against the backdrop of the evolving economic relations. In particular this section focuses on the concession of the GSP and the negotiations for China's accession to the WTO, which were the two main instruments and venues in which the EC had the power and competence to set in place meaningful policies to economically engage China and promote human rights consistently. Furthermore, since these competences are under the strong control of the member states, these cases also allow

[1] Robert Ash, 'Europe's commercial relations with China', in David Shambaugh et al., *China-Europe Relations. Perceptions, policies and prospects*, p.190.

considering the influence of the member states in the elaboration of the EC's policies.

4.2.1 The General System of Preferences

The earliest element of conditionality linking trade and human rights in EU-China relations can be traced back to the decision to include China within the GSP in the early 1980s. Although it has been clearly stated that up to 1989 little attention to the issues of human rights and rule of law was paid by the EU officials and member states in their relation with China, the GSP provides an instrument of conditionality: the so-called social clause, which can be used in case of blatant violations of workers' rights in order to suspend commercial preferences.

China greatly benefited from the GSP and by the mid-1990s China's share in the GSP reached 29%, which translated into 53.6% of the total EU imports from China covered by the GSP in 1995. Even more interesting is to point out that the GSP provided a significant instrument through which the EC could wield conditionality on the country, at least in some of the sectors it covered. Since the 1990s the GSP has gradually begun to include punitive measures and special incentive arrangements related to the observance and improvement of democracy, human rights and good governance conditions in selected countries. Similarly, technical assistance was offered to promote these principles.

However, in the 1980s, the clause was not used in the case of China, not even in the aftermath of the Tiananmen Massacre, when all political contacts were suspended. Subsequently, with the reinforcement of the conditionality applied to the GSP, the EP began to call upon the Commission to start enquiries into

forced labour and prison labour in China in accordance with Article 9 of the GSP regulations.[2]

A similar position was shared by the European Trade Union Confederation (ETUC), which became more and more vocal in the mid-1990s in its support of the GSP clause to promote respect for worker's rights in China. With the inclusion of further clauses, such as those on the suspension of preferences for goods produced with slave labour and the penalisation of those countries withholding the right to freedom of association, further requests were made. Yet they fell on deaf ears.

The Commission never embarked on any of the potential investigations that were requested by the EP and the ETUC nor proposed to the Council the suspension of special measures. This attitude is motivated by the fact that at Council level, most member states were against sanctioning China on the issue of human rights. This has been shown in Chapter 3 in relation to the three case studies analysed. The Commission reflected the positions of the member states which were against negative conditionality towards China.[3] The most influential among them were Germany, France and the UK, as shown in Chapter 3.

The extension of the GSP to China slowly began to fade only in the late 1990s. Yet this was not motivated by principled reasons but rather by the commercial interests of the member states that wanted to protect the European market from being flooded by Chinese goods. Paradoxically, one is forced to point out that there was only one instance of trade sanctions over human rights in the relations between China and the EU. This occurred when China imposed sanctions against Denmark – and to a lesser extent the Netherlands and Ireland –

[2] Elena Fierro, *The EU's Approach to Human Rights*, p. 191.
[3] The attitudes of the member states against economic sanctions towards China to promote human rights respect has emerged during interviews with member states' embassy officials. Interviews 8, 12, 16, 19 and 20.

after they tabled and sponsored the resolution against the PRC at the UNCHR meeting of 1997. An unusual case of trade sanctions in defence of human rights indeed. But certainly a proof of the symmetric conditionality between China and the EU, and of the latter's weakness due to its internal divisions.

4.2.2 EC-China negotiations for WTO

Another important venue worth considering in order to appreciate the EC's commitment to the promotion of human rights through economic engagement is the negotiations for China's WTO accession. The EC often portrays its negotiations with China as shaped by constructive engagement. However, as will appear from the discussion below, this was neither the case in the strictly-defined economic negotiations which will be analysed in this section nor in the efforts to put in place concrete policies for the promotion of the rule of law and human rights which will be analysed in the next section.[4]

At WTO level the EC's requests did not significantly differ from those of other Western countries. Similarly to those countries, the EU had two outstanding issues with China: the trade deficit and the desire to increase its direct investments in the country. In the 1990s the commercial relations between the EU and the PRC were strongly favourable to the latter. Ever since the early 1990s, Europe's commercial balance with China had entered into a deficit. In 1993, the European trade deficit was at EUR 8.76 billion. In 2001, the deficit had reached EUR 45.1 billion. Accordingly, the trade deficit was an important issue in the EC's negotiations with China for its accession to the WTO.

[4] The negative opinion on the EC constructive engagement of China in the strictly economic negotiations for accession into the WTO is generally shared by Chinese academics and officials. Interviews 28, 29, 31, and 33.

First of all, throughout the 1990s, China was the country most accused of dumping by the EC.[5] Secondly, the EC often complained about the unfairness of the trading relations with the PRC, as the three Commission Communications on China have subsequently pointed out. The following passage of the 1998 Communication is representative of the European objectives in trade with China:

> The EU's trade deficit with China reached 20 billion ECU in 1997, reflecting China's growing export capacity as well as the obstructive effect of market barriers in China itself. The EU should use all available channels, notably China's WTO accession process and the EU's bilateral trade negotiations, to iron out such barriers and help create an open Chinese economy that benefits European and global interests alike. Improving the climate for European investment in China should also be one of the EU's top objectives.[6]

As illustrated in the previous Chapter trade deficit levels were not worrying in most EU member states, but they were in France, Germany and Italy. Therefore it is not difficult to see the hands of these countries behind the EC's insistence on this policy issue.

The second major issue in the EC's negotiations for China's accession into the WTO was the growing interests of the member states to enter the Chinese market for its investment potential. This was particularly the case of Germany and France, as will also be illustrated in Chapter 5. While the EU appears to have contributed a relevant transfer of technology, the European FDIs trailed far behind those of the biggest investors in China, namely Hong Kong, Japan and the US.[7] It was only after the second half of the 1990s that the EU member states became more aware of the investment potential in China, whose foreign

[5] Xiang Liu and Hylke Vandenbussche, 'European Union Anti-Dumping Cases Against China', *Journal of World Trade*, Vol. 36, No. 6, 2002, p.1125.
[6] European Commission, *Building a Comprehensive Partnership with China*, p. 6.
[7] Bernadette Andreosso-O'Callaghan and Wei Qian, 'Technology Transfer: A Mode of Collaboration Between the European Union and China', *Europe-Asia Studies*, Vol. 51, No. 1, 1999, pp. 203-222.

investment regime was further opened with the sweeping changes following Deng Xiaoping's Tour of Southern China.

European companies began to appreciate the opportunities of the Chinese market and a new European policy towards FDIs was set down in the 1995 Commission Communication on China. This led to increased European investments, followed by an important shift in the type of investments, which moved from being markedly "resource seeking" to "market seeking". Yet, the EU continued to remain a minor investor in China. Today, for example, the EU is still only the fourth biggest investor in China.

On the basis of the bilateral economic structure and of the European economic concerns towards China it is possible to understand the European interest to see China join the WTO. Apart from meeting the key principles of the WTO, namely the transparency requirement, the national treatment and the most-favoured-nation treatment, the EC insisted that China:

- Offer real market access for industrial and agricultural goods by cutting tariffs significantly – including the removal of tariff "peaks" (duties of 15% and higher) and adherence to the Information Technology Agreement – and by removing all quotas, unjustified technical barriers to trade and other non-tariff measures.
- Rapidly remove the current monopolies on foreign trade so that all Chinese or foreign nationals in China can engage in import and export.
- Provide substantial opening of China's services market in distribution, telecoms, financial services, professional services, tourism, travel and medical services.
- Improve the conditions for foreign companies establishing in China. This includes removing all restrictions on the legal form of establishment (whether as a joint venture or a wholly-owned company), lifting geographic restrictions and those on the scope of permitted activity, and removing pre-establishment conditions. It also includes the removal of export performance requirements and export subsidies.

- Rapid implementation of the WTO TRIPS Agreement and full enforcement and protection of intellectual property rights.[8]

In light of the above *desiderata*, the Commission's rhetoric of a constructive engagement through economic engagement in WTO negotiations is easy to dismiss in the strictly economic negotiations. Besides, in support of this opinion, it is important to underline two other elements that the EC imposed on China for its accession to the WTO: the safeguards measures and the further requests advanced after the US's conclusion of negotiations with the PRC.

Due to its concerns with the trade deficit, the Commission was firm in introducing safeguards and antidumping measures. In the negotiations, the EC supported restrictions, which even went against WTO regulations, in order to preserve its internal market from Chinese competition. This was further compounded by the non-extension of the market-economy status, which enables the EC to maintain some protectionist measures, as is demonstrated by the numerous antidumping cases against China still occurring in recent years.

After China concluded the WTO deal with the United States the Commission embarked on very tough negotiations with China, which led to the obtainment of numerous concessions in the interest of the main EU partners with China. The EC's additional conditions related mainly to access in sectors of greater importance to European companies (mostly French, German and British), such as automobiles, telecommunications, retail chains and financial services.

The EC's requests for China's accession to the WTO and the further requirements imposed on China in its bilateral negotiations for entry into the WTO show that the EC's constructive engagement towards China's accession was only so on paper. Besides, and perhaps more importantly for this study, in

[8] European Commission, *Building a Comprehensive Partnership with China*, p. 15.

its strictly economic negotiations the EC never paid attention to the negative effects that the liberalisation of the Chinese market might have had on the socio-economic rights of its citizens. Finally, the EC's WTO negotiations strongly reflected the interests of those member states which had deeper economic relations with China, i.e. Germany, France and the UK. Where then were the alleged claims that through economic engagement and concrete policies the EC promoted the rule of law, good governance and human rights in China during its negotiations for China's entry into the WTO?

4.2.3 The EC's promotion of human rights through WTO?

It is certainly true that the WTO is not a venue to talk about human rights. When the EC and the US tried to include social clauses during the last WTO round they failed blatantly. In fact some analysts fear that the WTO prevents the punishment of human rights violations.[9] At the same time the importance of trade for emerging countries is undeniable. Therefore China's entry into the WTO could have been used to apply conditionality related to certain human rights standards, while at the same time pushing for the acceptance of practical activities to promote the administrative and economic reforms in the rule of law.

This requires analysing whether the EC put forward any discussion on human rights and the rule of law in the run up to China's entry into the WTO. The topic can be addressed along two lines: whether the Commission ever linked China's accession to WTO with concrete improvements of human rights and the rule of law, and whether specific concessions and projects were agreed on during the WTO negotiations.

[9] Carlos Manuel Vazquez, 'Trade Sanctions and Human Rights. Past, Present and Future', *Journal of International Economic Law*, Vol. 6, No. 4, 2003, pp. 797-839.

As far as the first line of inquiry is concerned, one is forced to admit that the WTO does not cover any issue of human rights and the rule of law, nor is there any mention of them in any of the 14 agreements that are necessary to join the Organization. Therefore it would have been rather difficult for the Commission to place any specific request before admitting China to the club.

There is yet another important issue that must not be overlooked and which pertains to the Commission's real competences. Unlike the US negotiators, European officials did not have a trade policy to refer to in order to link human rights with trade. As argued by Marina Eglin with reference to the EC negotiations for China's entry into the WTO,

> the fact that the European Union does not face the handicap of a unified supranational trade legislation has enabled its trade commissioner to concentrate on furthering commercial and business interests and on improving trade relations with China in a multilateral context without the baggage of human rights and anti-communist lobbies. Critical statements on China's human rights policy are issued by the Parliament but as a rule they do not figure in the Commission trade policy objectives.[10]

As far as the EC's request for specific improvements in human rights are concerned, since the preparatory works for the 1995 Commission Communication, the ETUC intensively lobbied Trade Commissioner Brittan for more references to the practices in labour camps and "special economic areas", which exploited prisoners and workers to produce cheap goods for the European market.

Similarly, the ETUC argued that China's entry into the WTO should be made conditional on respect for human rights. Specifically, it put forward that the EC should insist that China must comply with working standards as set by the International Labour Organisation (ILO). The ETUC pointed out the issues of

[10] Marina Eglin, 'China's Entry into the WTO with a little help from the EU', *International Affairs*, Vol. 73, No. 3, 1997, pp. 496-497.

fundamental workers' rights to freedom of association and the rights to organise and to bargain collectively, as they are subject to serious violations in China. Similarly it noted the substantial evidence of the existence of child and forced labour .[11]

Against such criticism and requests Trade Commissioner Leon Brittan acknowledged that human rights violations "continue to be a part of everyday life in China". However, in Brittan's opinion, these concerns should not get in the way of future cooperation because political reform would become increasingly irresistible as China's economy opens up to the rest of the world. Consequently, he maintained "what we can do is encourage economic liberalization".[12]

The rhetoric and actions of the then Trade Commissioner are important to underline in light of the EU's rhetorical commitment to promote second-generation rights. From the analysis, though, it appears that the Commission, on behalf of its main member states, never used the WTO negotiations to promote respect for such rights. This is also strikingly out of tune with the actual requests of the Chinese civil society as well as with the Chinese government's efforts to promote such rights, as shown in Chapter 1.

The only concession that the EC made to the requests coming from the EP, ETUC and European civil society was the elaboration and implementation of specific projects for the support of China's reforms in preparation for its entry into the WTO. In this sense the EC was quick to respond to China's request for support through projects on the ground.

The EC set up several projects in support of China's administrative and economic reforms, mostly in the sectors of public administration, intellectual

[11] Quoted in *Inter Press Service*, 10 October 1995.
[12] Quoted in *Far Eastern Economic Review*, 20 July 1995

property rights and commercial law. Although these initiatives represented a significant portion of the EC's development assistance to China, it appears that they were narrowly focused on technical aspects.[13]

Even the EC's delegation officials interviewed on this topic indirectly support this interpretation. When asked whether the EC intends to promote social and economic rights through its projects in support of China's accession to the WTO, they provided elusive answers, mostly focused on the improvement of administrative and economic laws.[14]

From the above analysis it emerges that the EC did not use its proposal power to apply GSP conditionality to promote human rights. Similarly, lacking competences to link human rights with trade negotiations, the EC's negotiators never had to confront China on these issues while negotiating China's entry into the WTO. If this was not enough, the so-called 'constructive engagement' through trade did not deserve its name. In fact the Commission bargained strongly to obtain several concessions from China, particularly in the interests of some member states, such as France, Germany and the UK. Finally, it only put forward very narrowly-focused and technical projects in support of administrative and economic reforms, which are hard to consider positive evidence for the improvement of human rights in the country.

Therefore it can be maintained that the EC was not able to formulate and implement economic policies consistent with the objective of promoting human rights and the rule of law in China. This was mostly due to the influence of the member states which had deeper and more significant economic relations with China, i.e. Germany, France and the UK. First these member states influenced

[13] This opinion is expressed by Richard Youngs in Richard Youngs, *The European Union and the Promotion of Democracy*.
[14] Interviews 1 and 3.

the EC to refrain from applying economic sanctions on China for its human rights abuses. Second they supported the EC in the negotiation of very harsh conditions for China's accession into the WTO. Third they restricted the EC's projects in support of China's economic reform to very narrowly-focused administrative and commercial issues in connection to WTO requests and without any reference to human rights. It is interesting to note that these projects reflected those carried out by the three member states in China, as will be shown in the next Chapter, thus further suggesting their influence on the EC.

4.3 The EC's promotion of human rights through development

In the mid-1990s Chinese authorities proved more willing to accept projects on the ground. These projects reflected the shift to constructive engagement adopted by most Western countries and international organisations in those years and together with the bilateral dialogues can be seen as the Chinese 'reward' for those countries' softer attitudes at UN level.[15]

The EC's efforts in China reflected the growing interests of the EU to collaborate with China in the field of human rights, good governance and the rule of law, following the inception of the strategy of constructive engagement. Starting from the mid-1990s, the Commission began to consider such types of projects with the Chinese authorities. As was stated during interviews, at that time Commissioners and other officials were eager to start such projects to counter-act the end of the sanctioning policy on human rights towards China.[16]

This section considers how the EC attempted to promote human rights through its development assistance. It also shows that the EC's development

[15] One of the most active organisations in the development of good governance, the rule of law and human rights projects in China at that time was the UNDP. The fact that it does not represent any specific countries' interests allowed the UNDP more freedom to operate in such sectors, as emerged during interview. Interview 25.
[16] Interview 5.

assistance evolved alongside the first Commission Communication on China in order to reflect the increasing desire of EC officials to promote human rights and the rule of law through projects on the ground. To what extent this evolution reflected a consistent commitment to promote human rights in the country is considered in the sections below.

4.3.1 The EC's development assistance in China

The EC's development assistance in China began in 1984 but it only took off in the wake of the 1985 Trade and Cooperation Agreement, when an increase in size and scope of development assistance can be discerned. Then, between 1991 and 1994, under the basic budget lines for development aid and economic cooperation in Asia, about ECU 20 million were set aside each year for China.

Mirroring the lack of any involvement and attention to the domestic situation of China which characterised the EC and the member states' approach to the country in the 1980s, during those years and up to 1995 the EC's development assistance to the PRC did not cover concerns for principles of democracy, human rights and good governance but was concentrated on infrastructure, agricultural and rural projects.[17]

Although the Asian and Latin America (ALA) Regulation, which governs development assistance activities of the EC with China, provided an extensive human rights clause incorporating to a large extent positive conditionality, it is interesting to note that from the beginning of the development activities in the country and up to 1994, the EC's development assistance to China was not significantly affected by events occurring in the PRC, including the Tiananmen

[17] The projects centred on the rural sector in its broadest sense, covering varied fields such as soil and water conservation, food processing and storage, as well as the improvement of crop yields. In parallel with the programme of technical and financial assistance a programme of economic cooperation developed in the 1980s.

Massacre. Apart from a brief suspension in the aftermath of the June 4th events, the previously agreed development assistance activities continued unhindered.

The EC's approach began to change with the 1995 Commission Communication, which reflected China's graduation from a traditional 'developing country' to an 'economy in transition'.[18] At the same time the EC's budgetary resources tripled reaching EUR 70 million per year up to 1999. Accordingly the Commission and China's Ministry of Technology and Commerce (now Ministry of Commerce – MOFCOM) took a strategic decision: to move away from individual infrastructure and rural development projects, to a broader range of projects aimed at supporting the overall reform process.

In particular, the 1995 Communication stated that development assistance should be aimed at underpinning the Chinese government's strategy to accelerate economic, social and administrative reform and China's integration into the world economy. From the mid-1990s China also became a beneficiary of a number of the EC's regional programmes, such as Asia Invest (China was the biggest recipient), Asia Urbs, Asia Pro ECO I, Asia IT&C, Asia Link, as well as EC thematic programmes, such as the European Initiative for Democracy and Human Rights. Yet, notwithstanding the web of different budget lines, Richard Youngs notes that "even if community aid to China increased significantly in the first half of the decade, it was by a lesser proportionate amount than development assistance to most other Asian states".[19]

Reflecting the institutionalisation of political and economic dialogues and the Commission's stated objectives of supporting China's reform as well as its integration into the international system, the subsequent Communications prescribed that EC-funded cooperation programmes needed to be even more

[18] Interview 1.
[19] Richard Youngs, *The European Union and the Promotion of Democracy*, p.167.

closely linked with the EU's broader China policy. The Communications called for the EC to seize the chance to underscore its policies with concrete assistance projects.[20]

Negotiations progressed slowly due to the reluctance of Chinese officials to open up new and, most importantly, sensitive sectors of collaboration. At the same time the negotiations closely followed the trajectory of the ECDHR, thus being suspended in 1996 and resumed the next year as a 'reward' for the EU member states' policy shift at the UNCHR.

Subsequently, the 2001 Communication suggested and defined concrete and practical short- and medium-term actions for the EC's policy to progress more effectively towards the long-term aims defined in 1998. It also prescribed making better use of the EC's cooperation programmes with China by reinforcing long-term programming, agreeing on a Country Strategy Paper (CSP) and focusing the EC's assistance activities in three main areas. These were (i) the promotion of sustainable development, (ii) the encouragement of good governance initiatives and the promotion of the rule of law, and (iii) support for economic and social reform.[21] In 2001 these three areas were incorporated in the CSP for China.

[20] Up to 1998 the EC had tended to concentrate on high-budget programmes spread over several years in order to maximise the impact of a limited cooperation budget. However the 1998 Communication proposed five important refinements: (i) facilitate rapid funding of small, short-term projects requested by Beijing; (ii) increase synergy between the EU's China policy objectives and cooperation programmes; (iii) improve synergy with EU member states; (iv) cooperate with the EIB to expand EIB activities in China within existing mandates; (v) strengthen regular dialogue with China on programming and project cycles.

[21] The budget for the EU-China cooperation programme 2001-2005 was around EUR 250 million (grant form). In 2000 the annual EU-China Joint Committee meeting agreed that cooperation priorities for the near future (2001-2003) would include assistance in support of WTO accession, the fight against illegal migration and trafficking in human beings, social security reform, the telecommunication/information society, environment, energy, and human resource development. It was also agreed that Western provinces should benefit more from EU assistance and that China should be more involved with future planning and programming (ownership).

In a recent review of the EC's China development cooperation it emerged that since 1998 the EC has allocated EUR 456 million, which were mostly distributed as follows: EUR 195 million to economic and social reform, EUR 138 to environment and EUR 70 million to human rights, the rule of law and good governance.[22] It is worth noting once again the limited value of the EC's co-operation budget, which represented only 1% of net ODA devoted to China. With regard to grant aid, the figure stood at 2% (see Table 4).

Table 4: The EC's ODA to China (1985-2008)

Years	*Total ODA*	*ODA share (DAC)*
1985	0.9	0.10%
1990	41.2	1.98%
1995	32.7	0.93%
2000	27.44	2.18%
2005	66.87	3.95%
2008	42.07	3.58%
Source: OECD, http://stats.oecd.org. Own calculations. US$ million.		

Similarly, in the case of the activities undertaken it is worth pointing to the fact that only one of the three objectives included human rights promotion. In addition, the sector of socio-economic development was merely concerned with support to administrative, financial and economic reforms, in particular with reference to China's entry into the WTO, as has been shown in the previous section. Thus little space was left to promote social and economic rights through this budget line. The next sections specifically analyse the main projects set in place for the promotion of the rule of law and human rights through the specific budget lines set out by the Commission.

[22] European Commission, *Evaluation of the European Commission's Cooperation and Partnership with the People's Republic of China, Country Level Evaluation*, 2nd Draft Final Synthesis Report, March 2007.

4.3.2 The EC's support of political reform in China

After long drawn-out discussions and negotiations, China agreed on cooperation programmes designed to strengthen the rule of law and promote civil, political, economic and social rights. Among these initiatives, two Programmes, the EU-China Legal and Judicial Cooperation Programme (LJC) and the EU-China Village Governance Training (VGT) Programme, became the largest foreign cooperation initiatives in China in the fields of social development and governance and they will be detailed in the next sections. At the same time the EC started the implementation of several EIDHR projects, which will be considered in this section.

These projects claimed to tackle human rights issues primarily by promoting the rule of law through the support of legal reforms and village governance, sectors where most foreign observers believed they saw inklings of democracy in China.[23] The engagement in the support of the rule of law was motivated by two factors. First the rule of law was a more neutral field than that of human rights, although a broader concept of the rule of law could clearly include a human rights dimension. Second, the Chinese authorities were certainly less sensitive to activities in this sector, as the implementation of the principles of the rule of law had become a priority of President Jiang Zemin since 1997.[24]

However, the rule of law is a highly contested concept, which even in the West can give rise to hot debates depending on the legal traditions of each country. In China the blurriness of the rule of law is further complicated by the

[23] The study of Suzanne Ogden comprehensively explores the democratic potentials behind the institutionalisation of procedural democracy through village and township elections. Suzanne Ogden, *Inklings of Democracy in China*, Cambridge, Massachusetts, Harvard University Asian Centre, Harvard University Press, 2002.

[24] After his rise to power, in 1997, during the XVI CCP Congress, Jiang endorsed the idea of "ruling the country in accordance with the law and establishing a socialist rule of law state", which was later enshrined in the Chinese constitution in 1999.

Chinese communist ideology, which has often referred to the Party's "rule by law".[25] The dichotomy between rule of law and rule by law dominated the Chinese debate as well as that among internal and external observers, without yet leading to a clear interpretation of the Chinese political reform since the 1990s.[26] The EC's activities in this sector faced a similar lack of clarity and consequently of purpose.

In the specific sector of human rights promotion, China had been a focus country for the EIDHR since its creation in 1994. Country-specific priorities included: (i) freedom of association, (ii) freedom of expression and independent media, (iii) strengthening of civil society organisations, and (iv) protection of ethnic minorities. The EIDHR funded micro as well as macro projects: the micro projects, whose value was within EUR 100 thousand were open to Chinese institutions and were awarded by the Commission's Delegation in Beijing; the macro projects were open to European NGOs, which were required to create consortia with Chinese local NGOs, and were generally awarded in Brussels.

Overall EIDHR macro projects were focused on the following issues: strengthening the defence for death penalty cases, making torture accountable, removing the death penalty, minority rights in Xinjiang and democratic processes and public participation. The EIDHR micro-projects instead focused on rights education and dissemination, research on international human rights

[25] See on this point Joseph Fewsmith's discussion of Mao's former secretary, Li Rui, and his approach to political reform in the wake of Jiang Zemin's adoption of the rule of law at the XVI CCP Congress. Joseph Fewsmith, *China Since Tiananmen: the Politics of Transition*, Cambridge, Cambridge University Press, 2001, pp. 127-128.

[26] Main contributions to this debate include Randall Peerenboom, *China's Long March Towards the Rule of Law*, Cambridge, Cambridge University Press, 2006 and the special issue of the Journal of Contemporary China, where various authors discussed Pan Wei's argument of a consultative rule of law regime in China. *Journal of Contemporary China*, Vol. 12, No. 34, 2003.

practice, training of police and various other initiatives in defence of minorities, women, children and workers' rights (see Table 5).

Once again, in the light of the discussion of the Chinese government rhetoric and practice of human rights in Chapter 1, it is important to note that none of these projects was centred on the promotion of social and economic rights. As it appears the EIDHR was only focused on the promotion of political and civil rights. This point is important to underline. On the one hand the insistence on these types of projects was negatively interpreted by the Chinese authorities, which would have been more prone to accept projects in favour of social and economic rights.[27] This point emerged during interviews with representatives of MOFCOM and of the Chinese Ministry of Finance. As the two Ministries are delegated to deal with foreign cooperation, this is an important point, which appears to have been overlooked by the EU officials. On the other hand, the EC seemed oblivious of the Chinese societal requests that were emerging in those years and that were mostly centred on the improvement of social and economic rights, as has been shown in Chapter 1.

In China EIDHR projects encountered several difficulties. First and foremost the Chinese authorities always made the projects subject to their approval, although this was openly infringing the principles of EIDHR. For example in 2004 no grant was allocated within that year's Call for Proposal for micro projects because of disagreement between the Chinese government and the Commission's Delegation in Beijing.[28] Second, the nature of NGOs in China, often better described as Government-Operated Non Governmental Organisations (GONGO), and the registration requirements imposed on them,

[27] Interviews 28 and 29.
[28] Interview 3.

complicated the selection of the most suitable NGOs in line with the EIDHR requirements for independence and non-commercial purpose.[29]

Table 5: The EC's projects in the rule of law and human rights in China

EUROPEAN COMMISSION PROJECTS IN RULE OF LAW AND HUMAN RIGHTS					
Year	**Project Title/Description**	**Amount grant/loan (in million euro)**	**MS Agency responsible**	**Chinese Agency/Partner**	**Category**
1999-2005	EU-China Legal and Judicial Co-operation Programme	13.20	EC Delegation	Ministry of Justice	Training and Exchange Programme
2001-2007	EU-China Intellectual Property Rights Co-operation Programme	5.60	EC Delegation	Chinese Patent Office, State Intellectual Property Office, Chinese Trademark Office and National Copyright Administration of China	Training and Exchange Programme
2001-2008	EU-China Village Governance Training Programme	10.67	EC Delegation	Ministry of Civil Affairs (MoCA); Ministry of Commerce	Training Programme
2002-2004	Human Rights Training of Police in Hunan	0.09	Danish Center for Human Rights		Training Programme
2003	Human Rights Law Training for University Teachers	0.07	EC Delegation	Human Rights Center China University of Political Science and Law	Training Programme
2003-2007	China Europe Public Administration Programme (CEPA)	5.70	EC Delegation	MOFCOM, China National School of Administration	Training and Exchange Programme
2002-2004	Cooperation in the field of economic, social and cultural rights (Macro-EIDHR)	0.70	EC Delegation	MOFCOM	Human Rights Promotion
2004-2005	EU-China Human Rights Network (Macro-EIDHR)	0.80	Irish Center for Human Rights	MOFCOM	Technical Assistance
2003-2006	Strengthening the defence of death penalty cases in the PRC (Macro-EIDHR)	0.50	Great Britain China Center	MOFCOM	Training Programme

Source: Overview of European Union Ongoing Projects in China, Various Years 1995-2008, EC Delegation in China, Own Calculations.

Against this backdrop and considering the limited amount of money available for EIDHR projects worldwide, the EC's officials often debated whether or not to continue with EIDHR funded projects in the PRC.[30] This debate was also compounded by the Chinese government not showing any sign of interest in continuing such activities, as indirectly pointed out in its 2003 *EU Policy Paper*. It appears that in the 2007-2013 EIDHR funding, no project will be financed in China.[31]

[29] Ibid.
[30] The debate has been underlined in various interviews with EC officials in Beijing. Interviews 1 and 2.
[31] European Commission, *China - Country Strategy Paper 2007-2013,* European Commission, 2006.

4.3.3 The Legal and Judicial Cooperation Programme

The EU-China Legal and Judicial Cooperation Programme originated from the 1995 Communication, which had as one of its objectives the contribution to the development in China of a civil society and institutions based on the rule of law. The Communication's section on human rights stressed the necessity to link the bilateral dialogue to practical actions, the importance of the EC's support to establish the rule of law in the country, and the necessity to coordinate member states' efforts in the field.

A 1995 EC internal identification report pointed to a historic moment for legislative reform in China, both in terms of quantity (number of reforms) and quality (depth of reforms), and a widespread interest among Chinese authorities to learn from the EU and its member states' experience.[32] It was also pointed out that the support and interest from Chinese authorities had a lot to do with China's intention to cooperate with the EC in an attempt to distance itself from the mounting American activism in such sectors in China.[33] The report thus suggested the strategic importance of setting up such a programme for the EC, also in consideration of the fact that no similar European programme existed at that time and the member states were running "uncoordinated and patchy" projects in the field of legal cooperation.

However, several years had to pass before the LJC Programme could materialise, due in particular to the 1995 set-back caused by the member states' insistence on tabling and supporting a resolution against China at the UNCHR,

[32] Claus-Dieter Ehlermann, 'Report on a Mission to China on Co-operation between the EU and China in the Legal Field', European University Institute, Florence and Centre for European Policy Studies, Brussels, 1995.
[33] Interview 5.

which had led to the suspension of the newly-started ECDHR. Only after the European policy shift at the UNCHR in 1997 did negotiations resume.[34]

In 1997 an EC formulation report justified the LJC Programme on the basis of three main reasons: (i) the reluctance by many Chinese government officials to accept the concept of the rule of law; (ii) the rapid proliferation of laws and regulations; and (iii) the problematic implementation and enforcement of laws and regulations.[35] The report suggested a five-year programme for the training of legal and judicial professionals in administrative, civil and commercial law as well as relevant areas of public and international law.

It is important at this point to stress the narrow technical and economic focus of the LJC Programme, the areas of civil and commercial law being so preponderant. Similarly the report did not make any reference to concerns for human rights, although this was justified by the alleged risk of incurring Chinese criticism. Apparently only after the first mid-term evaluation report of the LJC Programme were human rights concerns included into the training courses.[36]

Besides the thematic focus, it should be noted that no reference was made to institution-strengthening, arguably an essential objective for the overall improvement of the rule of law in the country. From an interview it emerged that institution building was deliberately avoided because "sometimes you should not strengthen institutions which are part of the problem".[37]

The LJC Programme's focus was on key officials, professionals and academics for their high potential to be promoters of change through their future

[34] The connection between the abandonment of the UNCHR resolution and the inception of these projects has been made by Michael Palmer. Interview 5.
[35] Bernard Dewit and Michael Palmer, 'Legal and Judicial Cooperation Between the European Union and the People's Republic of China', December 1997.
[36] Interview 5.
[37] Ibid.

actions. The insistence on training key figures contrasted with the selection procedure, which was closely monitored and influenced by the Chinese government, thus lowering expectations on reformist attitudes of these alleged 'promoters of change'.

When the LJC Programme eventually took off in 2000 it was structured along the following components: training components, which included the exchanges of lawyers (nine-month course in Europe), training for judges and prosecutors (three-month exposure to European practice in the legal process), the visitors' programme for key legal officials focusing on various themes (four-week study tour in Europe), and the Directors' facility, a small grant component (EUR 1.8 million) supporting a wide range of small but high impact co-operation activities in the legal field.

Notwithstanding the initial delays the LJC Programme ran for five years and was positively evaluated by its implementers, external reviewers and the Chinese authorities for its efficient management as well as for the impact it achieved.[38] For the first the LJC Programme's "impact has been especially, although not exclusively, among legal professionals and it has greatly encouraged Chinese legal professionals to look to Europe for models of best legal practice".[39] The stress on Europe is of some interest because it points to the fact that rather than international best practices, the LJC Programme focused on introducing European ones, as if it somehow tended to introduce a rule of law more familiar to Europeans.

[38] At the end of the Programme 75 lawyers were trained and 78 prosecutors were instructed in Europe. The term lawyers is to be interpreted in a broad sense, indicating not just private sector practitioners but also judges, prosecutors, legislators, notaries, legal academics and lawyers in government service. As for the prosecutors, the term refers to judges and procurators. These two categories of professionals had been bundled together with the intention of reaching cost-effectiveness but have in practice received different training based on their official duties.
[39] Interview 3.

In 2007 an evaluation of EC-China development cooperation initiatives carried out by external evaluators also referred to the LJC Programme as an "eye opener" for legal professionals, academics and senior governmental officials.[40] However, it was noted that the LJC Programme lacked any dissemination component, thus making it only relevant to the various participants. How the latter have then disseminated their new understanding of the rule of law remains to be researched.

Finally, a positive assessment was provided by Chinese authorities and participants, who reportedly expressed their appreciation in several official meetings.[41] Perhaps even more important was the request that the Chinese government put forward for the creation of a European Law School. This is certainly a sign of what some interviewees have interpreted as the Chinese desire to distance themselves from American cooperation in favour of European support.

The rosy picture painted by the EC's officials, external evaluators, LJC Programme beneficiaries and Chinese authorities, should not conceal perhaps the biggest flaw of the LJC Programme. Mirroring somehow the technical and economic approach of the Commission, the LJC Programme mostly stressed civil, commercial and administrative law, paying very little attention to issues of human rights such as the criminal code, due process of law, protection of minorities etc. Besides, the LJC Programme was limited to training of officials, professionals and academics.

Second, training in best practices belongs to a very soft attempt to influence the improvements of existing institutions or even their transformation. The lack

[40] European Commission, *Evaluation of the European Commission's Cooperation and Partnership with the People's Republic of China, Country Level Evaluation.*
[41] Interview 28.

of any practical research activity on new institutional reform plans was a major shortcoming. Besides, the fact that the best practices were European does not bode well for the support of the international human rights regime.

Third, training in itself does not automatically translate into sustainability, which is a key criterion for any good development cooperation project. This latter point was never mentioned in the formulation of the Programme and during interviews it emerged that it was never a concern for anyone involved in the Programme.[42] Finally, coordination with the member states was completely absent, as each member state continued with its legal and judicial cooperation projects without trying to coordinate or complement activities.[43] It is important to underline that this type of programme strongly resembled those of Germany, France and to a lesser extent the UK, as will be shown in the next Chapter.

It therefore appears that rather than being substantive, the LJC Programme resembled more a display window. On the one hand the EC's officials could show their concrete commitment to improving the course of Chinese reform. On the other hand Chinese officials could use such a Programme as a sign of good will in cooperating with the EC, while at the same time sending a strong signal to the US attempts, mostly through its foundations, to finance similar projects in China. While the actual impact of such a programme remains difficult to assess, the shortcomings highlighted point to a lack of strategic vision on the side of the EC to push the Chinese government towards more concrete and focused activities in support of human rights protection and promotion.

[42] Interview 5.
[43] The lack of coordination emerged during interviews with representatives of member states which had similar projects in China. Interviews 10, 11, 12, 15, 19, 20 and 21.

4.3.4 The Village Governance Training Programme

The fact that Chinese officials were interested in working in the rule of law sector without any spill-over into more politically sensitive areas such as human rights, was also reflected in the other EC's flagship initiative, the EU-China Village Governance Training Programme. Similarly to the LJC Programme, the VGT Programme was also internally approved in 1996 but took around five years to start up and this coincided with a visit of Commissioner Patten to China in 2001.

In China village elections restarted in 1987, allegedly in order to respond to the growing discontent arising in the countryside. There the introduction of the 'household responsibility scheme' had led to a deterioration of the overall welfare of farmers and villagers, corresponding to the shift in focus of reform from the countryside to the urban centres. For many foreign observers village elections appeared to be an important entry point for the democratisation of the country.[44]

The VGT Programme should be read in connection with the 1998 Commission Communication, which stated that "the EU should aim to strengthen those practices which make up the fabric of a strong civil society". The Communication went on to point out that the EU "should promote civil and political rights through initiatives such as support for a training centre in China for officials engaged in the implementation of the village governance law".[45]

According to an EU official, by its very nature the VGT Programme was politically sensitive since for the Chinese it implied having foreigners working

[44] Suzanne Ogden, *Inklings of Democracy*.
[45] The Project received a European Commission contribution equal to EUR 10.67 million. European Commission, *Building a Comprehensive Partnership with China*.

on one of China's most sensitive reforms.[46] Therefore, at the time of negotiations the Chinese side expressly requested the Programme to be focused on village elections training without any attempt to reach higher levels such as township elections. Similarly, the Chinese side did not see, nor wanted Europeans to see, the VGT Programme in connection with human rights.[47]

Chinese suspicions towards the VGT Programme were also strong within the Programme executing agency itself, the Chinese Ministry of Civil Affairs (MOCA), where differing opinions existed on the opportunity of receiving the support of the EC in the field. During an interview it was pointed that, in the end, it was financial necessity that won over the more reluctant among Chinese officials rather than any real conviction. MOCA was in dire need of funding to sustain and improve the electoral system.[48]

Another strong limitation of the VGT Programme was the Chinese unwillingness to make village elections accountable or at least open to the scrutiny of independent entities such as non-governmental organisations. An early reference to NGOs in a draft logical framework for the Programme was dropped during negotiations due to Chinese insistence that village elections were already submitted to the scrutiny of several organisations. Yet the latter's level of independence remained debatable.

The Programme formally took off only in 2001 but further delays in the implementation phase occurred due to misunderstandings on how to implement it. Once the VGT Programme took off the contents were disseminated and then

[46] Interview 4.
[47] This point emerged during interviews with both European officials and Chinese academics. Interview s 4 and 23.
[48] Although it seems secondary, the financial issue should not be underestimated, because trainings and materials are very costly and the government allocations to the MOCA for such activities are not very high when compared to their geographical scope. For example MOCA had made an appeal to receive international support for training activities since 1995 but before 2001 only UNDP had positively replied. However it should be noted that compared to the EU financial commitment the UNDP was much smaller, circa EUR 1.6 million. Interview 4.

several provinces applied. Eventually seven pilot provinces were identified and selected through open calls: Yunnan, Helongjiang, Gansu, Shandong, Liaoning, Henan, Jiangxi. At each pilot project collaborations were established with the local department of MOCA. Provincial trainers were educated in approaches, methodologies and contents.

In the opinion of the European official in charge of the Programme this was one of the best performing EC initiatives worldwide in terms of results and output: 11 books were published after being reviewed and revised by MOCA officials; 100 trainers at central and local level were trained in teaching and developing textbooks. Four study tours were also provided in Europe and one in India and Korea. Finally the Programme did not miss the dissemination component and was good at public communication, not least thanks to the support of the Chinese authorities, which proposed a follow-up.[49]

Overall, it appears that the VGT Programme achieved its stated goals and served to build an important base with all the material prepared, people trained and applied research carried out. Yet, it remains to be seen whether the impact of the Programme was only localised in the few pilot provinces or had a national impact. This is a problem also stressed in the recent report on the EC's development activities in China.[50]

4.4 Conclusion

This Chapter has analysed the consistency of the EC's economic engagement and development assistance policies towards China with its objective of promoting human rights in the country. What emerges from the Chapter is that the EC was not consistent in its policies because it imposed a harsh economic

[49] Interview 4.
[50] European Commission, *Evaluation of the European Commission's Cooperation and Partnership with the People's Republic of China, Country Level Evaluation.*

treatment on China without linking it with respect for human rights. Similarly, it did not put in place meaningful policies to concretely promote human rights and the rule of law. Third, the development projects that it implemented were strongly skewed towards the support of administrative and economic reforms in the rule of law. Finally, little attention was paid to human rights *tout court*, because most of the projects had a very technical nature and never crossed the strict limits imposed by the Chinese authorities.

The story that emerges is a story of missed opportunities. In trade the Commission never exerted any of the powers it was entrusted with by the treaties. In the case of GSP its sensitivity to the Council's 'mood' led it neither to start any investigations nor to propose any suspension in the face of grave violations. At the same time the Commission could carry on trade negotiations for China's entry into the WTO almost unencumbered by human rights issues because of its lack of competences and powers to link trade with human rights. Even more strikingly it never even used any such opportunities to push forward more concrete projects in support of reforms in the field of social and economic human rights, which would have been easier to implement due to the Chinese government's openness in this field and the support of the Chinese civil society.

It thus appears that in its economic engagement of China, the EC closely followed the interests and preferences of the three selected member states by avoiding sanctioning policies, pushing for harsh conditions on China's entry into the WTO, and putting in place projects of a very technical and administrative nature, in line with the economic priorities of the member states.

In the case of development assistance it has been shown that the EC's officials were eager to carry out projects in support of reform in China in order to compensate for the end of the sanctioning policy. However, despite having

carried out some of the largest programmes and projects in the country, the EC's activities all had a rather technical and economic character and little attention was paid to human rights promotion apart from the troubled experience of the EIDHR projects. Finally the EC never tried to set in place policies or projects for the promotion of social and economic rights in China, which would have found more support among Chinese authorities and civil society, as maintained in Chapter 1 and as emerged in interviews.

Accordingly it is possible to argue that even in the case of development policies the strategic and economic interests of the member states had a strong influence. Such policies were largely non-confrontational and they did not prioritise human rights promotion but rather the "domestication" of the Chinese administrative and judicial reforms, two features which also emerge in the member states' development policies analysed in the next Chapter.

To sum up, despite the expectations raised by the EU officials on the EC's ability to practice positive conditionality towards China through economic engagement and development assistance, it has emerged that these claims cannot be confirmed. This is mostly due to a lack of consistency, which derives from the narrow economic focus of the Commission, largely influenced by the member states' interests. This implied that the EC's activities mostly promoted the economic objectives of the most influential member states through its commercial negotiations and through its activities in development assistance.

This result is in line with the predictions of the framework developed in Chapter 2. Contrary to sociological institutionalist and constructivist expectations, even the so-called supranational level of the EC was strongly and negatively affected by the contrasting interests and policy preferences of the member states. In particular, the EC's activities reflected the narrowly-focused

and technical approaches of Germany and France, which will be shown in the next Chapter. This also suggests, without proving it, that the socialisation expected by sociological institutionalist and constructivist approaches may have been negative, because all the member states approved the EC's narrowly-focused and technical approach. To what extent the several, yet inconsistent, activities of the EC for the promotion of human rights in China were coordinated with those of the main partners of China in the EU is the topic of the next Chapter.

Chapter 5 – Coordination in the promotion of human rights

5.1 Introduction

This Chapter critically analyses the China policies of the three member states selected for the case studies, Germany, France and the United Kingdom, and their bilateral activities in the promotion of human rights in the PRC, especially from the mid-1990s. This Chapter aims at establishing the level of coordination between their development policies and those of the EC, which were analysed in the previous Chapter, in order to assess the extent to which the EC and its member states have tried to promote human rights in a coordinated way in China. This should assess whether the member states' development policies were influenced by the EU institutions, identity and norms, as expected by sociological institutionalist and constructivist approaches, or whether they remained a function of the member states' national interests and policy preferences.

It primarily emerges that each member state, despite differing historical relations with China, increasingly viewed the PRC as an important economic partner to strengthen its national economy. To this end each member state adopted *ad hoc* strategies to enter the Chinese market and exploit its investment potentials, often in competition not only with China's main international economic partners but also with other EU member states. Secondly, in line with each member state's identity and interests in world affairs, it emerges that Germany interpreted China's rise mostly in terms of economic opportunities, that France viewed China as a natural ally for the creation of a multipolar world,

and the UK appreciated the importance of partnering with the PRC over a broad range of international issues.

As far as each member state's approach to the promotion of human rights in China is concerned, the story that emerges points to a sidelining of concerns for human rights in the pursuit of strategic and economic interests. This tendency was exacerbated by their membership of the EU and it became even clearer with the inception of the EU strategy of constructive engagement in China in 1995.

In the case of Germany and France, the two main promoters of the EU strategy of constructive engagement, it is possible to note a clear delegation of responsibilities for the promotion of human rights in China to the EU level. Yet, while France delegated almost all responsibilities to promote political reform in China, Germany at least maintained practical activities in the support of the rule of law, although of a very narrow economic nature. In the case of Tony Blair's UK, his initial leaning towards an ethical foreign policy, which was soon put aside, only superficially emerged and his several failures in human rights promotion in the PRC were shielded from internal criticism through reference to membership of the EU.

These tendencies point to a limited coordination among the three main China partners in the EU with the EC's activities for the promotion of human rights. Considering that these countries' development assistance to China were the most conspicuous it suggests that the EU's overall policies for the promotion of human rights in China through development assistance may not have reached any significant weight. Finally, the lack of coordination also illustrates the little influence exerted by the EU institutions, identity and norms in the formulation of the three selected member states' national policies. On the contrary, the delegation of responsibilities to conduct normative policies from the member

states to the EC suggests that membership of the EU may even have had a negative influence, as it may have allowed member states to further dilute their commitments to norms promotion.

5.2 Germany – China relations and human rights

5.2.1 Evolution of Germany's relations with China

The main literature on Germany-China bilateral relations agrees on distinguishing a pre- and post- early 1990s period as these years represented a watershed from a traditional to a 'special relationship' between the two countries.[1] Naturally the Cold War calculations and Beijing's rather timid attempts at economic reform in the 1980s did play an important role in preventing the fully-fledged development of bilateral relations before the early 1990s. However, in the case of Germany, the division between East and West Germany forced the relations with Beijing towards an even more unstructured and *ad-hoc* path than it was the case with Beijing's relations with other EEC member states at that time. In particular, the Chinese attempts to undermine East-West *détente* complicated West Germany and China's strategic and political relations in the late 1970s and early 1980s.

With the softening of the Cold War confrontation and the reunification of East and West Germany, Germany's relations with China matured, in particular in the economic dimension. Germany asserted its primacy over other EU member states both in trade and direct investments in China. At the same time the late 1990s also represented a new era for an independent and mature foreign

[1] Karen Möller, 'Germany and China: A continental temptation', *The China Quarterly*, No. 147, 1996, pp. 706-725; Markus Taube, 'Economic relations between Germany and Mainland China 1979-2000', Duisburg Working Papers on East Asian Studies, No. 59, 2001; Joern-Carsten Gottwald, 'Germany's China Policy: Trade Promotion, Human Rights and European Disunity', in Mark Overhaus et al. (eds.) *German Chinese Relations: Trade Promotion Plus Something Else?*, German Foreign Policy in Dialogue, Vol. 6, No. 16, 2005, pp. 7-13.

policy for Germany, which maintained its preference to conduct foreign policy at EU level but combined it with bolder and more independent activities internationally. Strengthening political and economic relation with China became one of the main foreign policy objectives of such a strategy.

China's rise in West Germany's foreign policy thinking was formalised after its reunification with East Germany. In 1994 the landmark *Asien Konzept* was released and it became the reference for the subsequent German policy towards China. The document stressed the prominence of China for Germany's Asian policy in particular for its economic potential.[2] It acknowledged the healthy conditions of bilateral trade but at the same time it also recognised that Germany was still lagging behind other Chinese partners, including EU member states in terms of foreign direct investments.

This prompted Germany's more dynamic and consistent approach to business promotion in the country. This is illustrated by the high-level official visits paid by Chancellor Kohl and the return visits paid by Premier Li Peng and President Jiang Zemin in the mid-1990s, which were all accompanied by the signing of business deals. Such visits triggered competition among the EU member states, especially France and the UK, and their leaders began to conduct similar business trips to promote the entry of their national champions in the country as well as facilitate the business environment for their companies.

Despite the internal competition ignited by the renewed German dynamism, the *Asien Konzept* also constituted an important example for the EU, where the activism of Chancellor Kohl and French President Mitterrand, supported by the European Commission, promoted the elaboration of the 1994 Commission Communication *Towards a New Asia Policy* followed the next year by the first

[2] Government of the Federal Republic of Germany, '*Asien Konzept der Bundesregierung*', 1994.

Commission Communication on China: *A Long Term Policy for China- Europe Relations*.

Kohl's approach to China was upheld and strengthened by his successor Gerhard Schröder. Schröder made China a priority of his foreign policy, visiting it more than any other non-EU country. This was part of the Chancellor's willingness to leave Germany's Cold War secondary role behind and assert its influence worldwide.[3] During such visits Chancellor Kohl's practice of bringing with him large business delegations continued unabated and more business deals were signed each time. Joern-Carsten Gottwald even refers to the establishment of a "division of labour" between Chancellor Schröder as trade promoter and other members of the executive as occasional moral hawks.[4]

It is interesting to note that during its installation in 1998 the new German administration had affirmed that it would conduct an ethical foreign policy.[5] Yet, this concern was blatantly sidelined by Chancellor Schröder's realistic approach to China, which led to mixed results and strong criticism levelled against his soft stance towards moral and ethical issues in the PRC. According to Richard Youngs, "Schröder's policy towards China was the most heavily criticized area of policy after 2000".[6] Interestingly the harshest criticism came from his own coalition party, the Greens, and his Foreign Minister, Joschka Fischer, who had previously directed their criticism against Chancellor Kohl's

[3] According to Der Spiegel "when Schröder took office, Germany was ready to assert a new, post-reunification self-confidence. More than that, the country was also ready to leave its days of cowering in the corner of the international political stage behind." 'A Cheat Sheet to Schröder's Memoirs', *Der Spiegel* (English Version), October 25, 2006.
[4] Joern-Carsten Gottwald, 'Germany's China Policy', p. 7.
[5] Nicole Schulte-Kulkmann, 'The German-Chinese "Rule of Law" Dialogue: Substantial Interaction or Political Delusion', in Mark Overhaus et al. (eds.), *German -Chinese Relations: Trade Promotion Plus Something Else?*, German Foreign Policy in Dialogue, No. 16, 2005, pp. 30-37.
[6] Richard Youngs (ed.), *Survey of European Democracy Promotion Policies 2000-2006*, p. 124.

administration and promised to follow an ethical path in Germany's relation with China.[7]

The divisions and contrasts between the Chancellor and his Minister of Foreign Affairs, as well as between the Chancellor and his parliamentary majority, led to confrontations among executive members as well as open dissent in the Bundestag. For example, in 2003 and then again in 2004, the Bundestag conditioned the lifting of the arms embargo, staunchly promoted by Chancellor Schröder, to the improvements of human rights in China.[8] Yet, notwithstanding these tensions, the second *Asien Konzept* published in 2002 proved that the Chancellor's approach had got the upper hand and that his predecessor's strategy to put trade and investment first had been upheld.[9]

Indeed, the focus on the economic dimension did lead to the strengthening of economic relations between the two countries: after 2002, China became Germany's most important trading partner in Asia and its second largest partner outside Europe. In 2007 China was Germany's sixth largest foreign supplier and was particularly important in information and communication technologies as well as textiles. In turn, Germany became China's first export market in the EU as well as its second, and at times even the first, direct investor among the EU member states (see Tables 6 and 7).

[7] For example, during the first election campaign in 1997, Joschka Fischer, Schröder's Green Foreign Ministry, had stated that there would be "no further kowtow towards the Beijing dictatorship". Joern-Carsten Gottwald, 'Germany's China Policy', p. 8.
[8] 'German minister links lifting of China arms embargo to human rights', *BBC European Monitoring,* 10 December 2003. 'Ruling German coalition opposes lifting of EU's China arms embargo', *Agence France Press,* 28 October 2004.
[9] Government of the Federal Republic of Germany, *Asien Konzept der Bundesregierung*, 2002.

Table 6: Germany's trade with China (1995-2008)

Years	*Export to China*	*Export share EU-25*	*Import from China*	*Import share EU-25*	*Balance*
1995	5,756.00	39.16%	8,066.00	30.67%	-2,310.00
2001	12,118.00	39.60%	18,110.00	22.19%	-5,992.00
2005	21,210.00	40.95%	34,721.00	21.98%	-13,511.00
2008	29,874.00	41.78%	47,877.00	20.93%	-18,003.00

Sources: Eurostat, External and Intra-EU Trade 1958-2006, 2006 and Eurostat, External and Intra-EU Trade Monthly Statistics, Issue No. 4/2008. Own calculations. Million ECU/EUR.

Table 7: Germany's FDI to China (1985-2008)

Years	*Total FDI*	*FDI share (EU)*
1985	24.14	14.60%
1990	64.25	40.21%
1995	386.35	18.13%
2000	1,041.49	23.25%
2005	1,530.04	27.11%
2008*	3,032.10	25.02%

* For the year 2008 the data also include FDI in Hong Kong. Source: National Bureau of Statistics, various years. Own calculations. US$ million.

5.2.2 Germany's promotion of the rule of law in business

While bringing home the positive economic results of his personal friendship with Beijing's authorities, Schröder continued to maintain that democracy, human rights, the rule of law and the reform of the Chinese political system remained a priority for his government. This rhetoric was trumpeted in support of his government's initiatives in these sectors. In fact they lacked any concrete substance and were merely concentrated on the rule of law. This was compounded by a narrow and mostly administrative interpretation of China's governance reform. In a sense even these activities can be read through the prism of trade and investment promotion as they were aimed at 'exporting' practices to which German businesses were more familiar.

By far, the German government's most-preferred instrument for the promotion of human rights and the rule of law in China was development

assistance, in particular technical cooperation in the judicial and legal field.[10] German development assistance to China began in the 1980s and since then Germany has become the second largest donor to China after Japan.[11] In 2007 China was Germany's first recipient of Official Development Assistance (ODA) and it was classified as an "Anchor Country" by the Federal Ministry for Economic Cooperation and Development (BMZ).[12] This created internal tensions between the Development and Foreign Affairs ministries in Germany over who should have primary responsibility for development cooperation in China.[13]

Table 8: Germany's ODA to China (1985-2008)

Years	*Total ODA to China*	*China's ODA (DAC)*
1985	6.5	0.69%
1990	97.6	4.70%
1995	684.1	19.36%
2000	212.8	16.94%
2005	255.11	15.07%
2008	244.85	20.86%
Source: OECD, http://stats.oecd.org. Own calculations. US$ million.		

Given that this assistance was in no small part intended to ease the way for German commercial activities in China, the bulk of German development assistance was channelled through concessional loans, which were managed by the *Kreditanstalt für Wiederaufbau Entwicklungsbank* (KfW). By 2005 KfW had provided more than EUR 2 billion in concessional and market-condition loans to China.[14] The focus of this financial cooperation was mostly on the

[10] Interview 10.
[11] Kristof Rostoski, 'Development cooperation between Germany and China: does China still need development aid?', *Asia-Europe Journal*, No. 4, 2006, pp. 539-544.
[12] According to the 2004 BMZ Position Paper on Anchor Countries, these are countries that "have a key role to play with regard to reducing human poverty, working for globally sustainable development, securing peace and stability, as well as for issues relating to global governance and the protection of global public goods". BMZ, *Position Paper on Anchor Countries*, 2004, p. 3.
[13] Interview 8.
[14] Interview 9.

construction of infrastructures.[15] Yet, this form of development assistance was often criticised for its focus on business promotion be it in the form of market entry for German companies, in particular Small and Medium Enterprises (SME), or in the form of the introduction of new technologies, such as high-speed trains, nuclear power plants and the like.[16] In this regard it is interesting to note that Germany's concessional loans served to compete with other EU member states, especially France and the UK, to establish Germany's prominence in key strategic sectors such as transportation and energy production.

German development assistance to China also featured a significant grant contribution, which by 2005 had reached around EUR 600 million and was mostly managed by the *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ), Germany's semi-official agency for development cooperation. [17] Through grant contributions German development assistance mainly covered the sectors of sustainable economic development and environment where it provided support at policy level.

It is within the technical assistance offered through grants and managed by GTZ that Germany carried out several projects in the legal and judicial field.[18] Such projects were financed by the German Ministry of Justice but were managed by GTZ within the framework provided by BMZ. Such initiatives started as early as 1984 with a project on intellectual property law but they really took off only in the mid-1990s with a project in cooperation with the Chinese Ministry of Labour and Social Security on the establishment of a

[15] Ibid.
[16] According to Katrinka Barysh, "Germany's commercial success has been underpinned by large amounts of government aid and preferential loans". Katrinka Barish, *Embracing the Dragon. The EU's Partnership with China*, London, Centre for European Reform, 2005, p. 16.
[17] Interviews 8 and 11.
[18] Interview 11.

unified social security law, and two projects on commercial and administrative law.[19] Other initiatives such as training of judges and lawyers and support for civil, property and tort law formulation and enforcement also took off in the late 1990s and early 2000s with the coming to power of Chancellor Schröder (see Table 9).

Table 9: Germany's projects in the rule of law and human rights in China

GERMANY PROJECTS IN RULE OF LAW AND HUMAN RIGHTS					
Year	**Project Title/Description**	**Amount grant/loan (in million euro)**	**MS Agency responsible**	**Chinese Agency/Partner**	**Category**
1984	Advisory services for the improvement of the Intellectual Property Law	n.a.	German Patent Office	Chinese Patent Office	Advisory for Law Drafting
1994-2004	Advisory services for the drafting of new laws in the fields of labour and social security	5.5	GTZ	Ministry of Labour and Social Security	Advisory for Law Drafting
1997-2004	Training activities in commercial law	3.3	GTZ	Legal Department of MOFCOM	Training Programme
1997-2004	Advisory services for the drafting of economic laws to create a legal system based on market economics.	4	GTZ	Financial and Economic Committee of the NPC	Advisory for Law Drafting
2000-2006	Advisory services for the elaboration of new administrative and civil legislation	2.99	GTZ	Legislative Affairs Commission of the Standing Committee of the NPC	Advisory for Law Drafting
2004-2007	Advisory services	2	GTZ	Budget Commission of the Standing Committee of the NPC	Advisory for Law Drafting
1997-1999	Projects to foster rule of law, social, economic and cultural rights with particular focus on trade and labour issues	0.26	Friederick Ebert Foundation	Various organizations among which the All China Trade Union Federation	Advisory and Training Programme
1998-2000	Projects to foster rule of law, social, economic and cultural rights	2.1	Konrad Adenauer Foundation	Various organizations and universities	Advisory and Training Programme

Source: Overview of European Union Ongoing Projects in China, Various Years 1995-2008, EC Delegation in China, Own Calculations.

Most of these initiatives began under Chancellor Schröder's government. Nicole Schulte-Kulkmann notes that in those years "Schröder was eager to start such activities in response to criticism of his China policy".[20] Similarly, the Chinese authorities were interested in receiving foreign support in restructuring

[19] Interview 10.

[20] Nicole Schulte-Kulkmann, 'The German-Chinese "Rule of Law Dialogue": Substantial Interaction or Political Delusion', in Mark Overhaus, Hanns W. Maull and Sebastian Harnisch (eds.) *German-Chinese Relations: Trade Promotion Plus Something Else?*, German Foreign Policy in Dialogue, Vol. 6, No. 16, 2005, p. 31.

China's legal and judicial systems in order to align the country with international standards and in particular make it ready for accession to the WTO. Yet, the fact that these projects all merely concentrated on 'economic' or 'business' sectors cannot be overlooked. It was only with the second agreement on legal cooperation in 2000 that a human rights dimension was added.[21]

As far as coordination and complementarity with the EC's development projects are concerned, it should be noted that none of these projects were designed or implemented with the contribution of the EC authorities. Interestingly, when German officials were made to note that similar projects were also carried out by other EU donors as well as by the EC, they reaffirmed the importance of the German contribution and expertise.[22] Behind this rhetoric it is not difficult to suspect the attempt to 'domesticate' the business environment according to the practices most familiar to German companies.

In the case of Germany it is also important to make reference to the activities of its major political foundations (*Stiftungen*), which have a unique role in Germany's worldwide support and promotion of human rights and the rule of law. Generally German *Stiftungen* concentrate their work on non-governmental organisations in the sectors of social justice, decentralisation, social market economy, federalism and the rule of law. Besides, when they cooperate with state actors their projects focus on constitutional advice, support of legislature and judiciary as well as decentralisation. Finally all *Stiftungen* consider civic education a top priority for their democracy programmes. For this reason in the early 1990s with Germany's growing involvement in democracy promotion,

[21] Interview 10.
[22] Interview 8.

GTZ and *Stiftungen* agreed to share responsibilities, with political foundations being given the task of promoting civil society abroad.[23]

The biggest German foundations such as the Konrad Adenauer Stiftung (KAS) and Friederich Ebert Stiftung (FES) were all active in China (see Table 9).[24] While the two foundations do not directly work for any political party, KAS is inspired by Christian Democratic values and FES by Social Democratic values.[25] Both foundations were concerned with and active in the promotion of the rule of law as a substitute for the Chinese rule by law. Yet, their initiatives appeared timid at best and only involved seminars, exchanges and training.

It is interesting to point out that while KAS attempted to work in the human rights sector with its involvement in legal reforms, the efforts of FES, which is affiliated to Schröder's party, were almost negligible in this sector, apart from the conduct of a Human Rights Dialogue with China. Therefore it is possible to argue that the activities of German *Stiftungen* in China reflected not only the German overall policy towards human rights and the rule of law promotion in the country but also their political affiliations. In this sense it can be maintained that the financing of the activities of the *Stiftungen* served to delegate responsibilities from Schröder's government to official but non-governmental organisations to avoid the direct involvement of the German Ministry of Foreign Affairs in the human rights field.

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[23] Stefan Mair, 'Germany's Stiftungen and Democracy Assistance: Comparative Advantages, New Challenges', in Peter Burnell (ed), *Democracy Assistance. International Cooperation for Democratization*, London, Frank Cass, 2000, p. 146.

[24] The only exception is the Friederich Neumann Stiftung (FNS), which was expelled in 1996 after it organised the Second International Conference on Tibet in Bonn with the participation of the Dalai Lama.

[25] Stefan Friedrich and Carl Poljner, 'Beyond Official Diplomacy: the role of political foundations in German-Chinese relations. The Case of the Konrad Adenauer Foundation', in Mark Overhaus et al. (eds.), *German-Chinese Relations: Trade Promotion Plus Something Else?*, German Foreign Policy in Dialogue, Vol. 6 No. 16, 2005.

All in all it appears that Germany's strong emphasis on the economic dimension of its relations with China also shaped its promotion of human rights and the rule of law in the country. In particular Germany did not make any serious effort to tackle human rights issues on the ground thus limiting its activities to the promotion of an economic rule of law with mainly German characteristics. The inception of the EU's strategy of constructive engagement, strongly supported by Chancellor Kohl's government, allowed subsequent German governments to avoid confronting China on the issue of human rights, delegating such a responsibility to the EU level in order to pursue trade and investment interests unencumbered by human rights issues.

5.3 France – China relations and human rights

5.3.1 Evolution of France's relations with China

When it comes to France-China bilateral relations in an historical perspective the main literature on the topic agrees in defining it through the prism of Gaullism.[26] De Gaulle was the first European leader to acknowledge and somehow play the 'China card' in his quest for a foreign policy independent from the two superpowers when he recognised China in 1964. This fact was not missed by the Chinese authorities who welcomed France's overture and considered it a natural ally for China's anti-hegemonic fight against Washington and Moscow.

Yet De Gaulle's approach to China did not consistently re-emerge until the coming to power of Chirac in 1995. French Presidents conducted incoherent policies towards China. On one hand the *ad-hoc* and patchy relations, which

[26] François Mengin, 'La politique chinoise de la France: du mythe de la relation privilegiée au syndrome de la normalisation', *Critique Internationale*, No. 12, 2001; Jean Pierre Cabestan, 'Relations between France and China: Towards a Paris-Beijing Axis?', *China: an international journal*, Vol. 4, No. 2, 2006, pp. 327-340.

characterised the 1980s, translated in an underdeveloped economic interaction.[27] On the other hand President Mitterrand's France took the lead among European and Western countries in sanctioning China both at a material and, perhaps even more annoyingly for Beijing, at a symbolic level. Similarly in 1992 the sale of 60 Mirage 2000-5 fighter aircrafts and frigates to Taiwan plunged China-France relations to their *nadir*.

Eventually tensions were put aside in 1994, on the occasion of the commemoration of 30 years of diplomatic relations between the two countries, when France capitulated to Chinese pressures, committing itself to the 'one China policy' and the non-sale of weapons to Taiwan. In 1994 the then French Minister Gérard Longuet also launched a new French strategy called 'Ten Initiatives for Asia'. This was at the basis of France's Foreign Minister Hervé de la Charette's announcement that Asia would receive new attention as the "*nouvelle frontière*" of French foreign policy.[28]

The French move reflected the attempt to follow in the footsteps of Germany's activism in Asia and its increasing competition in trade and investments in China. While bilaterally competing for the Chinese market, Germany and France were on the same wavelength concerning the necessity to provide the EU with a strategic outlook for Asia. This became the hallmark of Chirac's era and the revival of De Gaulle's legacy in France-China relations.

President Chirac's willingness to tread De Gaulle's path towards China did not take long to mature and within two years what initially seemed a 'personal curiosity' towards the rise of Asia, and China in particular, was formalised into

[27] Markus Taube, 'Economic Relations Between the PRC and the States of Europe', *The China Quarterly*, Special Issue, Europe and China, 2002, p. 83.
[28] Nicola Casarini, 'The evolution of the EU-China Relationship: from Constructive Engagement to Strategic Partnership', Occasional Paper No. 64, European Union Institute for Security Studies, 2006, p. 10.

a ‘Comprehensive Partnership Agreement’ during his first visit to the country in May 1997.[29]

At that time France was the second country after Russia and the first Western one to sign such an agreement with China. The parallel with President De Gaulle’s overture to China was all too clear. The Partnership Agreement encapsulated principles and objectives that would characterise President Chirac’s entire era of France’s China policy: multipolarity and economic concerns.

The Agreement put forward the concepts of multipolarity and an independent foreign policy for peace, signalling to the US that the two partners would “oppose any attempt at domination in international affairs”. In order to prove its good will France expressed its support for China’s accession to the WTO while showing an accommodating approach to the issue of human rights. In particular it acknowledged historical, cultural, economic and philosophical differences both as reasons to promote “equality and mutual respect” in the discussion of human rights and as means to “enrich the common assets of mankind”.

Fashioning themselves as leading powers within their regional areas of influence, France and China proposed to work on strengthening Europe-Asia cooperation and at the same time to promote a constructive dialogue between China and the EU on human rights. The importance of this point is hard to overlook as just a couple of months earlier, France had led some of the EU member states to abandon the UNCHR resolution and it was ‘rewarded’ with the restart of the EU-China Dialogue on Human Rights, as shown in Chapter 3.

If these were the main lines of France and China’s bilateral relations against the global political framework, more mundane objectives were also agreed upon

[29] Joint Sino-French Declaration on the establishment of a comprehensive partnership, *Beijing Review*, May 16, 1997.

at the bilateral economic level, where the two countries congratulated each other on signing profitable agreements and deals between them for cooperation in nuclear energy, environmental protection and health, or the purchase of Airbus aircrafts and the entry of French insurance companies in China. The strengthening of trade relations was also envisaged and the removal of obstacles to their reciprocal markets was agreed on.

After the 1997 Agreement the relations between the two countries consistently improved although the French peculiarity of President and Prime Minister sometimes 'cohabiting' determined slowdowns and accelerations. Starting from President Chirac's re-election in 2002 and the instauration of a parliamentary majority for his Gaullist party, relations accelerated consistently. culminating in the signing of an upgraded Partnership Agreement in 2002, this time with the inclusion of a "Strategic" dimension.[30]

However, President Chirac's softer stance towards China does not seem to have brought the same fruits as that of Chancellor Schröder. Despite Chirac often being criticised for playing 'sales representative' in China, most authors and analysts agree on the fact that trade relations and investments are still disappointing.[31] The figures support such an assessment and show that France-China trade was a third of Germany-China trade in 2008. Besides, the composition of trade still reflected the French preference for the so-called *grands contrats*, best exemplified by the sale of Airbus aircrafts or nuclear power stations (see Table 10).[32]

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[30] Joint Sino-French Declaration on the establishment of a strategic partnership, *New China News Agency*, October 13, 2002.
[31] See among others Jean-Pierre Cabestan, 'Relations between France and China', pp. 327-340.
[32] It is interesting to note that even when France's exports to China increases this does not always translate in a real increase in trade but rather in the sale of big companies' products, most notably the sale of Airbus aircrafts. In some years, notably 1994, it has been recorded that Airbus sales could contribute up to one third of France's exports. Francois Mengin, 'La politique Chinoise de la France', p. 102.

Table 10: France's trade with China (1995-2008)

Years	*Export to China*	*Export share EU-25*	*Import from China*	*Import share EU-25*	*Balance*
1995	2,028.00	13.80%	3,094.00	11.76%	-1,066.00
2001	3,552.00	11.61%	8,343.00	10.22%	-4,791.00
2005	6,489.00	12.53%	14,464.00	9.15%	-7,975.00
2008	9,016.00	12.61%	17,985.00	7.86%	-8,969.00

Sources: Eurostat, External and Intra-EU Trade 1958-2006, 2006 and Eurostat, External and Intra-EU Trade Monthly Statistics, Issue No. 4/2008. Own calculations. Million ECU/EUR.

Table 11: France's FDI to China (1985-2008)

Years	*Total FDI*	*FDI share (EU)*
1985	32.54	19.68%
1990	21.06	13.18%
1995	287.02	13.47%
2000	853.16	19.05%
2005	615.06	10.09%
2008*	2,363.85	19.50%

* For the year 2008 the data also include FDI in Hong Kong. Source: National Bureau of Statistics, various years. Own calculations. US$ million.

Finally, notwithstanding President Chirac's practice of leading big delegations of entrepreneurs during his frequent visits to China, similar to Chancellor Schröder's habits, and the signing of profitable deals for France's major conglomerates such as Airbus, Alstom, or Parisbas, French direct investments in China lagged far behind those of other major investors and France was only the fourth investor among the EU member states in 2007. Interestingly, not even the WTO negotiations carried out by the Commission in key sectors for the French economy such as telecommunications, insurance, and market chains, helped change France's limited presence on the Chinese market (see Table 11).

5.3.2 France's promotion of human rights through culture

The inception of President Chirac's era of France's China policy and the growing interaction at political and economic level did not lead to a further engagement on human rights and rule of law issues. In fact France was the most

eager EU member state to abandon the practice of tabling a resolution against China at the UNCHR. Its defection in 1997 coincided with the beginning of the new 'Comprehensive Partnership Agreement', which, while paying lip-service to the cause of human rights, watered down any potential conflict making appeal to mutual respect, understanding and cultural, historical and political differences. Similarly, almost concomitantly with the stance at the UNCHR, France began to campaign for the lifting of the EU arms embargo on the PRC.

As argued by Richard Youngs, France is "one of the Western governments least enthused by the democracy promotion agenda". [33] Notwithstanding President Mitterrand's ostensible watershed La Baulle speech in 1990, where he stated that France's development aid would become conditional on democratic performance, France is described as "one of Europe's 'back-markers' on investing democracy policies with meaningful substance". [34] The coming to power of President Chirac, his centralisation of foreign policy prerogatives and his Gaullist interpretation of international relations, left little trace of any timid commitment to the democratic cause and human rights promotion.

This general trend is also reflected in France's China policy since 1989. The initial harsh response to the Tiananmen Massacre was slowly and steadily diluted by more realist foreign policy motives. Up until 1992 a shadow of an approach concerned with human rights lingered on. For example in 1991 a delegation of French judges was sent to China to assess the situation on the ground and their negative report triggered President Mitterrand's critical and confrontational approach to Beijing.

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[33] Richard Youngs, *Survey of European Democracy Promotion Policies 2000-2006*, p. 82.

[34] Ibid., p. 82. Mitterrand's intention to place democracy at the centre of France's development policy almost fell on deaf ears and it took ten years to formalise some timid commitments to democracy promotion in France's development policy with the publication of a strategy document titled 'For Democratic Governance'.

Yet, after the crisis over Taiwan, the *relâchement* of the pressure of public opinion and the pressure of French industry, a more appeasing policy can be discerned. This was also motivated by the successful example provided by Germany's soft stance towards China, which had been 'rewarded' with profitable deals, as in the case of the automobile sector. The culmination of such a process coincided with the inception of President Chirac's 'Comprehensive Partnership Agreement' with China, which was anticipated by the abandonment of the tabling of the UNCHR resolution against China's human rights record.

Interestingly though, the decision to abandon public shaming did not even translate into a behind-the-door approach to human rights and the rule of law, as France did not make any effort to establish a formal human rights dialogue. As indicated in the 'Comprehensive Partnership Agreement', France pointed to the EU as the most suitable level to discuss the human rights issue with China, thus delegating the responsibilities of a normative foreign policy to EU level while untying its hands from such a burden. The only appearance of human rights concerns is represented by the intermittent reference to some political refugees and the request for their liberation, which sometimes featured in President Chirac's statements during his visits in China. This was laconically dubbed "*la diplomatie des listes*".

The situation on the ground paralleled the diplomatic and political relations. Similarly to Germany's development assistance to China, France's aid was consistently concentrated on infrastructure projects, which represented the bulk of France's commitments to China (see Table 12).[35] Further, it is also to be noted that as was the case with Germany, France's development assistance provided concessional loans to projects that were financially viable, thus

[35] Interview 12.

contravening one of the main internationally-agreed requirements for the disbursement of ODA. Interestingly this was often discussed within the Development Aid Committee (DAC) of the OECD, where French projects in the railway sector in China were frequently scrutinised and criticised.[36]

Table 12: France's ODA to China (1985-2008)

Years	*Total ODA*	*ODA share (DAC)*
1985	6.3	0.67%
1990	88	4.24%
1995	91.2	2.58%
2000	45.99	3.66%
2005	153.56	9.07%
2008	142.8	12.17%
Source: OECD, http://stats.oecd.org. Own calculations. US$ million.		

Assistance in grant form also played an important role, in particular in the technical and cultural sectors. In the technical field the main cooperation sectors were: agronomy, industrial technology, energy (in particular the nuclear branch), and environment; in the cultural field the activities focused on architecture, urban planning, exchange and training of students, and cultural heritage preservation. Besides, French cultural diplomacy benefited greatly from the organisation of the Chinese Culture Year in France in 2003 and France Culture Year in China in 2004, during which numerous events were organised. It is probably through the prism of *culture* that it is also possible to interpret French efforts in the legal and judicial field, as it was pointed out both in interviews and in official publications, and as is testified by the conspicuous involvement of French academic institutions in the implementation of such initiatives.[37]

France began to support legal activities in China in the early 1980s through academic exchanges and the allocation of scholarships to Chinese students.

[36] Interview 24.
[37] Interviews 12 and 13.

These activities were interrupted in the aftermath of the Tiananmen Massacre and only resumed in 1993, gaining momentum in 1996. Since then activities have concentrated on five main sectors: (i) human resources development in public administration [38] , (ii) cooperation between French and Chinese universities, (iii) cooperation between French and Chinese judicial courts, (iv) cooperation between judicial professions and (v) judges programme (see Table 13).[39]

Differently from other donors' activities in the field of human rights and the rule of law, France's initiatives did not concentrate on either support for law drafting and enforcement, or protection of human rights and fundamental liberties through, for example, activities carried out by NGOs. [40] French activities fell within a mostly training- and academic exchange-focused approach. What is even more surprising is that they all had a French flavour attached, as if rather than the support of human rights and the rule of law and their best practices, it was the approach to French culture that really mattered. Interestingly, it emerged during interviews that while the French authorities stressed the comparative approach of their projects and tried to make Chinese beneficiaries familiar with the French legal system, Chinese officials were reportedly much more interested in learning about European law and often requested to include a period of internship at the EU institutions within the academic exchange programmes.[41]

[38] Given the relevance and significance of France's National School of Administration and Chinese keen interest for administrative reform, this was one of the most successful and sought for programme for Chinese authorities.
[39] In the field of legal cooperation, an ambitious programme was launched in 2003 and it aimed at training 50 judges and 50 prosecutors through a preliminary 8-month language training in China and a 6-month internship period in French courts or law firms. Interview 10.
[40] Interview 12.
[41] Ibid.

Table 13: France's projects in the rule of law and human rights in China

FRANCE PROJECTS IN RULE OF LAW AND HUMAN RIGHTS					
Year	**Project Title/Description**	**Amount grant/loan (in million euro)**	**MS Agency responsible**	**Chinese Agency/Partner**	**Category**
1994	Adaptation of Chinese law to the market economy	n.a.	Aix-Marseille University of Law, Economics and Science	China's People's University and Southwest University of Politics and Law.	Academic exchange
1997-ongoing	Law in Europe: comparative, commercial, criminal and human rights law	n.a.	Panthèon-Sorbonne University	People's University of Beijing	Academic exchange
1999-ongoing	Human resources development in public administration	n.a.	French National School of Administration	Ministry of Personnel	Training programme
1999-ongoing	Scholarship programme for PhD in public administration	n.a.	Various French Schools of Administration	Various Chinese Schools of Administration	Academic exchange
2001	Intellectual Property Rights	n.a.	French National Judges College	National Prosecutors College	Academic exchange
2003-ongoing	100 Judges and Prosecutors Training Programme	4	French National School for Judges	Chinese National Judges College and Chinese National Prosecutor College	Training programme

Source: Overview of European Union Ongoing Projects in China, Various Years 1995-2008, EC Delegation in China, Own Calculations.

The involvement of French academic institutions can be interpreted as an attempt to not only avoid the conduct of sensitive projects on the ground but also as an attempt to delegate the responsibilities for these projects away from Chirac's executive. A similar attitude is traceable towards the EC and its development activities. Rather than trying to reach better coordination and envisaging projects with broader breath including other EU countries for example in the training of judges and lawyers, French assistance was only limited to the reinforcement of institutional and academic exchanges between the two countries. At the same time, the lack of any projects on human rights raises the suspicion that this field was indirectly delegated to EC responsibility. Finally those projects that somehow escaped the cultural flavour were centred on a narrow economic and administrative interpretation of the rule of law, as in the case of Germany.

To sum up, President de Gaulle's legacy in France-China relations consistently emerged starting from Chirac's first presidential mandate. President

Chirac's realistic approach mirrored the French national identity and interests in two main ways: it tried to create a power balancing alliance with China to resist a unipolar world and it strived to enhance France's material capabilities through diplomatic initiatives to develop bilateral commercial relations and investments, often in competition with other EU member states. This diluted France's ability to promote human rights in China. On the ground France pursued a sort of *cultural* human rights policy, which reinforced contacts among French and Chinese legal and judicial institutions. At the same time, the EU's strategy of constructive engagement strongly promoted by French officials allowed a delegation of responsibilities to the EU to deal with any real divisive issue concerning human rights both in terms of dialogue and projects.

5.4 UK – China relations and human rights

5.4.1 Evolution of the UK's relations with China

When discussing the UK's relations with China, one is often forced to confront Peter Ferdinand's argument that "it would not be a major exaggeration to say that until 1 July 1997, British relations with China were always coloured by Hong Kong".[42] While it is difficult to counter such a statement for the UK's relations with China since the inception of China's 'open-door policy' in 1978, a more nuanced picture appears if the focus is shifted to the pre-1978 era. In fact, the Hong Kong issue did not merely provide headaches to British officials. It put the UK in a better position to exploit the Chinese market, initially during the Cold War period and then during the opening phase, through direct investments.

[42] Peter Ferdinand, 'UK Policy towards China', in Miguel Santos Neves and Brian Bridges (eds.), *Europe, China and the Two SARs*, p. 29.

The realism and pragmatism shown in handling Hong Kong during the Cold War was somehow reflected in the overall UK-China relation. Until the early 1980s, UK-China relations were characterised by a compromising approach and any ideational motive – be it in terms of Chinese *revanchism* over Hong Kong or British patronising attitude towards reform and human rights – was left aside. Throughout alternating periods of highs and lows due mostly to the Korean War, the Indochina confrontation and the Cultural Revolution, economic relations, particularly in the form of investments, progressed pushed by the lobbying of the British unofficial 48 Group. The latter was composed of businessmen that pooled their resources in order to press British authorities to support and protect their activities in the PRC.

The Hong Kong issue became highly politicised only at the end of the 1970s and it was then echoed in all the official exchanges between the two countries. A first step towards solving the conflictive charge of the Hong Kong issue was represented by the 1984 Joint Declaration, which was the product of attitudes of compromise from both parties.[43] The signing of the Joint Declaration was followed by the strengthening of economic relations.[44] Interestingly, this accommodating approach contrasted with the British uncompromising position over the Falklands islands with Argentina in the same years.

Two serious set-backs, inherently correlated, slowed down the flowering of UK-China relations in the late 1980s and early 1990s. First, the Tiananmen Massacre, to which the UK attributed a much more ominous relevance due to the shock of Hong Kong's population to the June 4 events. Second, the

[43] The Joint Declaration sanctioned the return of Hong Kong to mainland China in 1997 but at the same time it stated that for the next fifty years the city-island would maintain its "traditional way of life".

[44] Beijing 'rewarded' London with several profitable deals such as the purchase of ten British airliners. In addition, new agreements for economic cooperation were signed and the penetration of British investments in China was favoured.

promulgation of democratic reforms in Hong Kong under the new governor, Christopher Patten.[45] Relations between the two countries were only fully mended with the creation of a more compromise-prone Joint Liaison Group that ironed out the last tensions before the return of Hong Kong on 1 July 1997.

Interestingly, 1997 did not only witness the return of Hong Kong to Mainland China and thus the disappearance of the biggest obstacle in the UK-China relations. It also brought back to power the Labour Party under Prime Minister Tony Blair after the Conservative years of Margaret Thatcher and John Major. According to the precepts of the 'Third Way' inaugurated by Prime Minister Blair in 1997, the overall UK foreign policy would be characterised by a mixture of idealism and pragmatism, pursued through a combination of hard and soft power. The idealistic commitment was stressed by the then Secretary of State Robin Cook in his famous announcement of a foreign policy with an "ethical dimension" and "human rights at its heart".[46]

A similar approach was stated for the UK's relations with China. On 10 June 1997, Derek Fatchett, the then Minister of State at the Foreign Commonwealth Office (FCO), told the House of Commons that his government wanted "to open a new chapter of more constructive relations across the board, addressing both trade and more difficult issues such as human rights".[47]

However reality proved different. Prime Minister Blair's first visit to China in 1998 was aimed at opening a "new chapter" in Britain-China relations. Yet

[45] The Tiananmen events had changed the attitude of both sides towards the Hong Kong issue: on the one hand the Chinese authorities were alarmed over the danger of having a breeding centre for opposition in Hong Kong, as demonstrations there had amply shown; on the other hand, British rulers feared the fate of the island after 1997 and grew suspicious of Beijing's intention in the aftermath of the handover. During these years reciprocal distrusts thus led to open tensions and eventually to the promulgation in 1995 of democratic reform of the Legislative Council election system, which deeply irritated the Chinese authorities.
[46] The integral speech was reported in The Guardian, 12 May 1997.
[47] Quoted in House of Common, Select Committee on Foreign Affairs, *Tenth Report on the UK's relations with China*, London, HMSO, 1999.

the "new chapter" did not resonate any ethical concerns but rather economic ones. This is testified by the Sino-British Joint Declaration on a 'Comprehensive Partnership Agreement' which was signed by the two parties and that resembled President Chirac's Partnership Agreement signed a year earlier, although notably missing the multipolar dimension.[48]

Having failed one of the first tests for his ethical foreign policy, Blair's Government began to stress the 'constructive' side of Fatchett's earlier statement, interpreting more constructive relations with China as those that would firmly lock it into the international system. To this purpose, as mentioned in the Partnership Agreement, Blair's Government began to pursue the objectives of creating closer economic and trade relations with the country, establishing more frequent consultations over global issues, and engaging China on human rights through multilateral and bilateral channels as well as through projects.

At an international level Prime Minister Blair's dynamism could not miss the importance of China for the construction of a new international architecture. Since his early days in power he had stressed the importance of engaging China on a varied range of global issues among which environment and Africa became perhaps the most significant. For this reason, with the signing of the Sino-British Joint Declaration on a Strategic Partnership in May 2004, the two countries committed themselves to further high-level political dialogues and consultations on sustainable development, strategic security, development and non-proliferation.[49]

Along with ideational motives, the hard facts of trade and investment remained high on the British agenda. Despite the presence of Hong Kong and

[48] 'Sino-British Comprehensive Partnership Agreement', *Beijing Review*, October 6, 1998.
[49] 'Sino-British Strategic Partnership Agreement', *Beijing Review*, May 10, 2004.

Britain's strong mercantile tradition, trade had never been a defining feature of Britain's relations with China. Even the presence of such powerful institutions as the 48 Group and the Sino-British Trade Council, which later merged to form the China-Britain Trade Group (CBTG), did not significantly change the pattern of exchanges with China. For a long time the UK lagged behind European major trading partners with China such as Germany and France (see Table 14).

Table 14: UK's trade with China (1995-2008)

Years	*Export to China*	*Export share EU-25*	*Import from China*	*Import share EU-25*	*Balance*
1995	979.00	6.66%	4,551.00	17.30%	-3,572.00
2001	2,744.00	8.97%	15,530.00	19.03%	-12,786.00
2005	4,081.00	7.88%	24,667.00	15.61%	-20,586.00
2008	5,489.00	7.68%	33,201.00	14.52%	-27,712.00

Sources: Eurostat, External and Intra-EU Trade 1958-2006, 2006 and Eurostat, External and Intra-EU Trade Monthly Statistics, Issue No. 4/2008. Own calculations. Million ECU/EUR.

Table 15: UK's FDI to China (1985-2008)

Years	*Total FDI*	*FDI share (EU)*
1985	71.35	43.16%
1990	13.33	8.34%
1995	914.14	42.89%
2000	1,164.05	25.99%
2005	964.75	17.10%
2008*	4,639.95	38.28%

* For the year 2008 the data also include FDI in Hong Kong. Source: National Bureau of Statistics, various years. Own calculations. US$ million.

Although in 2008 the UK was China's second biggest European trading partner after Germany, this was mostly due to imports of Chinese products rather than exports of British goods. Where Britain yet surpassed China's other EU partners was in its direct investments in the PRC, in which it had occupied a leading position since the early 1960s, although it was eventually surpassed for some years by Germany in the 2000s (see Table 15).

5.4.2 The UK's promotion of human rights in China

It is fair to argue that until 1989 mention of human rights and the rule of law did not appear in the British policy towards China if one excludes reference to the issue of Hong Kong. In those years, though, it is hardly possible to consider the dialogue on the democratic form of Hong Kong as the meddling of an outside country into China's internal affairs. Yet, starting from the early 1990s, the UK's attitude changed and the rule of law and human rights made their appearance in the diplomatic exchanges between the two countries.

However, in the aftermath of the Tiananmen Massacre the outstanding issue of Hong Kong led to the UK endorsing a positive approach based on dialogue and cooperation rather than mere megaphone diplomacy. This position was reinforced by Lord Howe's visit to China in 1992 and the report which ensued pointed to the need to increase exchanges and programmes on the ground.[50] Therefore in 1993 the Foreign Commonwealth Office (FCO) could state, among its four objectives for British China's policy, "encouraging China to continue more open economic policies and through frank dialogue and increased exchanges to promote greater respect for universal human rights by the Chinese authorities".[51]

Yet, little of this rhetoric translated in concrete actions at the dialogue level. Apart from the support for the UNCHR resolution, until 1997 the political dialogue between Britain and China on human rights was only limited to the usual handing over of name lists of detainees. Similarly, only timid activities were embarked upon on the ground, mostly consisting of exchanges of lawyers and judges.

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[50] Lord Howe, *Report on China and Human Rights*, HMSO, December 1992.
[51] House of Commons Foreign Affairs Committee, *Report on Relations between the United Kingdom and China in the Period up to and beyond 1997*, London, HMSO, 1994.

The arrival of Prime Minister Blair with his ethical foreign policy infused some hope of a different handling of China. This perception among the media was reinforced by the Prime Minister's famous 1999 Chicago speech where he expounded his doctrine of the 'international community'. It pointed out that democracy promotion would be a legitimate objective to be supported also through military actions, since the spread and establishment of the values of liberty, the rule of law, human rights and an open society were presented as supporting the UK's national interests.

Yet, as it has been shown above, Prime Minister Blair's ethical foreign policy failed its baptism of fire with his first visit to China in 1998. Occurring in the gloomiest year of Chinese repression against political and religious dissidents after Tiananmen, Blair's visit to China did little to prove his commitment to human rights in the country. Rather, Blair's orientation followed his predecessor's footsteps, publicly confirming that he favoured dialogue over hectoring on human rights and reform, a line that he held despite domestic criticism.

On the ground, different from the other major EU member states, the UK's development assistance to China never featured high in the UK's priority list (see Table 16). The only time it did so was during the mid-1990s when China briefly became one of the top recipients of British aid.[52] Two thirds of these commitments were in the form of Aid and Trade Provision, mainly focused at supporting British companies' penetration into the Chinese market. However, with the coming to office of Prime Minister Blair, the Aid and Trade Provision was abolished.

[52] Peter Ferdinand, 'UK Policy Towards China', p. 50.

In order to compensate for the end of the Aid and Trade Provision, which eventually terminated in 2001, and to maintain what Blair had promised in the 1998 Joint Declaration[53], the newly-formed Department for International Development (DfID) began non-conditional technical assistance activities. According to the first DfID Country Strategy Paper (CSP) for China (1998-2001) activities were mostly centred on poverty reduction and sustainable growth programmes.[54]

Table 16: UK's ODA to China (1985-2008)

Years	*Total ODA*	*ODA share (DAC)*
1985	1.6	0.17%
1990	4.8	0.23%
1995	47.8	1.35%
2000	83.44	6.64%
2005	55.48	3.28%
2008	52.28	4.45%
Source: OECD, http://stats.oecd.org. Own calculations. US$ million.		

This implied a focus on human development (education and health), economic, social and administrative reform (with particular emphasis on SOE reform) and the environment. Such an approach was maintained until 2005 as testified by the subsequent CSP.[55] In 2007 the UK's development activities were significantly reduced, as part of DfID 'exit strategy' from China, and they

[53] The joint declaration had made clear that cooperation would be strengthened in "development and restructuring of State-owned enterprises; the provision of training and small business creation for unemployed workers; the provision of financial sector training, including in the field of regulation; poverty elimination and promotion of development of the interior provinces." Joint Declaration, 1998.

[54] According to the DfID China Country Strategy Paper for 1998-2001, since the early 1990s UK development assistance to China has averaged £35 million per annum. At that time technical assistance only accounted for £ 7-10 million of the total while the remaining part was composed of Aid and Trade Provision. In the peak year for ATP expenditure (1997-1998), China was the fifth largest recipient of British development assistance.

[55] According to the DfID China Country Strategy Paper for 2002-2005 the following amounts had been allocated: £38 million for 2002-03 and 2003-04 and £60 million for 2004-05. The Strategy proposed an even more specific focus on poverty reduction identifying the following three outcomes: people with productive and sustainable livelihoods, educated and literate people and healthy people.

were mostly centred on supporting the dialogue with the PRC on African development issues.[56]

As it appears from the above discussion, notwithstanding DfID's 2001 'conversion' to the good governance cause with the release of the White Paper on 'Promoting Effective Governments and Efficient Markets', this did not directly produce any changes in DfID projects in China.[57] The sensitive fields of promotion of human rights and the rule of law were left to other public organisations, namely the Great Britain-China Centre (GBCC) and the British Council (BC).

Differently from the German *Stiftungen* the GBCC and the BC are two public bodies. These organisations greatly benefited from the funding offered by the Foreign Commonwealth Office (FCO), which, starting from the mid-1990s provided financial means in grant form initially through the Human Rights Project Fund and more recently through its offspring the Global Opportunity Fund (GOF).[58] As in the case of Germany, the use of these public but non-governmental organisations appears instrumental in delegating responsibilities in the promotion of human rights away from the executive branch of government.[59]

China was not a priority country for FCO activities in democratisation and human rights promotion worldwide, yet its sheer size made it one of the biggest recipients.[60] The projects carried out in China through this funding were small in value (less than 150 thousand pounds) and for this reason were narrowly-

[56] Interview 15.
[57] During interviews it was argued that good governance and human rights are included in any DfID activity in the country. The only notable exception is the recent inception of DfID annual dialogues with China on Good Governance and Africa. Interview 15.
[58] Interview 16.
[59] Opinion shared by GBCC representatives. Interviews 17 and 18.
[60] Interview 14.

centred around five main priorities: (i) abolition of death penalty, (ii) combating torture, (iii) freedom of expression, (iv) the rule of law and (v) children's rights.

Another important channel of funding was the Department of Constitutional Affairs that set up a Young Lawyer Training scheme, which was managed by the British Council and a Judges Training Scheme, which was followed by the GBCC (see Table 17).

Table 17: UK's projects in the rule of law and human rights in China

UNITED KINGDOM PROJECTS IN RULE OF LAW AND HUMAN RIGHTS					
Year	Project Title/Description	Amount grant/loan (in million euro)	MS Agency responsible	Chinese Agency/Partner	Category
1993-ongoing	Training and Exchange Programme on Judicial Administration, Criminal Justice, Juvenile Justice (various activities)	n.a.	GBCC on behalf of FCO	Ministry of Justice	Training Programme
1998-2003	Judges Training Programme	0.7	GBCC on behalf of DfID	Intermediate, High and Supreme Courts	Training Programme
2002-2004	Criminal Justice Programme	n.a.	GBCC on behalf of DfID	Supreme People's Procurate	Training Programme
2001-ongoing	The Lord Chancellor's Training Scheme for Young Chinese Lawyers	n.a.	British Council on behalf of FCO	Ministry of Justice	Training Programme
2003-2005	Senior Police Training Programme	n.a.	British Council on behalf of FCO	Ministry of Public Security	Training Programme
2004-2006	Reform of re-eductation through labour	n.a.	British Council on behalf of FCO	Legislative Affairs Commission of NPC	Advisory for Law Drafting
2005-2007	Reform of death penalty reviewing procedure	n.a.	British Council on behalf of FCO	Legislative Affairs Commission of NPC	Training Programme
2005-2008	Enhancing Human Rights in Prisons through Training Prison Staff and Reforming Prison Management	n.a.	British Council on behalf of FCO	Ministry of Justice	Training Programme

Source: Overview of European Union Ongoing Projects in China, Various Years 1995-2008, EC Delegation in China, Own Calculations.

Although timid and limited in their efforts these projects showed a certain level of attention for human rights issues in China from the British side. However, it should be noted that they represented only a very small part of the UK's grant contribution to China, and the DfID's lack of any projects in the field of human rights is symptomatic of a certain negligence and delegation of responsibilities to non-governmental organisations. Similarly, the fact that the UK's bulk of ODA funds in China was channelled to other fields points to a

limited commitment, which also confirms the shift on the ground from the initial aspiration to an ethical foreign policy.

To sum up: the coming to power of Prime Minister Blair with his internationalist attitude and ethical foreign policy led the UK to engage China on a variety of international issues. Among these, human rights probably suffered the most as the UK was only able to articulate limited projects. In its policy the UK embraced the constructive engagement of the EU. Similarly, its membership of the EU led on the one hand to stronger competition for China's market with its EU economic competitors and on the other hand to a more pragmatic approach towards China's human rights situation, as testified by the UK's leadership of the European Council that ratified the abandoning of the UNCHR resolution in 1998 as shown in the previous Chapter.

5.5 Conclusion

The three sections above have critically analysed the China policies of the three member states selected. It has emerged that the three major member states, Germany, France and the United Kingdom, fiercely competed for the Chinese market. At the same time each of them engaged China in accordance to its own identity and interests in world affairs, with Germany privileging economic power, France multipolarity and the UK China's engagement in international issues.

Commercial and investment competition, together with the role that each member states attributed to China for its own foreign policy, determined a dilution of human rights concerns in the bilateral relations. These concerns were often masked behind very non-confrontational projects on the rule of law. It is interesting to note that very few efforts were spent by all the three member

states in the support of human rights. It is even more interesting to underline that when some projects were devised and implemented none of them was concentrated on socio-economic rights, but mostly on civil and political ones. At the same time membership of the EU created an important incentive for the member states to pursue their economic and strategic interests with China bilaterally, while delegating the divisive issues of human rights to the EU level.

Besides the delegation of responsibilities in human rights promotion from member states to the EU, all three member states have shown the tendency of the executives in power to delegate the carrying out of sensitive activities on the ground to non-governmental organisations, in particular political foundations, public bodies and academic institutions. Although this could be justified on the basis of the expertise and competence of such organisations, it is impossible to rule out that such a delegation hides the willingness of the executives to leave the conflictive issues of human rights promotion to non-governmental organisations, thus limiting their direct involvement to sheer financing.

All in all this Chapter has thus shown that the bilateral policies of the three selected member states for the promotion of human rights in China were mostly influenced by their specific identities, interests and policy preferences and only partly by their membership of the EU. The latter allowed these three member states to largely delegate the responsibility to promote human rights to the EC level. For the purposes of this work it is necessary to point out that the combination of differing national interests and delegation of responsibilities to the EC level did not enable any coordination with the policies put in place by the EC for the promotion of human rights in China. Rather, the EC's policies often replaced those of the three member states, leaving their hands free to pursue their national interests. In this perspective the EU's overall policies for

the promotion of human rights in China through development assistance did not achieve any significant weight.

The research findings support the predictions of the theoretical approach developed in Chapter 2, according to which the member states' interests and policy preferences are primarily formed within their national borders and little socialisation occurs through the EU level in the definition of their human rights policies. These findings are at odds with the expectations of sociological institutionalist and constructivist approaches, which would have predicted a convergence of such policies around the EU's identity and norms in human rights promotion.

In fact, it is interesting to note that it was rather the member states' approaches which were reflected in the EC's policies for the promotion of human rights in China. Similarly, the delegation of responsibilities suggests, without proving it, another potential finding that challenges sociological institutionalist and constructivist approaches: i.e. membership of the EU may have negatively socialised the three selected member countries into abandoning normative policies at bilateral level and delegating them to the EU.

Chapter 6 – Conclusion

6.1 Introduction

This thesis has aimed to contribute originally to the literature on the EU's normative policy, which has increasingly characterised studies of the EU's external relations since the early 1990s. It has done so through the analysis of the policies devised by the EU and its member states to promote human rights in China. In particular this thesis has investigated whether the EC and three selected member states, Germany, France and the UK, have been able to articulate consistent and coordinated economic and development policies to promote human rights in China within their strategy of constructive engagement. This has offered the possibility to assess to what extent the EU and its member states have been able to balance normative and material priorities in their external relations towards China.

In order to analyse the ability of the EU and its member states to balance normative and material priorities this thesis has relied on a liberal intergovernmental approach to explain the policy output within the various levels of governance considered in the EU's external relations with China. The suitability of this approach against the prevalent sociological institutionalist and constructivist approaches has been discussed in Chapter 2.

The analysis of the evolution of the EU's policies for the promotion of human rights worldwide has shown the need to frame the discussion in terms of the EU's system of multilevel governance in external relations. The theoretical discussion has shown the need to focus on the prominence of member states in the EU's promotion of human rights because they can heavily influence the EU's policies at CFSP and EC levels and still conduct significant bilateral

policies in this field. Similarly, the liberal intergovernmental approach has been shown suitable to make sense of the multilevel governance analytical approach, as it offers the possibility to explain the policy output at the various levels of governance in the EU's promotion of human rights.

Finally, the suitability of the liberal intergovernmental approach has also been illustrated in the broader study of EU-China relations. Chapter 3 has shown that the interests and policy preferences of the EU's three main partners with China strongly influenced the elaboration and implementation of the EU's policies towards the country. In particular Chapter 3 has shown that these member states had growing economic interests in China, but they were divided by their national economic objectives and did not share a common approach to human rights in the country. Besides, such approaches have been shown to be representative of the approaches of the other member states. The combination of the growing economic interests of the three selected member states and their divisions on the issue of human rights in China heavily influenced the EU's strategy of constructive engagement of China.

The combination of the insights of Chapters 2 and 3 has supported the elaboration of the specific hypothesis of this thesis: that *the EU's constructive engagement of China on human rights reflected the prevalence of strategic and economic interests over ideational ones in the attitudes of Germany, France and the UK towards China.* This thesis has thus clearly embraced a rationalist approach as it has analysed the relevance of material interests in the policies of the EU and its member states towards China.

In order to address the specific hypothesis this thesis has delimited the research to only two levels of governance in the EU's external relations, i.e. the EC and the member states, and it has singled out for analysis the most

appropriate policies, i.e. economic engagement and development assistance. The suitability of this focus has been supported by the analysis of the EU and its member states' strategy of constructive engagement of China carried out in Chapter 3. Similarly, this thesis has concentrated the analysis on the coordination of the development policies of the EC, Germany, France and the UK. The three member states are representative of the EU member states' approaches towards human rights in China as specified in Chapter 3.

Chapter 3 has shown that the EU's strategy of constructive engagement was mostly based on economic engagement, dialogue and development assistance. Chapter 3 has, in addition, shown that the strategy of constructive engagement privileged an approach that sidelined sanctioning policies. The abandonment of sanctioning policies, which were formulated at CFSP level, has shown the necessity to concentrate on the EC and the member states' levels of governance. Similarly, since two out of the three main policies of constructive engagement of China, i.e. economic engagement and development assistance, came under the EC's competence, a focus on these two has been shown to be appropriate. Chapter 3 has then shown that in the definition of the EU's constructive engagement, Germany, France and the UK were not only the most influential member states but they were also representative of the other EU member states' approaches towards human rights in China.

For these reasons in order to address the specific hypothesis, this thesis has considered whether the EC's economic engagement and development assistance policies towards China have been consistent with the objective of putting human rights at the cornerstone of relations with the country. Secondly, this thesis has asked what specific policies the EC and the three selected member states devised and applied for the promotion of human rights, thus showing the

institutional efforts at achieving coordination. These aspects have been summed up in two research questions, whose answers are discussed in the sections below.

6.2 Research question 1: EC consistency?

Did the EC elaborate and implement consistent economic and development policies to promote human rights in China?

Chapter 3 has shown that until 1989, and to a lesser extent also until 1995, member states' interests and policy preferences towards China differed greatly. In particular while Germany, France and the UK began to consider the economic and strategic possibilities that had been offered by China since the mid-1980s, and some other member states, Italy and the Netherlands, saw its rising importance for their commercial and investment interests, the majority of the other member states did not pay much attention to China until the middle and late 1990s.

However, the activism of Germany, France and to a lesser extent the UK, which received the support of the Commission, imposed their positions at EU level. The affirmation of these member states' positions on China at EU level implied a rise of the PRC in the strategic thinking of the EU as well as a growing attention to the economic menace and opportunity that China represented for the EU and its member states. These strategic and economic calculations led to the embracing of the strategy of constructive engagement, which has featured in the EU's policy towards China ever since.

With reference to human rights, the constructive engagement prescribed dealing with China in such a way as to open it to external influence, in particular through trade, and to engage it in multilateral fora in order to make it

a more responsible international player. At the same time a mix of critical discursive approaches, mostly private rather than public, and positive actions would complement the integration of the PRC in the international human rights regime.

However, the strategy of constructive engagement soon proved that sanctioning policies should be sidelined, if not eliminated *tout court*. This has been shown in Chapter 3 in the discussions of the member states' positions at the UNCHR, the evolution of the ECDHR and the case of the arms embargo. Therefore the strategy of constructive engagement of China on human rights greatly depended on positive policies implemented by the EC through economic engagement and development assistance.

Chapter 4 has analysed these two major policies elaborated and implemented at EC level. It has emerged that the EC's economic engagement and development assistance policies were broadly inconsistent with the objective of promoting human rights in China. The EC's economic engagement of China in the two case studies analysed, i.e. the GSP and the WTO negotiations, did not reflect the rhetoric of constructive engagement put forward by the Commission.

The latter did not use its proposal power to suspend GSP in order to take action against abuses of social and economic rights in China nor did it use the WTO negotiations to request China to improve some basic rights. In fact the Commission followed the strict mandate of the three member states and on their behalf negotiated commercial and investment concessions often detrimental for China. Moreover, the Commission did not make use of its power to negotiate development projects to assist China's reform of its human rights regime. The only projects that it put forward in connection with China's negotiations to enter the WTO all had a mainly administrative and economic focus.

A similar story emerges from the development programmes and projects that the EC pursued in China. The EC was certainly one of the biggest donors. It financed some of the largest programmes in the judicial field and in support of village elections. At the same time it also made China one of the main recipients of the EIDHR facility for the promotion of human rights through macro and micro projects.

However Chapter 4 has shown that all these activities did not have a strategic thrust but were mostly *ad hoc*. The lack of a strategic thrust found its *raison d'être* in the member states' interests and policy preferences towards China on human rights. The member states remained divided on the best way to promote human rights in the country and provided an ambiguous mandate to the Commission. The latter, in turn, did not have the power to bargain strongly with the Chinese authorities and its projects remained confined to the small technical areas opened by the Chinese government.

For these reasons the programmes and projects that emerged appeared heavily influenced by a narrowly-focused approach centred on technical and administrative issues. Little attention was paid to specific human rights projects and the bulk of funds went into highly visible activities but with an unclear *ad hoc* strategy. Even more importantly the EC did not manage to use the opportunities offered by the Chinese government to operate on social and economic rights nor to support the request of the Chinese civil society in these sectors. As mentioned in Chapter 1 more focus on these fields was also strongly recommended by international advocacy groups.

Overall it appears that at the EC level the policies elaborated and implemented by the Commission were heavily influenced by the economic interests of Germany, France and the UK and by the overall divisions of the

member states on the best way to handle human rights in China. This gave rise to inconsistent policies, which lacked an appropriate strategic outlook and were mostly *ad hoc*. Finally, such policies were strongly confined within the limits imposed by the Chinese authorities, which maintained a strong control over them and were often reluctant to collaborate on the civil and political issues raised by the EC.

These findings support the expectations of the liberal intergovernmental approach elaborated for the analysis. The EC's policies for the promotion of human rights in China were mostly influenced by the strategic and economic interests of the three selected member states, which had the most bargaining power and highest stakes on China. At the same time this contrasts the expectations of sociological institutionalist and constructivist approaches, because the EU institutions did not socialise the three member states into supporting EC policies in line with the identity and norms of the EU. In fact, the findings suggest, without yet proving it, that the influence of the interests of the three member states may have led the EU institutions to contribute to the socialisation of negative norms at EC level, since the policy output may not have reflected the normative interests of those member states more prone to concretely engage China on human rights.

6.3 Research question 2: EC and member states' coordination?

Did the EC and the three member states elaborate and implement coordinated development policies for the promotion of human rights in China?

Notwithstanding the mixed results of the EC's development cooperation initiatives in the human rights and rule of law sectors, Chapter 4 has shown that the EC emerged as one of the most significant donors to China in these fields.

However, little complementarity seemed to exist with the three member states selected for analysis. In this perspective the EC's activities may have resembled those of a sixteenth member state (now it would be a twenty-eighth member state) rather than being complementary to those of its member states.

On the one hand all the three member states had some exchanges of lawyers and judges, which they carried out without trying to find any synergies with the LJC Programme. On the other hand no member state was supportive of the VGT Programme through the funding of similar initiatives or attempts to build on it. So the two Programmes, although rather successful, seemed more a convenient justification for the selected member states to abandon the field of political aid.

Similarly little coordination existed. The necessity of coordinating activities and applying them in a consistent way is even more stringent in light of the oft-reiterated suggestions of international advocacy groups as well as scholars, which have often pointed at the necessity of pooling forces to reach results in China.[1] Yet, despite the numerous steps undertaken to make European aid more effective, such as meetings between representatives of member states and the EC delegation, exchange of information, joint studies, analyses and evaluations, and joint programmes, formal and substantive coordination was absent up until the elaboration of the CSP in 2000.

A new impetus for improving the level of coordination between the EC and its member states' activities in the country was brought about by the reform of the Commission in 2000 and the necessity to prepare a Country Strategy Paper

[1] Human Rights in China and the Open Society, *Promoting Human Rights in China*, Report of the China Human Rights Strategy Study Group, 2001.

for each developing country.[2] Yet, even the inception of the CSP, the more frequent development counsellors' meetings and their sharing information do not seem to have changed much in development cooperation activities, even less so in those connected to the rule of law and human rights. Similarly, up to 2006, the Commission Delegation in the country did not institutionalise any meetings in the rule of law and human rights fields.[3]

Lack of coordination and complementarity reinforces the idea that the EC played the role of a sixteenth member state. This was confirmed indirectly by an internal report. The document reports that coordination between EC and member states is strong in form but weak in substance:

> Donor coordination within the democratic governance sector is a challenge. There is no evidence that, apart from sharing information with the EU's member states, the EC has made efforts to take a lead role in political and policy dialogue processes on democratic governance (or HR and rule of law).[4]

The lack of coordination and complementarity supports the validity of the liberal intergovernmental expectations that in the formulation of their national policies for the promotion of human rights, the member states followed their own interests and policy preferences and they were not influenced by the EU's identity and norms. In addition, the delegation of responsibilities of the three member states to the EC level supports a further negative assessment of the interaction of the EC and member states' levels of governance on the issue of human rights promotion in China. This even suggests that membership of the

[2] By its nature the CSP had to include all the member states' activities and, taking stock of their involvement, elaborate the most suitable field of intervention for the EC. To this purpose the CSP also included a matrix for EU donor co-ordination and stressed the necessity for EC activities and MS to coordinate their activities. European Commission, China – Country Strategy Paper 2001-2005, European Commission, 2001.

[3] Only in 2007 following the input of a Dutch proposal was the first Coordination meeting of donors involved in the field of human rights and the rule of law set up.

[4] European Commission, *Evaluation of the European Commission's Cooperation and Partnership with the People's Republic of China*, p. 88.

EU may have contributed to the socialisation of negative norms in the form of delegation of responsibilities.

6.4 The nature of the EU's constructive engagement

Answering the two research questions above has allowed testing the specific hypothesis of this thesis, which in turn helps to clarify the actual nature of the EU and its member states' constructive engagement of China in terms of normative and material priorities.

From the above discussion it has emerged that the EC and its three member states elaborated and implemented inconsistent and uncoordinated policies for the promotion of human rights in China. It has been shown that this outcome was strongly influenced by Germany, France and the UK's economic interests towards China and their divisions on the best way to deal with human rights in the country.

This aspect supports the validity of the central hypothesis of this thesis. The EU and its member states' strategy of constructive engagement towards China on human rights was indeed highly influenced by the material priorities of the three selected member states. Therefore it is possible to argue that the actual nature of the EU and its member states' constructive engagement in China privileged material interests over ideational ones. This was also reflected by the little attention paid to socio-economic rights in China. Generally, the strategy of constructive engagement adopted in 1995 did not greatly differ from the engagement of China on human rights in the previous years.

Chapter 3 has shown that during the 1980s the approach of all the EU institutions, including the EP, was characterised by a negligent cooperation, which was supported and promoted by those member states that had growing

economic and strategic interests towards the country. The Tiananmen Massacre stirred the lukewarm attention of the EU and its member states towards the situation of human rights in China. However, the initial response was in mildly-worded rhetorical terms and did not include any concrete sanctions apart from the arms embargo. The divisions already existing at that time led to an overall soft EU response. Only some member states maintained a critical approach, in particular the Nordic countries.

It has been shown that after the beginning of the constructive engagement the EU member states achieved compromises of very low common denominators, which sidelined public criticism and sanctions against human rights abuses in China. Somehow the only significant exception in the strategy of constructive engagement was the arms embargo, whose impact was diluted by internal divisions. The only policies that emerged in connection with the strategy of constructive engagement at the EC and the member states' levels remained of a very soft type, thus showing little progress from the previous approach.

This highlights an important point that can be considered as a corollary to the demonstration of the central hypothesis of this thesis. The interaction at the EU level on the issue of human rights in China may have contributed to the socialisation of negative norms. This thesis suggests that even member states more prone to embark upon critical approaches may have accepted compromises of a very low common denominator, as it appears in the cases of the resolution at the UNCHR, of the ECDHR and of the EC's economic and development policies. Similarly, from the analysis of the three selected member states, it emerges that membership of the EU may have offered them the opportunity to delegate responsibilities for normative policies to the EU level.

Once the common positions had been embraced at CFSP, any critical independent stance by those member states more prone to impose sanctions on China may have been limited. Similarly the communitarisation of trade competences may have precluded any further sanctioning policy by those member states which would have been more critical towards China. At development assistance level the sharing of competences may have led to a delegation of responsibilities to the Commission, which in turn was unable to design substantive projects and did not attempt to reach coordination and complementarity with its member states.

The prevalence of strategic and economic concerns in the interests and policy preferences of the member states with the most bargaining power and highest stakes in China, compounded by the EU institutions' 'sensitivity' to their attitudes, led to the imposition of the strategy of constructive engagement of China on all the member states of the EU. Therefore this thesis suggests, without yet proving it, that the EU framework may have contributed to the socialisation of negative norms, because the strategic and economic interests of the most influential EU member states imposed an overall inconsistent and uncoordinated EU policy for the promotion of human rights in China. In this perspective it would be interesting to analyse to what extent the EU institutions played the role of a *negative normative trap* in the overall EU promotion of human rights in China.

6.5 Thesis contribution to EU-China studies on human rights

Chapter 1 has offered a simple tripartite categorisation of EU-China literature. This thesis has clearly embraced a member states-centred approach, although it has done so in a more theoretically and analytically-conscious way,

which has combined the notion of multilevel governance with liberal intergovernmentalism. Similarly, at an analytical level this approach has shown the validity of analysing the consistency and coordination of the positive policies of the EC and its member states for the promotion of human rights in China. This approach has been shown suitable to analyse and explain the EU strategy of constructive engagement on human rights in China.

Applying this framework to the EU and its member states' present promotion of human rights in China implies considering the existing divisions among the member states, the mostly economic and strategic interests of Germany, France and the UK towards China, and their interaction within the system of multilevel governance in the EU's external relations.

It can be maintained that in line with the 2006 Commission Communication on China, the EU still rhetorically considers human rights an important issue in its relation with China. However this does not seem to be warranted by the present possibilities at the disposal of the EU and its member states and their envisaged actions to promote human rights in the PRC in the near future.

On the one hand the accession of China into the WTO has eliminated any possibility to chastise its behaviour through economic means, although these have been seen to never have been seriously considered by the EU and its member states. At the same time the fact that the UNCHR was replaced by the Council on Human Rights has also eliminated another multilateral venue where the EU could exert some influence on China. The only sanction remaining is the arms embargo, whose lifting at the moment does not seem to be on the table due to new internal European resistance coming mostly from the new German Chancellor Angela Merkel and the French President Nicolas Sarkozy's ostensibly tougher stances on this issue.

On the other hand, the pretences of the previous strategy of constructive engagement seem to have been further sidelined, with only the ECDHR remaining. Interestingly, while Chinese authorities continue to request member states' bilateral dialogues to be eliminated, EU officials appear to have given even more importance to the ECDHR, which has already proven its inefficiency.

Strengthening the ECDHR and its relevant seminars are the only practical activities envisaged by the EU to promote human rights in China. Projects on the ground have not been envisaged either through the classic ALA budget lines or through the EIDHR in the CSP for 2007-2013. According to some EU officials though, the issues of human rights, good governance and the rule of law have not disappeared, they have been *included* in all the actions of the EC.[5] At the same time, even the three selected member states seem to have abandoned the field of political aid, which has been one of the first to be phased out in their strategies for development assistance exit from the PRC.

If since 1995 the pursuit of a constructive and effective engagement of China characterised the EU and its member states' approach towards the country, starting from the 2006 Communication such concepts have been replaced by the notion of partnership.[6] This prescribes that the EU, its member states and China cooperate on the basis of equality and mutuality. This is also reflected in the ongoing discussions and negotiations on a Partnership Cooperation Agreement, which should replace the 1985 Economic and Cooperation Agreement.

In light of the historical overview of the EU's promotion of human rights in China and of the present instruments at the disposal of the EU and its member

[5] Opinion expressed by an EU official during the presentation on EC human rights and the rule of law activities in China held in Brussels in May 2008.
[6] European Commission, *EU-China: Closer partners, growing responsibilities*, COM(2006) 631 final, 2006.

states to promote human rights in the country, it would appear logical to argue that better coordination should be established among member states in their bilateral policies, as well as in their positions in the definition of EU policies. This could also trigger a more consistent EU policy. Yet better coordination may seem highly idealistic, considering the internal divisions among member states and their divergences on the best ways to promote human rights.

Therefore it could be argued that European officials and policy makers should be ready to lower their expectations in their human rights promotion, and focus most on issues where a real internal consensus can be built, at least for the time being. Secondly, in relation to the previous point, European officials and policy makers should be aware that at the moment, the EU and its member states do not dispose of any meaningful instruments to promote human rights in China. Thus either new instruments must be devised or some of the old ones be revived.

The need for better coordination for a real consensus, for effective policy tools and for the pursuit of a concrete strategy leads to a modest proposal: the issues in which the EU and the member states could reach a higher level of consistency and coordination could concern those on which the CCP is more readily willing to accept EU support, and on which Chinese civil society is more focused.

Throughout the thesis it has been shown, although only secondarily, that the EU and its member states have been unable to apply appropriate human rights policies. This was mostly due to the fact that they focused on political and civil rights. In fact the Chinese authorities appear more inclined to promote and accept support for socio-economic rights. The CCP has made progress in these sectors, as is shown by the recent enactment of the 2007 Labour Contract Law

or by the present attempts to establish a more equal, just and harmonious society, respectful of people's social rights. Similarly, China has shown its willingness for collaboration in the field of socio-economic rights, as testified by its requests for EU support in its 2003 *China's EU White Paper*.[7]

At the same time Chinese civil society also appears more interested in the pursuit of socio-economic rights. Today the Chinese civil society strongly mobilises in cases of local corruption, environmental degradation, labour rights, and rights to health and education. Today, therefore, support for social and economic rights seems to offer the biggest manoeuvring room, as also maintained in Chapter 1.

Focusing on these issues may be the right strategy for Europeans in the short term, because coordination could be easier to achieve as furthering these rights will not imply any political or economic costs for the member states, due to the Chinese government's willingness to cooperate. Secondly, member states could find it easier to agree on these issues because there is a growing awareness in Europe of environmental and socio-economic issues in the context of globalisation. Contributing to the improvement of such rights could ease the living conditions of the Chinese population and diminish the competitiveness of China's products, often based on sheer exploitation of workers and the environment, and on the lack of concrete social provisions. Thirdly, as the economic dimension remains the most important in the EU's relations with China, useful and effective instruments exist in this domain to pursue such rights, as exemplified by the application of Corporate Social Responsibility on EU companies investing in the country.

[7] Chinese Ministry of Foreign Affairs, *China's EU White Paper*, 2003.

To conclude, in a paradoxical manner, the EU and its member states could reframe their policy for the promotion of human rights in China by trying to push and support the CCP to embrace more social-democratic policies. At the moment, the EU and its member states are instead only rhetorically, intermittently and incoherently criticising the CCP. At least in the short term, a realistic outlook on the actual abilities and interests of the EU and its member states in relation to the actual situation in China would suggest spending the bulk of European energies in improving Chinese social and economic rights, while continuing to address political and civil rights in China through the existing channels and instruments.

6.6 Future research on the EU's promotion of norms

This thesis has contributed to the literature on the EU's normative policies through the analysis of the EU and its member states' strategy of constructive engagement of China on human rights. Although this thesis only focuses on a single country, its relevance for the study of the EU's promotion of norms is justified by the fact that integrating China in the international human rights regime can be seen as essential to put to the test the EU and its member states' commitment to some of the better established and less controversial norms in international relations. In this perspective the fact that the EU and its member states were unable to elaborate consistent and coordinated policies for the promotion of human rights in China suggests that they have been unable to balance normative and material interests in their relations with the PRC.

This has broader implications for the EU's external relations because it suggests that the EU is able to exert its clout in international norms promotion only when the member states with the most bargaining power and highest stakes

in a specific foreign policy issue (in this case human rights promotion in China) privilege normative interests over material ones. This in turn opposes the claims of sociological institutionalist and constructivist approaches, for which specific EU institutions, identity and norms influence the conduct of the EU and its member states' external relations. Similarly, it suggests that the EU framework may contribute to the socialisation of negative norms as well as positive ones, depending on the orientations of the member states with the most bargaining power and highest stakes in a specific foreign policy issue.

The EU's promotion of norms and human rights has to clear numerous hurdles given the interaction between divided member states and the inefficient architecture of its decision-making system. In the case of China this was due to the economic and strategic interests of the most influential member states and their divisions in the articulation of policies within the various levels of governance in EU external relations. Therefore further research should be carried out on the conditions that could lead the EU and its member states to elaborate and implement consistent and coordinated normative policies vis-à-vis third countries.

As argued in section 6.4, the research results generated by the analysis of the specific case of the EU and its member states' promotion of human rights in China open new interesting avenues in this respect. In particular, it has been shown that the predictions of sociological institutionalist and constructivist approaches concerning the EU's promotion of norms cannot be confirmed in this specific case. Rather the opposite appears true. The interaction of member states' material interests and policy preferences within the complex architecture of the EU's external relations may lead to a dilution of normative concerns in the overall *European* approach.

Thus this work suggests that analysts avoid running too quickly to the conclusion that the EU is a civilian, normative or ethical power, without considering the member states' interests and policy preferences as well as their bilateral policies. Concentrating on the ability of the EU to promote human rights may seem wise against the concept of *longue durée*. However, even in the perspective of the long term it is necessary that little steps are made in the right direction in the present. Therefore this thesis has provided an original contribution to the analysis of the short-term capability of the EU and its member states to promote human rights in a specific and significant case.

Appendix 1 - List of interviews

Interview 1: Mr. José Bustamante, First Counsellor of the Co-Operation Section of the Delegation of the European Commission to China, Beijing, May 2006.

Interview 2: Ms. Ann Karen Friis, Third Secretary of the Political Affairs Section of the Delegation of the European Commission to China, Beijing, October 2007.

Interview 3: Ms. Maria Rosa Sabbatelli, Project Officer, Development and Cooperation Section of the Delegation of the European Commission to China, Beijing, April 2006.

Interview 4: Dr. Jürgen Ritter, Team Leader, EU-China Training Programme on Village Governance, Beijing, March 2007.

Interview 5: Prof. Michael Palmer, Head of Law Department, School of Oriental and African Studies, London University, Coordinator of EU-China Lawyer Exchange Programme, London, May 2007.

Interview 6: Mr. Toby King, Project Officer, European Commission, Human Rights Unit, Brussels, November 2008.

Interview 7: Geoffrey Harris, European Parliament, Human Rights Committee, Brussels, March 2009.

Interview 8: Mr Thomas Helfen, First Secretary, German Embassy in Beijing, Beijing, February 2007.

Interview 9: Mr Arne Gooss, Director of KFW Office in Beijing, Beijing, April 2007.

Interview 10: Prof. Dr. Heinrich Julius, German Director, German Development Cooperation, Legal Cooperation Service, GTZ, Beijing, March 2007.

Interview 11: Dr. Astrid Skala-Kuhmann, Country Director GTZ China, Beijing, March 2007.

Interview 12: Ms Cassandre Maury, Chargée de Mission, Cooperation Juridique et Administrative, French Embassy in Beijing, Beijing, February 2007.

Interview 13: Ms Agnes Biscaglia, Deputy Representative, Groupe *Agence Française de Développement*, March 2007.

Interview 14: Ms Lucy Hughes, British Embassy in Beijing, Beijing, June 2007.

Interview 15: Mr Adrian Davis, Director of DfID in China, Beijing, September 2007.

Interview 16: Mr Mike Liu, Project Manager Global Opportunity Fund, British Embassy in Beijing, Beijing, April 2007.

Interview 17: Mr Orlando Edwards, Senior Project Manager, Great Britain China Centre, London, May 2007.

Interview 18: Ms Nicola Macbean, Director of The Rights Practice, London, May 2007.

Interview 19: Ms Annika Siwertz, Head of Development Cooperation Section, Embassy of Sweden in Beijing, Beijing, March 2007.

Interview 20: Mr Job Van Den Berg, First Secretary, Embassy of the Kingdom of the Netherlands, April 2007.

Interview 21: Ms Hattla Telle, Director of the Danish Centre for International Studies and Human Rights, written answers, April 2007.

Interview 22: Ms Tiziana Tota, China Project Coordinator, The Danish Centre for International Studies and Human Rights, Beijing, February 2007.

Interview 23: Mr Liu Huawen, Institute of Law Chinese Academy of Social Sciences, Beijing, March 2007.

Interview 24: Mr. Giorgio Sparaci, Director of the Italian Development Cooperation Office in Beijing, Italian Embassy, Beijing, November 2007.

Interview 25: Ms Alessandra Tissot, Senior Deputy Resident Representative, United Nations Development Programme, Beijing, July 2007.

Interview 26: Ms Bai Guimei, Professor of Human Rights, Peking University, June 2007.

Interview 27: Mr Gong Renren, Professor of Human Rights, Peking University, June 2007.

Interview 28: Ms Chen Ruhua, Deputy Division Director Department of International Trade and Economic Affairs, Ministry of Commerce of the People's Republic of China, May 2007.

Interview 29: Mr Sun Jianyuan, Desk Officer, Soft Loan Division 2, Ministry of Finance of the People's Republic of China, May 2007.

Interview 30: Ms Luo Hongbo, Professor Deputy Director, Institute of European Studies, Chinese Academy of Social Sciences, Beijing, February 2007.

Interview 31: Prof. Song Xinning, Director, National Research Centre for European Studies at Renmin University of China, June 2007.

Interview 32: Prof. Zhu Liqun, Director of Institute of International Relations of the China Foreign Affairs University, Beijing, April 2007.

Interview 33: Prof. Dai Bingran, Jean Monnet Chair, Centre for European Studies Fudan University, Beijing, April 2007.

Interview 34: Prof. Zhu Guichang, Assistant Director, Centre for European Studies, Shandong University, October 2007.

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