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China's Reforms Fortieth Anniversary and EU-China Relations*

Dr Matthieu Burnay

Summary

This paper aims to situate the evolution of the EU-China Strategic Partnership in the context of China's reforms and identify how recent changes in the nature of China's reforms can affect the future of the EU-China Strategic Partnership. It argues that the EU-China Strategic Partnership constitutes a testimony of the scope and limitations of both China's reforms process and the role of the EU as a global market and normative power. The paper highlights the importance of economic relations in the context of the EU-China Strategic Partnership confirming both the centrality of the economic aspects of China's reforms as well as the relevance of the EU as a market power. It also draws attention to the difficulty for the EU to emerge as a normative power in the context of the EU-China Strategic Partnership. In fact, the relationship with China has tested the normative claim that the EU could strategically prioritise and promote Article 21 TEU values in a coherent way despite the strong limitations of China's political reforms. Finally, the paper argues that the uncertain future of China's reforms will require the EU and China to reinvent their relationship in order to solve the rising number of contradictions that characterise the EU-China Strategic Partnership.

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Introduction

In 2018, the Chinese Communist Party (CCP) celebrates the 40th anniversary of the Third Plenary Session of the 11th Central Committee decision to transform China's economy in a way that would 'meet the needs of modernization'.² This decision to open up to the world initiated a learning and adapting process that has dramatically transformed the country and allowed for the (re-)emergence of China as a central political and economic force in contemporary global governance. Internally, China's reforms have been successful to maintain an average annual economic growth close to nine percent that has permanently transformed the national economic and social structure. This success is the fruit of a complex mix of political, economic, and social policies made of centralisation and decentralisation, regulation and de-regulation, as well as interventionism and liberalisation. Externally, China's reforms have enabled the country to become a central stakeholder in most institutions of global governance as best exemplified by China's accession to the WTO in 2001, which was the fruit of fifteen years of arduous negotiations.

Even without taking a position on the existence of a 'China Model' or the emergence of a 'Beijing Consensus',³ the analysis of China's reforms cannot escape a reference to the notion of 'Chinese characteristics' that highlights all these aspects of China's reforms that do challenge Western political

¹ See at https://issuu.com/collegeofeurope/docs/eu-china_observer218

² Communiqué of the Third Plenary Session Of the 11th Central Committee of The Communist Party of China, adopted on 22 December 1978, available at http://www.bjreview.com.cn/special/30yearsofreform/2008-11/29/content_167170_2.htm (accessed: 23 June 2018).

³ See generally W. Chen, *The Beijing Consensus? How China Has Changed Western Ideas of Law and Economic Development*, Cambridge University Press, 2017.

and economic theories.⁴ One could point to, for instance, the unchallenged control of State Owned Enterprises (SOEs) over the strategic sectors of the economy in the ‘Chinese corporate capitalism’⁵ or the ‘resilient capacity and adaptability’⁶ the CCP has demonstrated throughout the process of *limited* political reforms. China’s reforms have nevertheless also been deeply shaped by China’s gradual inclusion in the dynamics of globalisation as well as its growing interdependence with the main stakeholders in global governance, including the European Union (EU). Interestingly, China’s reforms have been taking place in a timeframe that has also been marked by both the deepening and widening of the European integration process.

It is against this background that this paper aims to situate the evolution of the EU-China Strategic Partnership in the context of China’s reforms and identify how recent changes in the nature of China’s reforms can affect the future of the EU-China Strategic Partnership. It will be argued that the EU-China Strategic Partnership constitutes a testimony of the scope and limitations of both China’s reforms process and the role of the EU as a global market and normative power. In a first part, this paper will highlight the importance of economic relations in the context of the EU-China Strategic Partnership confirming both the centrality of the economic aspects of China’s reforms as well as the relevance of the EU as a ‘market power’. In a second part, this paper will highlight the difficulty for the EU to emerge as a ‘normative power’ in the context of the EU-China Strategic Partnership. In fact, the relationship with China has tested the normative claim that the EU could strategically prioritise and promote Article 21 TEU values in a coherent way despite the strong limitations of China’s political reforms. In a third part, this paper will argue that the uncertain future of China’s reforms will require the EU and China to reinvent their relationship in order to solve the rising number of contradictions that characterise the EU-China Strategic Partnership.

‘Market Power Europe’ and China’s Reforms

Relations between the EU and China have gone a long way since the establishment of diplomatic relations between the PRC and the European Communities in 1975. Interestingly, China has proved to be a consistent supporter of the European integration process. In that sense, Zhou Enlai, then Chinese Premier, stated at the time of the establishment of bilateral diplomatic relationship:

*We... support the peoples of Europe in uniting themselves to safeguard their sovereignty and independence. We are for the view that the cause of European unity, if it is carried out well, will contribute to the improvement of the situation in Europe and the whole world.*⁷

In a way China’s economic reforms and the relationship between the EU and China have evolved hand in hand to a point where the EU is now China’s main trading partner and China the second main trading partner of the EU.⁸ Very much in line with the overall economic nature of China’s reforms and the European integration process, the relationship between the EU and China has always been mainly centred on economic and commercial issues.⁹ Despite the fact that the EU-China Strategic Partnership, as established in 2003, now covers more than sixty dialogues, it is still arguable that joint priorities remain very much focused on the promotion of trade and investment flows. In that sense, it is ‘market power Europe’ that constitutes a principal driver of the EU-China Strategic Partnership. ‘Market power

⁴ R. Wang & G. Groot, ‘Who Represents? Xi Jinping’s Grand United Front Work, Legitimation, Participation and Consultative Democracy’, 27 *Journal of Contemporary China* 569, 2018, p. 570.

⁵ C. J. Milhaupt, ‘Chinese Corporate Capitalism in Comparative Context’ in W. Chen, *The Beijing Consensus? How China Has Changed Western Ideas of Law and Economic Development*, Cambridge University Press, 2017, p. 275.

⁶ X. Li, ‘The Endgame or Resilience of the Chinese Communist Party’s Rule in China: A Gramscian Approach’, 23 *Journal of Chinese Political Science* 83, 2017, p. 83.

⁷ CEC delegation to Japan, 4.4.1975, “China and the E.C.”, BAC 136/1987 n°624.

⁸ European Commission, Trade with China, available at http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/index_en.htm.

⁹ G. Geraerts, ‘EU-China Relations’ in T. Christiansen, E. Kirchner & P. Murray (eds), *Handbook of EU-Asia Relations*, Palgrave Macmillan, 2013.

Europe' endorses as a fundamental premise that '[T]he EU's identity, both historically and presently, is crucially linked to its experience with market integration'.¹⁰ This has implications as to how the EU works internally but also how it is able to project its power (of attraction) externally, including in its relationship with China.

At the multilateral level, the EU strongly supported China's accession to the WTO and the European Commission – that had the mandate to negotiate China's accession on behalf of the member states – adopted a consistent negotiating strategy primarily aimed at achieving 'relative gains against other great powers'.¹¹ As importantly, the EU and China have made an increasing use of the WTO Dispute Settlement Mechanism (DSM) to solve their trade disputes since China's accession in 2001.¹² The fourteen disputes brought before the WTO DSM between the EU and China so far have hence contributed to the strengthening of China's legal capacity in the WTO. While a bilateral Free Trade Agreement (FTA) remains out of range for the time being,¹³ the EU and China currently negotiate an investment agreement that should strengthen the regulatory framework governing bilateral investment flows and clarify the type of dispute settlement mechanism that will be used to solve investments disputes.¹⁴

It is not to say that everything is easy in the economic relationship between the EU and China. The significant trade deficit, the rise of protectionism in strategic sectors of economy, and challenges in terms of protection of intellectual property rights explain the strong politicisation of the bilateral economic relationship. Despite all these challenges, the evolution of EU-China economic relations testify to the joint commitment of China's reforms and 'market power Europe' in favour of the liberalisation of international trade in general, and the multilateral settlement of trade disputes in particular. This has been lately exemplified by a number of separate statements – despite some attempts to find a coordinated answer –¹⁵ denouncing the major protectionist moves in the United States foreign trade policy.¹⁶

'Normative Power Europe' and China's Reforms

From the very early years, the relationship between the EU and China has constituted a test case for 'normative power Europe'. 'Normative power Europe' is the widely-discussed notion developed by Ian Manners that refers to the shared norms at the heart of the *acquis communautaire* that define the EU's identity.¹⁷ The EU's success to use and operationalise these core values – i.e. human rights, democracy, and the rule of law – in its relationship with China has always been very much debated. In that sense, the sanctions imposed in the aftermath of the Tiananmen massacre (i.e. the arms embargo) have never been applied in a consistent way by the member states.¹⁸ The adoption of a less confrontational approach such as in the context of the EU-China Human Rights Dialogue has also been described as a 'fig-leaf

¹⁰ C. Damro, 'Market power Europe', 19 *Journal of European Public Policy* 682, 2012, p. 683.

¹¹ H. Zimmerman, 'Realist Power Europe? The EU in the Negotiations about China's and Russia's WTO Accession', 45 *Journal of Common Market Studies* 813, 2007, p. 824.

¹² M. Burnay, *Chinese Perspectives on the International Rule of Law: Law and Politics in the One-Party State*, Edward Elgar, forthcoming 2018.

¹³ A. García-Herrero, K.C. Kwok, X. Liu, T. Summers & Y. Zhang, 'EU-China Economic Relations to 2025 Building a Common Future', A Joint Report by Bruegel, Chatham House, China Center for International Economic Exchanges and The Chinese University of Hong Kong, 2017, pp. 12-13, available at http://bruegel.org/wp-content/uploads/2017/09/CHHJ5627_China_EU_Report_170913_WEB.pdf.

¹⁴ D. Hallinan, 'The EU-China Bilateral Investment Treaty: A Challenging First Test of the EU's Evolving BIT Model', 5 *China-EU Law Journal* 31, 2016.

¹⁵ See for instance: Mission of the PRC to the European Union, China and the EU Have a Joint Responsibility to Uphold the Rules-based Multilateral Trade Order, 5 April 2018, available at <http://www.chinamission.be/eng/mh/t1548272.htm>.

¹⁶ See for instance: Keynote Speech by H.E. Xi Jinping, President of the People's Republic of China At the Opening Session of the World Economic Forum Annual Meeting 2017, 17 January 2017, available at <https://america.cgtn.com/2017/01/17/full-text-of-xi-jinping-keynote-at-the-world-economic-forum> and

¹⁷ I. Manners, 'Normative Power Europe: A Contradiction in Terms?', 40 *Journal of Common Market Studies* 235, 2002.

¹⁸ O. Brauner, 'Beyond the Arms Embargo: EU Transfers of Defense and Dual-Use Technologies to China', 13 *Journal of East Asian Studies* 457, 2013, p. 476.

for member states' whose very limited commitment to the dialogue 'might inadvertently confirm to the Chinese partners that Europe's stand on values is extinct'.¹⁹ In that sense, the inability of the EU to come up with a joint statement to be delivered at the 35th session of the Human Rights Council (6 to 23 June 2017) was seen as a blatant failure of the EU to develop a coherent human rights policy.²⁰ The increasingly visible division between member states is only one factor that explains the difficulties to meet the expectations set by the narrative on 'normative power Europe'.

This paper would also emphasise that challenges to 'normative power Europe' within the EU-China Strategic Partnership are primarily the product of false expectations regarding China's reforms. Since the very inception of China's reforms, there has indeed been the hope that the transformation of China's economy would be later accompanied and strengthened by a democratisation of China's politics.²¹ While it is arguable that China's political reforms have constantly oscillated between periods of 'opening' and 'closing',²² they have nevertheless always taken place in the limited space allowed by the One-Party State. This does not mean that the EU has not been successful at all in influencing the evolution of China's normative framework. While the human rights dialogue constitutes a 'low-risk initiative' whose 'concrete influence is difficult to establish',²³ the EU and its member states have nevertheless seen part of their respective legal standards and procedures successfully internationalised through processes of 'soft law legal transplants'. These 'soft legal transplants' - 'obtained through formal or informal good practices learning or sharing'²⁴ - are best exemplified by the 2007 Chinese Anti-Monopoly Law that has been deeply influenced by the EU Competition Law.²⁵ Hence the EU's ability to act as a 'normative power' should not only be assessed in view of the EU's success or failure to directly export its values but also to indirectly shape the evolution of China's domestic legal system in areas of common interests. The need for a more strategic and probably less normative engagement with China is partly reflected in the 2016 Global Strategy that puts a great emphasis on the notion of 'principled pragmatism' as an attempt to reconcile the coherent promotion of EU values with the fulfilment of EU interests.²⁶

The EU-China Strategic Partnership and The Future of China's Reforms

Forty years after the start of China's reforms, there is a growing consensus on the fact that China has now reached an important turning point. In that sense, President Xi Jinping emphasised in his report to the 19th CCP National Congress that 'socialism with Chinese characteristics has entered a new era'.²⁷ Internally, the challenges facing China have become numerous and require urgent political and economic responses: '[T]he key issue for nations like China at this stage of development is precisely the relationship between economics and politics'.²⁸ The unaddressed challenges include the sustainability of such a rapid economic growth trajectory, the high level of income inequality and

¹⁹ F. Godement & A. Vasselier, 'China at the Gates: A New Power Audit of EU-China Relations', ECFR, 2017, p. 86, available at http://www.ecfr.eu/page/-/China_Power_Audit.pdf.

²⁰ H. Smith, 'Greece Blocks EU's Criticism at UN of China's Human Rights Record', The Guardian, 18 June 2017, available at <https://www.theguardian.com/world/2017/jun/18/greece-eu-criticism-un-china-human-rights-record>.

²¹ S. Zhao, 'Political Liberalization without Democratization: Pan Wei's Proposal for Political Reform', 12 *Journal of Contemporary China* 333, 2003, p. 334.

²² D. Shambaugh, 'Contemplating China's Future', 23 *Chinese Journal of Political Science* 1, 2018, p. 4.

²³ K. Kinzelbach, *The EU's Human Rights Dialogue with China: Quiet Diplomacy and its Limits*, Routledge, 2014, p. 196.

²⁴ M. Burnay, 'Soft Legal Transplants': EU-China Relations at A Glance' in J. Men & Annika Linck (eds) *The EU and China: Reform and Governance*, Routledge, 2017, p. 20.

²⁵ Q. Wu, 'EU-China Competition Dialogue: A New Step in the Internationalisation of EU Competition Law', 18 *European Law Journal* 461, 2012.

²⁶ M. Burnay and K. Raube, 'Strategy, Coherence and Legitimacy – Variations of a Theme in the Case of EU-China Relations', Special Issue Legitimacy in EU Foreign and Security Policy, *Global Affairs*, forthcoming.

²⁷ Report to the 19th National Congress of the Chinese Communist Party, Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era, 18 October 2017, available at http://www.xinhuanet.com/english/download/Xi_Jinping's_report_at_19th_CPC_National_Congress.pdf

²⁸ D. Shambaugh, 'Contemplating China's Future', 1 *Journal of Chinese Political Science* 1, 2018, p. 2.

longstanding economic disparities across the country, as well as the necessity to reform an autocratic but consensus-based political system that has proved ill-equipped to address the more systemic challenges faced by China. Externally, China needs to respond to the crisis of the post-World War II international liberal order. Not only are the International Liberal Order and the global governance architecture in which it is embedded continuously challenged for their lack of legitimacy and efficiency, it is now the first time that the United States has elected a President who stands against the institutions and some of the basic values at the heart of liberal institutionalism.²⁹ In that context, China needs to strive a good balance between acting as a supporter of a multilateral-rules based international order – which has benefited China so much since the inception of the reforms process - and a challenger when it suits its national interests.

A significant part of this uncertainty relates to the question whether China might become more democratic or whether it is likely to become an even more authoritarian state in the future. In a monograph published this summer, Carl Minzner argues that recent developments mark ‘China's authoritarian revival’ and ‘the end of an era’.³⁰ In the same line, Elizabeth C. Economy argues that the authoritarian revival in China challenges Xi Jinping’s reform rhetoric.³¹ A number of elements tend indeed to point in that direction. First, the 2018 amendment of paragraph 3 of article 79 of the PRC Constitution repealed the two five-year term limits for the Chinese President.³² This revision of the Chinese Constitution showcases the extent of ‘Xi Jinping's power grab’³³ and makes it clear ‘‘history’ has returned’³⁴ in the sense that there is no longer room for intra-Party debate and opposition against the current Party line. Second, the adoption of a number of new laws aimed to protect China’s ‘national interests’ strongly impede –the already limited- leverage left for checks and balances mechanisms to operate. These new laws include the 2015 National Security Law³⁵ as well as the 2016 Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China.³⁶ More generally, the increasing gap between the Party discourse on the rule of law and the reality of the Chinese legal system testify to the fact that ‘the regime’s commitment to law is partial and limited and law’s full potential as an autonomous force is something the Party is deeply concerned with’.³⁷ Third, China has grown increasingly vocal against the promotion of ‘universal values’, ‘civil society’, as well as the idea of ‘Western constitutional democracy’ as emphasised in a 2013 Communiqué on the Current State of the Ideological Sphere, the so-called Document 9.³⁸ The rejection of these values has been translated into a number of crackdowns against individual and collective rights advocacy whose leverage has been very much shrinking since Xi Jinping came into power.³⁹ It has also conducted China to become increasingly active in promoting an alternative discourse on human rights internationally as best exemplified by the recent adoption of the Beijing Declaration on Human Rights.⁴⁰

²⁹ See G. J. Ikenberry, ‘The End of Liberal International Order?’, 94 *International Affairs*, 2018.

³⁰ C. Minzner, *End of an Era: How China's Authoritarian Revival is Undermining Its Rise*, Oxford University Press, 2018.

³¹ E. C. Economy, *The Third Revolution: Xi Jinping and the New Chinese State*, Oxford University Press, 2018.

³² Presidium of the 1st Session of the 13th National People’s Congress of the People’s Republic of China, Announcement of the National People’s Congress of the People’s Republic of China No. 1, 11 March 2018.

³³ M. Pei, ‘China's Return to Strongman Rule’, *Foreign Affairs*, 1 November 2017.

³⁴ F. Godement, ‘Xi’s Rule of Life: What Does Our Anxiety Reveal?’, ECFR Commentary, 28 February 2018, available at https://www.ecfr.eu/article/commentary_xis_rule_for_life_what_does_our_anxiety_reveal.

³⁵ The National Security Law of the People's Republic of China, as adopted at the 15th session of the Standing Committee of the Twelfth National People's Congress of the People's Republic of China on 1 July 2015.

³⁶ The Law of the People's Republic of China on the Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China, adopted at the 20th Meeting of the 12th Standing Committee of the National People’s Congress on 28 April 2016 and entered into force on 1 January 2017.

³⁷ H. Fu, ‘The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State’, 27 *Journal of Contemporary China* 554, 2018, p. 567.

³⁸ Document 9, Communiqué on the Current State of the Ideological Sphere, A ChinaFile Translation, 8 March 2013, available at <http://www.chinafile.com/document-9-chinafile-translation>.

³⁹ See E. Pils, *Human Rights in China*, Polity Press, 2018.

⁴⁰ South-South Human Rights Forum, Beijing Declaration on Human Rights, 8 December 2017.

Needless to say that this historical momentum in China's reforms will deeply influence the future of the EU-China Strategic Partnership. While the current authoritarian revival clearly impedes the leverage of the EU to engage into meaningful normative dialogues with China, the resurgence of trade protectionism in the United States and the possibility of a global trade war simultaneously call for a stronger economic cooperation between the EU and China. Hence, it remains to be seen how the success of 'market power Europe' can be reconciled with the weak performance of the EU as a coherent and strategic 'normative power'. No doubt that the EU and China will need to reinvent the nature of their bilateral relationship if this contradiction is to be solved.

At the end of the day, this contradiction and the different ways to address it nevertheless go beyond the very issues at stake in the EU-China Strategic Partnership. On the one hand, the contradiction relates to the future of the multilateral rules-based international order, which has not only shaped but also allowed the emergence of the EU as an international actor as much as it did facilitate the (re-)emergence of China as an economic and political powerhouse. The ability of the existing global governance system to avoid an even deeper fragmentation of international law will condition China's ability to commit to multilateral trade rules, for instance, while negating its commitments under international human rights law. On the other hand, the contradiction relates to the ability of the EU to resolve its normative crises in a context where the rule of law and democracy as they stand no longer seem to function as sufficient legitimising force in the governance of the EU and its member states.⁴¹ Recent political and constitutional developments in Hungary and Poland tend, in fact, to indicate that the adoption of the *acquis communautaire* is not a sufficient guarantee to ensure Member States' compliance and commitment to EU values.⁴² Hence the growing lack of internal coherence deeply constrains the possibility for a coherent and credible promotion of values to develop in the EU external action.

Conclusions

The relationship between the EU and China gives us a clear picture of the scope and limitations of China's reforms and the ability of the EU to act as a market and normative power. The fact that China is now facing a turning point in its domestic reforms combined with the multiple calls for the EU and member states to reinvent the European integration process are only likely to reinforce the contradictions inherent to the EU-China Strategic Partnership. The growing disruption and multiple crises of the multilateral rules-based international order are nevertheless likely to affect negatively both the EU and China. It remains therefore to be seen how the EU and China will navigate (together?) this new normal.

Biography

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⁴¹ These crises will be at the heart of the H2020 Project 'Reconciling Europe with its Citizens through Democracy and Rule of Law'. See <https://reconnect-europe.eu/>.

⁴² D. Kochenov, 'The Issue of Values' in R. Petrov and P. Van Elsuwege (eds), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the EU*, Routledge, pp 46–62.

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