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EU-CHINA DIALOGUES : TALKING AT CROSS PURPOSES?
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Introduction

The world is changing and it is changing fast. The 2013 UNDP Report on Human Development, subtitled The Rise of the South: Human Progress in a Diverse World, underlines *'the unprecedented speed and scale of the recent growth of developing countries'* and highlights the *'potentially far-reaching implications for people's lives, for social equity and for democratic governance at the local and global levels'*² Since World War II and the process of de-colonisation, we have witnessed an exponential increase in the number of Nation-States, which has contributed to a change in the dynamics of multilateral fora , with a change of emphasis in global challenges and the need to get new players on board. For example, development is now a central issue - quite simply because a vast majority of 'new' countries are developing countries – and China's active involvement on environmental issues is key to mitigating the impact of climate change. For a long time, developed countries managed to retain their capacity to influence the international order, within the limits set by the cold war. The collapse of the Soviet Union further contributed to the transformation of the global scene and led to the premature announcement of the 'end of history'. In recent years, we have witnessed the emergence of new global players, in particular the so-called emerging powers, particularly BRICS. Although there are other emerging powers, such as Indonesia, Mexico or Turkey, BRICS' attempts to become a more structured group in order to use their economic might to weigh on international affairs is particularly interesting. It is worth recalling that BRICS represent 27% of the world's landmass and account for 42% of the world

¹ The views expressed in this paper are entirely my own and do not necessarily reflect the positions of the EEAS or European Institutions.

² UNDP Human Development Report 2013 – The Rise of the South : Human Progress in a Diverse World.

population.³ Figures show that in 1950, Brazil, China and India together represented only 10% of the world economy; by 2050, the same group of 3 should account for 40%.⁴

Some may doubt that BRICS have many values and interests in common; some are even clear rivals (India/China). Yet BRICS seem to share a common objective, which is to assert an identity that is different from Western cultures (less so in some cases than others). In some ways, the BRICS represent some kind of new Non Aligned Movement, the non-alignment in question being with the West only. The recent BRICS summit in Durban and the announcement of the creation of a New Development Bank seems to confirm a convergence of interests.⁵ Interestingly at the Durban BRICS summit, there was another announcement that received less publicity although it was highly significant. In Durban, the BRICS leaders agreed to the establishment of the BRICS Think Tanks Council and the BRICS Business Council to develop policy options such as the evaluation and future long-term strategy for BRICS and develop new paradigms for sustainable and inclusive growth models. Although BRICS are far from being a homogenous group, it is clear that they are intensifying coordination and cooperation, as well as their share in the global economy and power⁶. As we focus here on EU-China relations, we do not have enough time to further elaborate on the role played by China in the BRICS but, as pointed out in a recent study commissioned by the European Parliament on BRICS, ‘*without China, the BRICS are a toothless tiger*’⁷ For its part, China clearly has a strategy within BRICS, which acts as some kind of ‘power magnifier’.

³ Morazan Pedro, Knoke Irene, Knoblauch Doris, Schäfer Thobias – The Role of BRICS in the Developing World - European Parliament (2012)

⁴ UNDP Human Development Report 2013 – The Rise of the South : Human Progress in a Diverse World.

⁵The BRICS Leaders agreed to the establishment of (1) a New Development Bank (2) the contingent reserve arrangement (CRA) with an initial size of US\$100 billion to BRICS countries forestall short-term liquidity pressures and further strengthen financial stability (3) the BRICS Think Tanks Council and the BRICS Business Council to develop policy options such as the evaluation and future long-term strategy for BRICS and develop new paradigms for sustainable and inclusive growth models. Two Agreements were also concluded under auspices of the BRICS Interbank Cooperation Mechanism : (a) the BRICS Multilateral Infrastructure Co-Financing Agreement for Africa paves the way for the establishment of co-financing arrangements for infrastructure projects across the African continent (b) the BRICS Multilateral Cooperation and Co-Financing Agreement for Sustainable Development sets out to explore the establishment of bilateral agreements aimed at establishing cooperation and co-financing arrangements, specifically around sustainable development and green economy elements

⁶ UNDP Human Development Report 2013 – The Rise of the South: Human Progress in a Diverse World.

⁷Morazan Pedro, Knoke Irene, Knoblauch Doris, Schäfer Thobias – The Role of BRICS in the Developing World - European Parliament (2012)

In spite of having individual strategic partnerships with all five BRICS, the EU does not engage with BRICS as a group. The European Parliament recently called for the development of a coherent EU strategy vis-à-vis BRICS⁸ but the EU's thinking is still out of focus. To compound matters, there is no clear definition of what a 'strategic partnership' is. Actually, it would be quite difficult to have a clear definition, given the variety of countries (BRICS as well as the US, Canada, Japan, or South Korea, to name a few) the EU is engaged within the framework of a 'strategic partnership' and given the absence of shared values with some of the EU's strategic partners, in particular China, whilst the Foreign Policy of the EU is value-based⁹.

Of course, this does not mean that the EU is unaware of the magnitude of recent changes nor that the EU does not adapt its Foreign Policy to such evolutions but, rather, the EU is still in a predominantly reactive rather than pro-active mode, even when it comes to bilateral relations. For example, the EU has some difficulty identifying a medium to long-term strategy as well as new ways of engaging with the 'ultimate' emerging power, China. This difficulty is probably more acute now than ever before because the relationship between the EU and China has evolved quite significantly since the first official visit paid by a European official, namely Commissioner Soames in 1975. The relationship has become comprehensive and now covers virtually all policy aspects. Nevertheless, although the relationship is no longer purely commercial, it is still dominated by trade and economic relations. The European Union and China are two of the biggest traders in the world; China is now the EU's second trading partner behind the United States and the EU is China's biggest trading partner. Inevitably, some issues are more delicate than others, especially those issues that are based on values rather than interests.

For we must also remember that, like the EU, China is a value-based society with a value-based foreign policy. The main question is the extent to which such values are

⁸ Jacek Saryusz-Wolski, Head of the Polish Delegation of the EPP Group, an author of the report on BRICS adopted by the European Parliament in 2012, declared that the EP encourages the EU to create a coordination mechanism within the EEAS which would allow the geographical desk officer responsible for particular BRICS countries to exchange information and coordinate positions in cases where concerted action could be expected from their side too. He concluded '*Such a mechanism would not require a modification of the current EEAS structure and could be of a purely informal nature.*'

⁹ Biscop Sven – The value of Power, the Power of values: A Call for an EU Grand Strategy – Egmont Paper 33 – October 2009.

different, whether they can be combined or are so antithetic that they are a source of tensions between the EU and China. Other key questions are how successful China is at promoting its model of development – the so-called 'Beijing consensus' – as opposed to the 'Washington consensus', how successful China is at promoting its values and ultimately how successful China is at shaping the international agenda and the international order. Ultimately, we may be faced, once again, with what a French Historian once described, in the context of the cold war, as 2 dreams sharing the same bed¹⁰.

In this overall context, we shall look more closely at the dynamics of the EU-China Strategic Partnership as a two-way process designed to promote the partners' interests and values and assess their mutual influence because, although their respective sets of values are quite different they are not necessarily incompatible or irreconcilable. We shall concentrate more particularly on some of the values the EU is based on, such as democracy, human rights, the rule of law, upholding universal values and promoting effective multilateralism. We shall also focus on dialogues – rather than other EU Foreign Policy instruments - as there can only be mutual influence through true dialogue - rather than juxtaposed monologues - in other words, when partners are not talking at cross-purposes.

The Foreign Policy of the EU is based on values and interests

Although it has probably become one of its best-known features, it is still worth recalling that the European Union itself is founded on values and the foreign policy of the European Union is based on the same values and principles. It is also important to underline that the Foreign policy of the EU is designed to promote its values, as well as its interests, and that the EU supports effective multilateralism.

¹⁰ André Fontaine - Un seul lit pour deux rêves Histoire de la "détente" 1962-1981 - 1981

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Article 2 of the TUE states that *'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'*.

Of course, the EU and its predecessors were not always founded on respect for democracy and human rights.¹¹ It was only in 1978, few years before the 1981 and 1986 enlargements and the return of Greece, Portugal and Spain in the family of democracies, that the European Council declared that *'respect for and maintenance of representative democracy and human rights in each Member State are essential elements of the European Communities.'*¹² In June 1993, a few years after the fall of the Berlin wall and collapse of the Soviet Union, the European Council set firmer conditions for membership, one of which specifying that applicants must have achieved stability of institutions guaranteeing democracy, the rule of law, human rights, what became known as the Copenhagen criteria¹³.

Regarding the Foreign Policy of the European Union, Article 21 of the TUE clearly states that *'The Union's action on the international scene 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 dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.'*

¹¹ Smith Karen – European Union Foreign Policy in a Changing World – 2008 p 113

¹² Copenhagen Declaration on Democracy – 7-8 April 1978

http://aei.pitt.edu/1440/1/Copenhagen_1978.pdf

¹³ http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf

The last part of Article 21 is sometimes overlooked although highly relevant in the context of EU-China relations because the Foreign Policy of the EU also aims at promoting respect for international norms and standards and the role of international organisations, especially the United Nations.

As one of the instruments of the EU's Foreign Policy, strategic partnerships are naturally based on values as well as interests, although there is no general definition or overall framework for such strategic partnerships. Originally, the EU's strategic partners were like-minded countries *i.e* countries that shared EU values and they were all developed countries. When the EU decided to develop strategic partnerships with emerging countries, the strategic element appeared to be missing; so much so, in fact, that, at the European Council of 16 September 2010, President Van Rompuy declared '*we have strategic partners, now we need a strategy.*'

With the multiplication of EU strategic partnerships with emerging powers whose political make-up is very different from that of the EU, tensions became inevitable. Tensions occurred between partners. Tensions also occurred between those within the EU who would rather pursue interests rather than values and those who keep recalling that the EU is about values as well as interests. Of course, this is not to say that a partnership based on shared values cannot be tense, as testified by the EU relations with the US, which are not totally devoid of tensions, especially on commercial or security issues. Let us say that in many ways the EU strategic partnership with the US has more of a common ground and needs perhaps less explanation and soul searching than the EU-China partnership. Although that is also open to debate.

The last Commission Communication on EU-China relations, which dates back to 2006, states, in one of its opening paragraphs that the EU needs to '*leverage the potential of a*

*dynamic relationship with China based on (EU) values’.*¹⁴ As we shall see, there are some calls urging the European Union to worry less about the promotion of the values it is based upon. Quite clearly the temptation to ‘drop’ values and concentrate on interests, at least in some cases, would be problematic for the internal/external coherence and consistency of EU action. As we shall also see later on, it would fuel accusations about EU double standards – unless the EU’s Foreign Policy becomes interest-based all round.

China is a value-based society

China itself is based on values, which it sees as different from western values but not necessarily incompatible. They are also values to be shared. *‘Freedom, equality and democracy are common values shared by many people. However, traditional Chinese values: ritual, benevolence and justice, are the values which China should share with the rest of the world.’*¹⁵

More generally, some Chinese academics¹⁶ regard the concept of harmony (Hexie, 和谐) as a core value of Chinese traditional culture and Chinese foreign policy and diplomacy. Applied to foreign policy, the principle leads to the Five Principles of Peaceful Coexistence, namely ¹⁷mutual respect for territorial integrity and sovereignty, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence—that were introduced by Chinese leaders in the 1950s to govern relations between States. According to the concept of Hexie, conflicts between States should be handled through avenues that maintain harmony between states such as diplomatic negotiations. This is to ensure that any imbalance of power is corrected to achieve balance, what we call the peaceful settlement of conflicts. However, Hexie does

¹⁴ Commission Communication – EU-China : closer partners, growing responsibilities – 24.10.2006 COM (2006) 631

¹⁵ Yan Xuetong (director of the Institute of International Studies, Tsinghua University) on China.org.cn – 11 May 2012

http://www.china.org.cn/opinion/2012-05/11/content_25361798.htm

¹⁶ Zhang Ligua – Resident scholar Carnegie Tsinghua Centre for Global Policy

¹⁷ he ping gong chu wu xiang yuan ze, 和平共处五项原则

not turn China into a pacifist country as it is foreseen that in cases of aggressive confrontation that violate territorial sovereignty, threaten human life, or challenge other core interests, such as foreign invasions, counterattacks made in self-defence are appropriate.¹⁸

Other traditional Chinese values like benevolence, righteousness, courtesy, wisdom, and honesty are considered as playing a positive role in Chinese society. Suggestions have been made by some Chinese scholars that Chinese traditional values should be combined with modern universal values like freedom, democracy, human rights, rule of law, equality, justice, fairness, efficiency, and competition, and this could have a positive impact on improving society's norms and values altogether¹⁹. This entails that also Chinese values are different from Western values, they are seen as complementary.

Moreover, this is an indication of the fact that Chinese Society is a complex society and it is neither monolithic nor static. The Communist Party of China itself offers a wide spectrum of political sensitivities. One must also remember that there are other political parties in China. Of course, they play a lesser role in Chinese politics than the CPC but their very existence signals a plurality of political beliefs that is often overlooked. So naturally, when it comes to values, there is a plurality of views, within China, not to mention the EU, whether we are talking about Chinese values, Western values or Universal values.

The debate over Universal Values found a new momentum through Qin Xiao who, after a successful career in the banking sector, used his position as a respected (retired) business leader and chairman of the Hong Kong-based Boyuan Foundation to promote "universal values", alongside political and economic reform. In particular, he has explicitly and repeatedly stated his opposition to the so-called "China Model" of politics and economics (mixing authoritarianism and state-owned enterprises with some market economics). The Boyuan Foundation finances various research projects, such as the a very interesting

¹⁸ Zhang Ligua – Resident scholar Carnegie Tsinghua Centre for Global Policy

¹⁹ Zhang Ligua – Resident scholar Carnegie Tsinghua Centre for Global Policy

current project on theory and practice of democratic transition, looking at typical cases of democratic transition and regional differences in the various regions of the world since the 1970s and touching upon many related issues, such as the consolidation of the new democratic regime, the relationships between democracy and governance, democracy and ethnic conflicts.

In fact, much was said during the 1993 Vienna Conference on Human Rights about 'cultural relativism', and this was perhaps the first time that one group of countries (led by China, Syria and Iran alongside Singapore, Malaysia, Indonesia and Vietnam) would try to articulate a coordinated position on Asian values opposed to western culture and what was perceived as the West's attempts to impose a universal definition, which amounted to interference in their internal affairs. As remarked by former German Minister for Foreign Affairs, Joschka Fischer, *'...the concept of 'Asian values,' originally developed in Singapore and Malaysia (...) remains unclear. Essentially, the concept has served to justify collectivist-authoritarian rule by aligning it with local tradition and culture, with autonomy defined in terms of otherness – that is, differentiation from the West and its values. Thus, 'Asian values' are not universal norms, but rather a self-preservation strategy harnessed to identity politics*²⁰

Effective multilateralism, Universal values and respect for International Law

Before we turn to EU-China dialogues, we need to say a few words about another central dimension of EU-China relations, namely the role of the United Nations as a forum for norm setting and promoter of universal values. First of all, the values the EU is based upon are values that are enshrined in UN instruments. Secondly, China is amongst the countries known to claim that UN values are western biased although the discourse has now changed and is not so blunt anymore, signaling a shift both in rhetoric and in engagement with multilateral fora. Thirdly, both the EU and China are committed to

²⁰ <http://www.project-syndicate.org/commentary/chinese-values-Jv7QDIxb2Wqsc6Qi.99>

effective multilateralism so it is worth looking at the multilateral dimension of EU-China relations. Fourthly, as an emerging power and a role model for many developing countries, there is intense speculation about the extent to which China is likely to influence the international system.

Although some countries still regard the United Nations as the mere transposition at the international level of Western values and an instrument for further promoting (if not imposing) western values and interests when in fact, this is used as an excuse not to fulfill international obligations. In fact, as pointed out by some authors²¹ the *'question of the 'universal' or 'relative' character of the rights declared in the major instruments of the human rights movement has been a source of debate and contention from the movement's start'*.

People often forget that some of the primary international instruments did in fact take other cultures into account. For example, the Commission that drafted the Universal Declaration of Human Rights was made up of 18 members from various political, cultural and religious backgrounds. The Committee was chaired by Eleanor Roosevelt, widow of American President Franklin D. Roosevelt and counted eminent lawyers like René Cassin of France, who composed the first draft of the Declaration, the Committee Rapporteur Charles Malik of Lebanon, Vice-Chairman Peng Chung Chang of China, and John Humphrey of Canada, Director of the UN's Human Rights Division.

The Commission met for the first time in 1947. In her memoirs, Eleanor Roosevelt recalled that *'Dr. Chang was a pluralist and held forth in charming fashion on the proposition that there is more than one kind of ultimate reality. The Declaration, he said,*

²¹ Steiner Henry J., Alston Philip and Goodman Ryan – International Human Rights in context (Law, Politics, Morals) OUP 3rd Edition 2007 p 517

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*should reflect more than simply Western ideas and Dr. Humphrey would have to be eclectic in his approach. His remark, though addressed to Dr. Humphrey, was really directed at Dr. Malik, from whom it drew a prompt retort as he expounded at some length the philosophy of Thomas Aquinas. Dr. Humphrey joined enthusiastically in the discussion, and I remember that at one point Dr. Chang suggested that the Secretariat might well spend a few months studying the fundamentals of Confucianism!*²²

Indeed Dr Chang also argued that many influential western thinkers on rights were guided by Chinese ideas and told the UN General Assembly that 'in the 18th century, when progressive ideas with respect to human rights had been first put forward in Europe, translations of Chinese philosophers had been known to, and had inspired, such thinkers as Voltaire, Quesnay and Diderot in their humanistic revolt against feudalism.'²³ He was able to explain Chinese concept of human rights other delegates and creatively resolved many stalemates in the negotiation process by employing aspects of Confucian doctrine to reach compromises between conflicting ideological factions. He insisted, in the name of universalism, on the removal of all allusions to nature and God from the Universal Declaration of Human Rights.

Moreover, as we shall see later on, the idea that Universal values are western values in disguise is becoming less and less of a valid proposition as new instruments are being drafted and adopted. But this is clearly a consideration to bear in mind in the context of a Foreign Policy based on respect for international law and standards and bilateral relations between China and the EU.

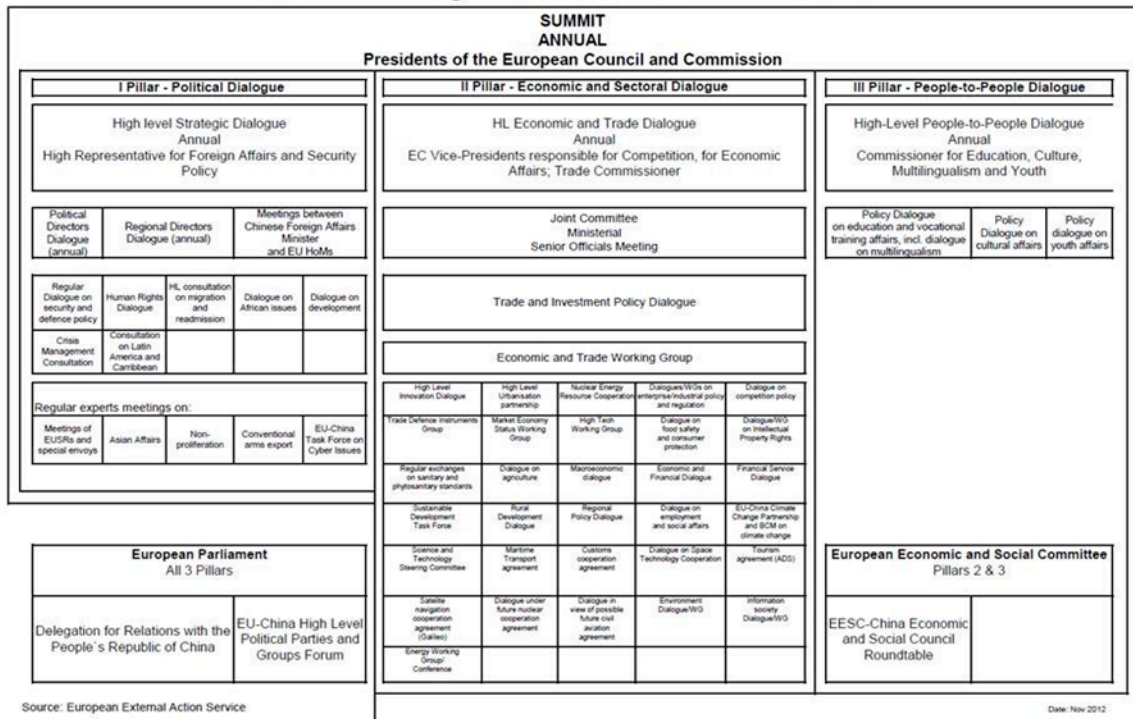
²² Eleanor Roosevelt - The Autobiography (1961)

²³ Eleanor Roosevelt - The Autobiography (1961)

EU-China Dialogues in the framework of the strategic partnership

The EU's strategic partnership with China is celebrating its 10th anniversary this year. Back in 2006, the European Commission believed that *'the EU's fundamental approach to China must remain one of engagement and partnership'* adding that *'with a closer strategic partnership, mutual responsibilities increase'*. The approach was not very far from that of a marriage of convenience as the goal was clearly stated as *'a situation where China and the EU can bring their respective strengths to bear to offer joint solutions to global problems'*.²⁴ In due course, the old couple would get to know each other better through increased mutual understanding and the People-to People Dialogue.

EU-China Dialogue Architecture – main elements*



²⁴ Commission Communication – EU-China : closer partners, growing responsibilities – 24.10.2006 COM (2006) 631

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Today the EU-China strategic partnership has 3 pillars and encompasses over 60 dialogues, working groups and steering committees, reflecting the broad-based EU engagement with the China. It includes over 20 high level dialogues at ministerial level and above, as well as 36 senior officials dialogues at Vice-Minister, Director General or Director level.

In 2012, on the occasion of the 14th EU-China summit, which was held in Beijing, the People-to-People Dialogue was officially launched, adding a third pillar to the EU-China strategic partnership (See Table 1), as a way of deepening understanding and mutual trust between peoples and ensuring the sustainability and stability of EU-China relations.

In passing, we should also mention the trilateral EU-China-Africa yearly dialogue, based on a 2008 Commission Communication²⁵, which recognised that *'both the EU and China have a strong interest in promoting stable and sustainable development in Africa'*. Finally, in 2013, the feasibility of new dialogues is being explored, notably on Rule of law, and this is an indication of the vitality of EU-China relations and the ever growing number of areas of common interest.

The partnership is indeed seen by both sides as being very good and still having the potential to further develop. During the 15th EU-China summit, which took place in September 2012, EU and Chinese leaders *'noted with satisfaction that the EU-China Comprehensive Strategic Partnership had matured and become increasingly rich and multi-dimensional, and was now embodied in wide ranging cooperation initiatives forged between the two sides. Both sides were determined to continue to develop the Partnership in the future to further increase its strategic dimension and bring EU-China cooperation to a higher level.'*²⁶

²⁵ Commission Communication – *The EU, Africa and China: Towards trilateral dialogue and cooperation* – 17.10.2008 COM (2008) 654.

²⁶ 15th EU-China summit – Joint Press Communiqué – 20 September 2012
http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/132507.pdf

More recently, at the end of the fourth China-EU High-Level Political Parties Forum, Zhang Yansheng, secretary-general of the Academic Committee of the National Development and Reform Commission, declared that China-Europe cooperation was about to enter a high-quality era, as China is set increase its middle-income population from 230 million to 630 million and it will intend to buy goods and service of high quality. Mr Zhang also declared '*The past three decades of our cooperation have been arduous, while the next 30 years will be the golden time.*'²⁷ Coming from the secretary-general of the Academic Committee of the National Development and Reform Commission, it seems quite natural that the EU-China relations would be envisaged more from the development, economic and trade angle but there is a risk that ultimately other aspects of the partnership will always be seen as ancillary and useful only insofar as they facilitate trade and development.

It remains that, overall, China is willing to engage with the EU on areas of common interests, in order to address global challenges and promote mutual understanding. China is also supporting 'effective multilateralism' although it may mean something different. China is clearly seeking to promote its values, not by imposing them but rather through the promotion of mutual understanding, as a grand strategy, including with the EU. For example, it was interesting to hear that China had been the chief promoter of the third pillar of the EU-China strategic Dialogue.

In their joint Press Communiqué, President Van Rompuy, President Barroso, High Representative Ashton and Premier Wen Jiabao, emphasized '*the importance of promotion and protection of human rights and the rule of law*'.

In the EU Press Statement after the 15th EU-China summit, President Van Rompuy and President Barroso had included a paragraph on human rights, in which they recalled that '*public opinion in Europe follows closely the situation in China as in other parts of the world, and, of course, in Europe itself*'. They had also told Premier Wen that '*the Human Rights Dialogue with China forms an essential part of our relationship*' but that '*it*

²⁷ Li Xiaokun – China Europe need one another - China Daily 24 April 2013

should deliver more progress on the ground’ and there was *‘still room for improvement’* and a *‘need to focus on that’*.

Nevertheless, Professor Jing Men identifies *‘a bottleneck in the development of the EU-China strategic partnership’* resulting from the *‘the differences between a bloc of liberal democratic states and an authoritarian state and between a developed group and a developing country’*.²⁸

We can identify 3 main areas where values are at stake and where tensions may arise, namely Democracy, Human Rights and Rule of Law. We shall therefore concentrate on those 3 areas in order to assess how EU-China dialogues may enhance mutual understanding or whether EU and China would be talking at cross-purposes and unwittingly generate more misunderstanding and mistrust rather than build confidence.

Democracy and democratic values

First, a few words about Democracy because the EU has developed a comprehensive strategy and policy for democracy support, which is essentially a support to parliamentary and participatory democracy. Further EU reflection on democracy is properly due.

In 2009, the Council of the European Union adopted some conclusions on democracy support in the EU’s External Relations, recognising that *“The European Union, as a global actor and the world’s largest donor, is founded on the principles of liberty, democracy, respect for human rights, fundamental freedoms and the rule of law. One of the objectives of EU external action is to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms. The EU is committed to*

²⁸ Professor Jing Men – College of Europe - EU-China Observer 6 (2012)

improving the coherence and effectiveness of its support to democracy.' The Council also adopted an EU Agenda for action on Democracy Support in EU external relations.

Because it involves the willingness of the country concerned, this is a subject that is not broached with China, which has its own conception of democracy. EU-China relations are not about regime change, it is about helping China improve its system and fulfill its international obligations. Nevertheless, recent initiatives in the framework of the People-to-People Dialogue, such as the European Economic and Social Committee Roundtable or the High-Level Political Parties Forum, where issues such as participation and representation are raised, further contribute to mutual understanding. At this stage, it is probably the most that can be achieved in this area, not necessarily because the systems rest on different values but rather because of the underlying politics.

Towards an EU-China Rule of Law Dialogue ?

As we have seen, the rule of law is one of the fundamental values on which the EU is founded and because the Foreign Policy of the EU seeks to promote EU values, the EU endeavours to promote the rule of law. The EU's engagement with the United Nations, as part of its support for effective multilateralism, meant that the EU was very active in New York last year.

Recognising that the Rule of Law is central to many of the challenges facing the global community, UN Members attended the first ever High-level Meeting of the General Assembly, on 24 September 2012. At the end of the high level meeting, the 193 UN Members adopted a Declaration, which reaffirms their commitment to the Rule of Law on the basis of a common understanding of definitional elements and sets out the full scope of the rule of law. The Declaration stressed the inter-relationship between the Rule of Law and the three pillars of the United Nations: (1) peace and security, (2) development and (3) human rights. It called for the rule of law to be considered in the

post 2015 international development Agenda in those words: *“We are convinced that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realisation of all human rights and fundamental freedoms, including the right to development, all of which reinforce the rule of law, and for this reason we are convinced that this inter-relationship should be considered in the post-2015 international development agenda.”*²⁹

Importantly, the UN sought the specific commitment of States and organisations, such as the EU and many voluntary pledges were received from Member States and Observers, including from the European Union. The voluntary pledge of the EU covers all three UN Pillars and has a special focus on the fight against corruption, when it comes to fostering human development. Of course, there are other key elements, such as the delivery of effective, just, non discriminatory and equitable public services pertaining to the rule of law.

For its part, China is also reflecting on the need to enhance the Rule of Law, for example the 2012 White paper on judicial reform, which considers that *‘due to the development of the socialist market economy, the comprehensive implementation of the fundamental principle of Rule of Law, and the increasing demands of the public for Justice, China’s judicial system urgently needs to be reformed, improved and developed.’* Already the 2011 White Paper on the Socialist system of Laws with Chinese characteristics recognised that *“China will take active and effective steps to guarantee the effective enforcement of the Constitution and laws, and accelerate the advance of the Rule of Law and the building of a socialist country under the Rule of Law.”*

Only a few days before the adoption of the UN Declaration on 24 September 2012 that, at

²⁹ Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, paragraph 7 (Doc. A/Res/67/1)

the 15th EU-China Summit on 20 September 2012, President Van Rompuy, President Barroso, High Representative Ashton and Premier Wen Jiabao, emphasised *'the importance of promotion and protection of human rights and the rule of law'*.³⁰

The EEAS is currently trying to assess more precisely how the EU could further promote the Rule of Law in order to support sustainable development, through a new dialogue with China³¹, which is one the new dialogues currently under consideration, which would be introduced in addition to the EU-China Human Rights Dialogue.

EU-China's Human Rights Dialogue

Ever since the 1990's, Human rights have been as an important feature of the EU-China partnership, one of the goals being to support China's transition to an open society based upon the rule of law and the respect for human rights.³² The European Commission insisted that *'Political dialogue should (...) pay close attention to human rights in keeping with the tenets of a maturing partnership of the kind we now enjoy, and in the conviction that this is an integral part of ensuring sustainability of the reforms and long-term stability.'*³³

A specific EU-China dialogue on Human Rights was launched in 1995 and interrupted in the Spring of 1996. In 1998, the European Commission noted that *'since its resumption in November 1997, China has shown a new-found willingness to engage in a serious and results-oriented dialogue. All subjects of concern, even the most sensitive ones, have been*

³⁰ 15th EU-China summit – Joint Press Communiqué – 20 September 2012

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/132507.pdf

³¹ See Joëlle Hivonnet - Rule of Law and Sustainable Development in the context of EU-China relations (to be published in forthcoming Book by KU Leuven).

³² Communication from the Commission *'Building a Comprehensive Partnership with China'* – 25.03.1998 COM (1998) 181 final.

³³ Commission Policy Paper *'A maturing partnership – shared interests and challenges in EU-China relations (updating the European Commission's Communications on EU-China relations of 1998 and 2001)'* – 10.09.2003 COM (2003) 533 final.

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*addressed during the discussions and the prospect of continued, regular dialogue has now been established.'*³⁴ In 2006, the European Commission dedicated a section of its communication on EU-China relations³⁵ to EU support to China's transition towards a more open and plural society, stating that *'the Chinese leadership has repeatedly stated its support for reform, including on basic rights and freedoms'* and the EU should consider *'how it can most effectively assist China's reform process, making the case that better protection of human rights, a more open society, and a more accountable government would be beneficial to China, and essential for continued economic growth.'* adding *'democracy, human rights and the promotion of common values remain fundamental tenets of EU policy and of central importance to bilateral relations'*. The EU also vented some of its frustration, giving indications on how to improve the relations in the area of human rights in the following words: *'the twice-yearly human rights dialogue was conceived at an earlier stage in EU-China relations. It remains fit for purpose, but the EU's expectations – which have increased in line with the quality of our partnership – are increasingly not being met. The dialogue should be: more focused and results-oriented, with higher quality exchanges and concrete results; more flexible, taking on input from separate seminars and sub-groups; better co-ordinated with Member State dialogues.'*

Some Member States of the European Union (UK, NL, DE, SE, HU) also have Human Rights Dialogues with China, although, in some cases, they have not taken place for years. As is the case with the Russian Federation, because of the importance attached to those EU partners and because of the number of issues to be discussed, there should be 2 rounds of dialogues every year. However, since 2009 there has been only one round of

³⁴ Communication from the Commission *'Building a Comprehensive Partnership with China'* – 25.03.1998 COM (1998) 181 final.

³⁵ Commission Communication – *EU-China : closer partners, growing responsibilities* – 24.10.2006 COM (2006) 631

Human Rights Dialogue with China every year.

In recent years, the EU has been criticised for its handling of human rights, for a whole range of reasons. One criticism pertains to the fashion in which human rights issues are raised. In 2011, the HR/VP was criticised for her 'style of diplomacy' rather than for the apparent lack of results or rather the HR/VP was criticised by Human Rights Watch because of her preference for soft diplomacy and neglect of other diplomatic tools that may have been more appropriate given the subject matter and the country concerned. Human Rights Watch had written in its Annual Report: *'the EU seems to have become particularly infatuated with the idea of dialogue and cooperation, with the EU's first high representative for foreign affairs and security policy, Catherine Ashton, repeatedly expressing a preference for "quiet diplomacy" regardless of the circumstances.'*³⁶ More recently, Human Rights Watch criticised the EU because its Human Rights Dialogue with China does not seem to be producing tangible results.³⁷

The European has also been criticised for using double standards. First of all, there is an issue of a lack of internal/external coherence³⁸ The internal-external policy gap has negative implications for the legitimacy and effectiveness of the EU's promotion of Human Rights externally.³⁹ In 2007, Amnesty International argued *'the contrast deepened between the EU's stated values of democracy, human rights and the rule of law, and its own human rights performance'*⁴⁰ In that respect, the launching of the EU Justice scoreboard should provide interesting elements of comparison among EU Member States. Also things might not be perfect but the EU can still boast that it has the strongest international framework to protect human rights, not just through EU

³⁶ Human Rights Watch - 2011 Annual World Report.

³⁷ Human Rights Watch – *China: EU Rights Talks Sliding Toward Irrelevance* – 25 May 2012 <http://hrw.org/news/2012/05/25/china-eu-rights-talks-sliding-toward-irrelevance>.

³⁸ Williams, A. -. *EU Human Rights Policies*. – 2004

³⁹ Smith Karen – *European Union Foreign Policy in a Changing World* – 2008 p 113

⁴⁰ quoted in Smith Karen – *European Union Foreign Policy in a Changing World* – 2008 p 115.

mechanisms but also through the Council of Europe that all EUMS are party of, including the European Convention on Human Rights mechanisms that the EU should become party to soon.

The EU has also been criticised for not treating all third countries in the same way i.e for applying double standards, and its lack of (or timid) condemnation of some Human Rights violations, for example by the US (death penalty, Terrorism). This is an argument in favour of value-based relations.

Finally, the EU has been criticised for mentioning human rights at all. Some have accepted the arguments put forward by China about their different values and different approach to human rights and a focus on economic and social rights and the all-importance of the right to subsistence.⁴¹ Some of the arguments are also based on a rather peculiar conception of history according to which, history would follow a natural course together with a beginning and an end. *‘Human Rights are both morally and historically inevitable’* say some, adding that *‘The Chinese Government, while perhaps not seeking to halt the march of history, seems determined to control the speed and direction of its progress’* and pronouncing that *‘to focus discussion on the rights to which Europeans give priority is premature at the very least’*⁴².

All those reasons go a long way explaining why, in its 2012 EU Foreign Policy Scoreboard, the European Council for Foreign Relations did not rate the EU’s handling of Human Rights and Governance with China very highly, giving it a miserly C grade.

⁴¹ *‘It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question.’* Human Rights in China - Information Office of the State Council, 1991 quoted in Freeman Duncan and Geeraerts Gustaaf *Europe, China and the expectations for human rights*

⁴²Duncan Freeman and Gustaaf Geeraerts - *Europe, China and the expectations for human rights – BRICCS Asia Papers* volume 5p 7.

When it comes to China, the criticism is even fiercer and yet, in spite of the concerns raised, for example in a recent Chatham House report on China and the International Human Rights System, we need to recognise the positive trend at least in terms of China becoming party, over the years, to most International Human Rights Instruments. But we still need to ask ourselves why China might appear reluctant to discuss Human Rights because it is only if we understand China's reluctance that we can enter into a more meaningful dialogue.

Firstly, China's overall priorities are to ensure its economic development and preserve its unity and its stability. Drawing lessons from the collapse of the Soviet Union where speedy economic and political reforms led to a brutal change of regime - rather than to a progressive transition - and the explosion of its territory under pressure from independence movements of central Asia, China is determined to retain a tight grip on its population, even at the cost of protecting human rights, in order to preserve its territorial integrity and its stability. The paradox of the Chinese position is that whilst China might be afraid of granting too much individual freedom to its citizens because, in China's perception, this may lead to social unrest, instability, calls for autonomy or even independence in some quarters, China suppression /repression may have the opposite effect and generate frustration and despair, which may lead to increasing instability.

Secondly, in spite of the fact that, as we have seen, the UDHR was greatly influenced by Dr Peng Chung Chang and, through him, by Confucian ideas, Human Rights are still often presented as betraying the West hegemonic ambitions and contrary to Asian values.⁴³ In fact, *'the pressing issue is not so much whether the representatives in 1948*

⁴³ Clapham Andrew – Human Rights A very Short Introduction – OUP - 2007

legitimize the claims of universality, but rather how we now build a universal appreciation of these ideas'.⁴⁴

Thirdly, there exists an undeniable emphasis on Economic, Social and Cultural rights by China, which often leads the EU to insist on the importance of civil and political rights, as some form of counterbalance, which inevitably appears to credit those who believe that the EU only cares about civil and political rights. In fact, the EU supports the Vienna Declaration and Programme of Action's approach that Human Rights are *'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'*⁴⁵

Fourthly, Human rights – especially civil and political rights – are presented by China as some kind of impediment to development. In fact, the EU supports the approach of the 2012 report of the UNSG High Level Panel on Global Sustainability, entitled Resilient People, resilient Planet : A future worth choosing, which stated's that *'Sustainable development is fundamentally a question of people's opportunities to influence their future, claim their rights and voice their concerns. Democratic governance and full respect for human rights are key prerequisites for empowering people to make sustainable choices'*. It is worth recalling that this is an approach based on the theories of Nobel Prize winner Amartya Sen and Martha Nussbaum regarding capabilities and the

⁴⁴ Clapham Andrew – Human Rights A very Short Introduction – OUP - 2007 p 44

⁴⁵ Vienna Declaration on Human Rights – Part 1 paragraph 5.

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Human Development Approach.⁴⁶ UNDP's 2013 on Human Development also underlines that *'unless people can participate meaningfully in the vents and processes that shape their lives, national human development paths will neither be desirable nor sustainable. People should be able to influence policymaking and results, and young people in particular should be able to look forward to greater economic opportunities and political participation and accountability.'*⁴⁷

Finally, we must underline China's international commitments. When UN membership was transferred from Taiwan-based 'Republic of China' to the People's Republic of China, the latter was also granted a clean slate when it came to international obligations. Over time, the People's Republic of China has become party to most of the core international human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) being the main exception. Although it was signed in 1998, it was never ratified by China and this has been raised repeatedly bilaterally and in UN for a by the EU.

In the 1990's, China may have been one of the champions of 'cultural relativism', it remains that China has accepted the universality of human rights and 'while the topic of human rights remains sensitive in China, it is not taboo'.⁴⁸, as demonstrated not just by its joining most international instruments but also by China's support for the resolution establishing the Human Rights Council in 2006. China's commitment to Human Rights has been further demonstrated through the revision, in 2004, of its Constitution, which now proclaims that *'the State respects and safeguards human rights'* and through the adoption of National Human Rights Action Plans, first for 2008-2009 and currently for 2012-2015.

⁴⁶ Amartya Sen - Development as Freedom (1999) and Martha Nussbaum - Creating Capabilities (2011).

⁴⁷ UNDP Human Development Report 2013 – The Rise of the South: Human Progress in a Diverse World.

⁴⁸ Sceats Sonya and Breslin Shaun – China and the International Human Rights System – Chatham House – October 2012.

Of course, the National Human Rights Action Plan still raises questions, in particular because although it underlines the Government's determination to promote *'the balanced development of individual and collective human rights'* and further tips the balance in the direction of economic, social and cultural rights' by setting 2 different objectives for Economic, Social and Cultural rights, on the one hand, and Civil and Political rights, on the other, providing *'comprehensive protection to citizens' economic, social and cultural rights'* and *'effective protection to the citizens' civil and political rights according to law'*. The current Action Plan also provides for *'the full protection to the lawful rights of ethnic minorities, women, children, senior citizens and the disabled'* and commitments to conduct *'extensive education in human right'* and to *'actively participat(e) in international exchanges and cooperation on human rights'*, the latter commitment involving *inter alia 'continuously conduct human rights dialogue, cooperation and exchanges with other countries on the basis of equality and mutual respect'*.

Conclusions

Ultimately, there is no real reason why EU values and China's values should be seen as very different. Even if considered different, there is no reason why different sets of values could not be reconciled. Of all languages, Chinese had the capacity to use opposite characters to create a whole new meaning (duoshao, youzuo, etc.). Dialogues cannot force China to do what it does want to do but continuous engagement on some of the issues that China considers more difficult would definitely be a sign of strength.

Both the EU and China are constantly evolving, reforming, adapting to their respective roles in the world and adjusting their relations together and with others. In fact, the dialogue between China and the EU is also contributing to their evolution for the sign of a true dialogue is when parties listen to each other, learn from each other and influence

each other. Of course, it is virtually impossible to measure the impact of any such interaction. It is also virtually impossible to predict the course of action that any country might take because it has to adapt constantly to evolving internal and external conditions. It is very difficult to predict how China is likely to evolve and, in turn, how China's evolution will impact on its relationship with the EU and the rest of the world. Martin Jacques identifies four possible political directions for the medium to long term.⁴⁹ Firstly, he assesses the unlikely move towards a multiparty system. Secondly, he mentions the possibility of a *de facto* recognition of factions within the Party. Thirdly, he evokes how to instill more life and independence into the People's Congress and the People's Consultative Conference. Finally, as a more likely proposition, he reckons that in the coming years, there will be more emphasis on the rule of law rather than democracy. This last option is that advocated by the Chinese intellectual Pan Wei and would concentrate more on how the government is run rather than who runs it and would bear great similarities with governance in Singapore and Hong Kong.

In this context, the EU should continue to prioritise certain values among what constitutes its model, namely human rights before democracy⁵⁰ and alongside Rule of Law, because it is all encompassing and supporting the 3 UN pillars of peace and security, development and human rights.

Finally, it seems clear that, EU-China relations, in particular in the area of Rule of Law and Human Rights, should remained anchored in the UN normative framework and respective commitments to effective multilateralism, this the best way to ensure that even on the more sensitive issues, the EU and China will not be talking at cross-purposes and

⁴⁹ Martin Jacques– When China Rules the World – Second Edition (2012) pp 284-286

⁵⁰ Biscop Sven – The value of Power, the Power of values: A Call for an EU Grand Strategy – Egmont Paper 33 – October 2009.

the EU will be able to continue accompanying China in its transition.