

# Getting Beyond Business as Usual for US-China Human Rights Policy

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## Dear President Obama,

More than any president in modern history, you began office facing extraordinary challenges both domestically and globally: US and global economic crises and wars in Iraq, Afghanistan, and the Middle East. Despite your sober reminders that the road ahead will be difficult, expectations for your administration are high, elevated by renewed hope that transcends a deadly cynicism of the past. As congratulations came in from my colleagues around the world, it was clear that the international community was also cheering your victory and embracing, albeit cautiously, your messages of hope, inclusion, and a better way forward. As the official *China Daily* reported in October 2008, you are an “overwhelming hit” in China<sup>1</sup>.

In the past eight years, your predecessor destroyed international goodwill towards America. The US-led war against terrorism in Iraq and Afghanistan, torture and denial of basic due process in Guantanamo and Abu Ghraib, and an often arrogant go-at-it-alone tone in international arenas all isolated the United States and undermined its moral leadership and legitimacy. When human rights activists raised the massive violations and problems in China, we were told we should first take on the human rights violations in the United States.

Of course, an urgent priority for your administration is to address unemployment and economic woes at home, but as your China advisers are hopefully pointing out, the effects of what happens in China do not stay in China. The lack of rights for Chinese workers, increased environmental degradation, endemic corruption, and ongoing suppression of freedom of expression in China all have profound and linked impacts on the health, security, and rights of US workers, the American people, and people throughout the world.

As a human rights professional who has devoted a substantial portion of her adult life to US-China legal exchanges and education, I take this to share some modest thoughts on how the United States can advance human rights in China by looking beyond business as usual.

## Strategic “Traps” or Rules of Engagement with Chinese Characteristics

The US-China relationship is recognized by both sides as important, special, and complex. Historically, Chinese and American students, missionaries, business people, and officials have been crossing the oceans in both directions to travel, study, proselytize, work, or make money for more than 200 years. In fact, the “Empress of China,” the first US vessel to visit China, set sail on George Washington’s 52<sup>nd</sup> birthday in 1784. Chinese workers and immigrants have contributed to the building of American railroads and mining towns,

while also facing first-hand the violence and discrimination of America’s racist past. Through this complex history of transpacific exchange, the US-China relationship has seen misunderstandings and periods of both mutual demonization and admiration.

Jim Mann, a former Beijing correspondent for the *Los Angeles Times*, offers one explanation of why it is so difficult to understand China and its complex economic, social, and political changes. In *The China Fantasy*, he examines two recurring scenarios in China advanced by US policy elites: the Soothing Scenario (capitalism will bring about rule of law and democracy); and the Upheaval Scenario (growing contradictions will lead to collapse and chaos). He then posits a third scenario: the persistence of a strong authoritarian regime through a range of changes. Mann does not assert conclusions about China itself, but rather offers a cogent critique of the hidden assumptions, rhetoric, and ideological and other investments that misshape US understanding of China and underpin its engagement policies<sup>3</sup>. Without critical examination of these assumptions and ideological frameworks, any assessment of China will merely reflect the United States’ own fears and expectations. A business-as-usual approach to observing China will not yield the understanding necessary for effective engagement.

The conventional Western post-Mao story about China goes something like this: Coming out of the chaos and destruction of the Cultural Revolution, China

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embarked upon a series of economic reforms, opening to the world. Yet, beyond initial rhetorical condemnations and an arms embargo, the violent crackdown on democracy and labor activists on June 4, 1989, as well as crackdowns on Tibetans and Uyghurs, were treated as an unfortunate blip by governments engaged with China and the business communities invested in, or seeking access to, China. Diverse actors pushed for relations between China and the rest of the world to get back on a course of engagement.

Engagement is justified by the theory that market liberalization and privatization function are trickle down processes that lead to political liberalization, in part due to the rising expectations of a middle class concerned about expanding its rights. Of course, this ignores the explicit policy choice made by the Chinese leaders to bifurcate political and economic reform. The implicit deal struck by the party with the elites after 1989—make money, “yes”; democracy, “no”—has now been threatened by the inability of the authorities to continue to deliver on economic growth as the economic crisis puts the Chinese out of work. Together with environmental degradation, pollution, and pervasive corruption, this economic crisis is fueling even greater social unrest. US engagement can contribute constructively to addressing these problems, but this calls for thinking out of the tried-and-failed boxes of the past and addressing the structural and legal factors that limit both problem analysis and solutions.

For almost 35 years, engagement has focused on a limited approach to dialogue and cooperation as the best strategy for advancing US strategic interests, including human rights. But assessments of whether this strategy has worked fall victim to a number of traps, including the difficulty of obtaining accurate and reliable information about actual conditions in China, and false dichotomies reflected in discussions of policy choices. Getting beyond business as usual will also require addressing how China has shaped and continues to shape these traps into the new rules of engagement—engagement with Chinese characteristics.

### “The frog at the bottom of the well”

Ironically, it was Mao Zedong who said: “We think too small, like the frog at the bottom of the well. He thinks the sky is only as big as the top of the well. If he surfaced, he would have an entirely different view.” China observers and outsiders may never be able to fully grasp the full “sky” that is China, but this inevitable partiality is only a problem if the glimpse of the sky is treated as the whole picture. The problem of inevitable partiality is present in all efforts to understand

the world, and of course in all human rights reporting. Grasping the totality of any situation—not to mention a country of 1.3 billion people—is impossible. The fluidity of moving targets—the shifting landscape in China, in United States, and in the world—also requires informed nimbleness to develop effective and relevant policy interventions.

However, when faced with human rights criticism, Chinese leaders often respond with the old chestnut: “China is so big and diverse, and progress is already underway.” While it is difficult to assess the shifting domestic landscape, and, in some respects, there has been social and economic progress for some people, the question remains: What about the vast majority of Chinese who have been left behind and who are bearing the brunt of the social and economic costs?

This frog-in-a-well trap is at work in conclusions that market-driven reforms have delivered real benefits to the Chinese people. Statistics show: 400 million people have been lifted out of absolute poverty, nearly 300 million Chinese are now online, “NGOs” and civil

society have seen tremendous growth, and so on.<sup>4</sup> Even if other statistics or data are acknowledged—600 million people drink water contaminated by human and animal waste and unemployment figures rising by the millions—people want to believe that market-driven progress is on track, and that China is moving in the right direction.

But is it? And how can we know?

With China’s comprehensive and effective system of information control, many questions are remarkably difficult to answer. Access to information is restricted both to the Chinese people and the international community. Under the state secrets system, a vast universe of information is swept into this net of information control, where classification can be retroactive and there are no due process protections for those accused of leaking state secrets or endangering state security.<sup>5</sup> The types of information explicitly classified as state secrets range from unemployment rates and information about strikes, to data on the number of people fleeing famine, programs for prisons and Reeducation Through Labor work, and executions. In fact, an independent UN body, the UN Committee Against Torture (CAT), recently concluded that the pervasive state secrets system “severely undermines the availability of information about torture.”<sup>6</sup>

President Obama, during your presidential campaign, you expressed strong concerns regarding the crackdowns in Tibet and surrounding areas following the March 2008 demonstrations, and you expressed support for a peaceful resolution in Tibet. It is difficult, however, to even assess the situation in its aftermath.

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Indeed, information about the treatment of persons detained or sentenced in connection with the demonstrations, and information about any investigations into deaths in connection with those demonstrations are all classified or related to classified information under the state secrets system. For example, “strategies and measures for dealing with the occurrence of major ethnic-related public order emergencies,” “strategies and measures used in handling ethnic separatist activities,” and “strategies and measures for handling major public order emergencies involving religious matters” are all classified “top secret.”<sup>7</sup> In this example and many others, the state secrets system limits an understanding of the human rights situation, and therefore limits analysis of causes, policy options, and solutions.<sup>8</sup> Any serious US intervention on Tibet must press the Chinese government for greater transparency on the numbers, status, and situation of Tibetans being detained or disappeared.

## Playing by the rules and the engagement myth

From the perspective of Western engagement strategy, the expectation and hope was that integrating China into the international community would lead China to play by the international rules and become a responsible stakeholder in the international system. Over the past 35 years, China has indeed become a major global player of enormous economic and political clout. It plays an influential role at the UN Security Council and is a member of the World Trade Organization. China has signed, acceded to, and ratified numerous international human rights treaties and has become an active player at the UN, including in the Human Rights Council. Has this integration resulted in improvements in human rights on the ground in China? Has this kind of engagement contributed to a more transparent and accountable reporting by China?

China is clearly playing by the rules, but it is also changing the rules. What China has demonstrated is an increasing sophistication in using both the language and processes of multilateral human rights mechanisms to manipulate procedural negotiations, and to sideline substantive discussions. China has also led the charge of the “like-minded group” (including India, Pakistan, Cuba, and Vietnam) to limit substantive rights, and it has pressured other governments into supporting its efforts to exclude from bilateral and multilateral processes any voices or groups seen as critical of China.<sup>9</sup> In this way, China’s new rules of engagement significantly affect the international regimes it participates in, and no international actor—government, business, academic, or even some foundations and NGOs—is saying no to China’s new rules. More attention needs to be devoted to analyzing and addressing this impact on the future of multilateral institutions as well as on the human rights

situation.<sup>10</sup>

Even the hope that China’s integration would align it with US security interests needs to be reexamined in light of China’s developing regional strategic partnerships. As part of its efforts to respond to the threat of terrorist acts, China is an active member of the Shanghai Cooperation Organization (SCO), which also includes Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. The SCO was founded on the belief that joint efforts by the member states within the framework of the SCO are an effective way to combat terrorism, separatism, and extremism.<sup>11</sup>

As argued in Human Rights in China (HRIC)’s NGO report to the UN’s CAT, by linking acts of “terrorism” with acts of “separatism” or “extremism” through the vehicle of the SCO, member states of the SCO take advantage of the presumptive legitimacy of anti-terrorism measures to crack down on the rights of their people to religious and cultural freedoms.<sup>12</sup> This is particularly true in the context of China’s Xinjiang Uyghur Autonomous Region.<sup>13</sup> As your new administration moves to reclaim the United States’ moral and political leadership position in the world, the United States can not allow a war against terrorism to serve again as a justification or smoke screen for rights restrictions.

## The trap of either/or paradigms

In addition to the lack of complete information about the situation on the ground, policy debates, particularly regarding engagement, often suffer from false dichotomies. Just as Mann identifies the dominant “soothing” or “upheaval” scenarios that pervade US discussions on China, policymakers often articulate false choices: bilateral or multilateral strategies; working in-country or from outside; pressure or cooperation; public shaming or quiet diplomacy; and in a frequent challenge to human rights advocates, human rights or trade. While each of these paired choices present different policy tools, constraints, and considerations, policy coherence and strategic effectiveness would be served by thinking about these choices as both related and not mutually exclusive. The United States needs to work multilaterally and bilaterally. On the human rights front, the United States must act bilaterally while strengthening multilateral communication with other governments engaged with China, notwithstanding China’s pressure and threats.

There needs to be more fresh thinking about how to specifically link and use different multilateral tools, decisions, and resources across fora. For example, by voluntarily signing onto over twenty-five human rights treaties, China has agreed to implement the international obligations and standards in areas including rights of women, children, and ethnic groups, and economic, cultural, and social rights. In addition to the treaty bodies monitoring these various human rights conventions and covenants, there are numerous

human special procedures such as the special rapporteurs on education, torture, freedom of religion, and the right to food, or the Working Group on Arbitrary Detention (WGAD).

HRIC has submitted numerous cases to the WGAD that have received a final determination of arbitrary detention; that is, that individuals were detained for exercise of fundamental freedoms or detentions occurred that violated international standards and norms. In raising individual detention cases, the United States could be raising these cases—cases that have already been reviewed by independent expert UN bodies—and avoid the charge of interfering in China's internal matters.

In regard to quiet diplomacy and public pressure, the United States must both work quietly and continue to send clear, strong human rights messages publicly. The rhetorical hackles raised about “hurting the feelings of the Chinese people” need to be taken with a grain of salt—1.3 billion grains to be precise. The litmus test for public or quiet messages should be whether they contribute to expanding the independent civil space inside China or legitimating authoritarian social control. The Chinese government clearly understands how to manipulate public messaging—witness the hostage releases usually during the time of the annual US debates about whether to extend MFN status, or when there was a potential for a human rights resolution to be tabled at the former Commission on Human Rights. As the new UN Human Rights Council Universal Periodic Review process proceeds and China's first review approaches on February 9, 2009, China once again is announcing new human rights progress—the upcoming release of a national human rights action plan.

Technology is an important example of a new tool, but it can be a double-edged sword. While the Chinese authorities now use technology to strengthen their state-of-the-art information control and surveillance capacities, the “inside” versus “outside” distinction is also being blurred by the proliferation of information and communication technologies. This is an arena in which US legislation, not to mention the global flows of people, plays an important role. In 2007, there were 685,026 total non-immigrant admissions from China to the United States including students and exchanges, and business and pleasure visits; 6,361 individuals were granted asylum; and 76,655 Chinese nationals became legal permanent residents.<sup>14</sup> People are carriers and incubators of ideas, experiences, and values, despite the resistance of tradition, nationalism, and embedded cultural frames.

Finally, when either-or thinking is invoked, it is useful to critically interrogate this: Who or what stakeholder asserts it? Why are they doing it at that moment? Who benefits? What are the consequences of accepting the paradigm? One example: The Chinese government often asserts a Chinese–Western divide, echoing

cultural relativism debates of the last century.<sup>15</sup> Yet, this distinction undermines universal standards and international human rights norms, benefits the government by guarding it from international scrutiny, and raises a barrier to the generation of international support for Chinese civil society voices and groups.

## 2009 And Beyond

Despite the largest coming out party in history and the successful mounting of the Olympics, 2008 was a difficult year for China—ice storms in the south, demonstrations in Tibet, global demonstrations during the Olympic Torch Relay, the earthquake in Sichuan, and scandals over tainted milk. Two-thousand-and-nine promises to be even more challenging in the face of several significant anniversaries: the 90th anniversary of the 1919 May 4th Movement; the 60th anniversary of the October 1, 1949, founding of the People's Republic of China; the 50th anniversary of the March–April 1959 flight of the Dalai Lama from Tibet to India; the 20th anniversary of the 1989 crackdowns in Tibet, and in Tiananmen Square on June 4.

Beijing's bid committee pledged in 2001 that the Games would be “an opportunity to foster democracy, improve human rights, and integrate China with the rest of the world.” The committee also promised to “give the media complete freedom to report” during the Olympics. Publicly, the Beijing Olympic Action Plan set forth the four goals of hosting a “Green Olympics,” a “High-tech Olympics,” a “Free and Open Olympics,” and a “People's Olympics.” Beijing should also have been held accountable for upholding the ideals of the Olympic Charter, which include the promotion of peace and the preservation of human dignity. However, a lack of transparency, the International Olympic Committee's inaction and excuses, and a general gold rush mentality in the international community made it nearly impossible to hold China accountable for its own promises during the Games, or to even help China deliver on those promises. This widespread contact with the world through the Games also contributed to strengthening domestic nationalism and an expansion of Chinese “soft power” that will make addressing human rights internationally more difficult.<sup>15</sup>

Mr. President, your personal journey to the White House, your life experiences deeply grounded in cultural and historical complexity that resonates with so many of us, will shape the leadership of the United States at home and abroad. There is tremendous goodwill and hope in the international community. This is a real opportunity not only to remake America, keeping faith with our ideals, as you so eloquently called for in your inaugural address, but also to commit to the hard work of building a more peaceful and just world for everyone. That is not possible without a China that respects human rights.

In your inaugural speech, you also referenced gov-



ernments that suppress freedom of expression. In China, there are three things that cannot be mentioned—Taiwan, Tibet, and Tiananmen. During the campaign, you spoke out on Taiwan and Tibet. You need to also address the Tiananmen incident in 2009, especially on the 20th anniversary of the bloody crack-down on June 4, and refuse the enforced historical amnesia of the Chinese authorities. There can be no truly harmonious society built on silence and injustice. Failure to investigate past abuses allows violations to continue in the present. Impunity breeds impunity.

I urge you to support the demands of China's own citizens for reform. By early January, more than 7,200 people including well-known scholars, writers, professors, have signed Charter 08, 80% of whom are individuals within mainland China. Charter 08 presents 19 proposals to the Chinese government on constitutional reform, judicial independence, freedom of expression, and human rights protection. It appeals to all Chinese citizens with a sense of duty—whether they are inside or outside government and regardless of their social status—to push for social change in China. Unfortu-

nately, the government's reaction to Charter 08 reveals its great anxiety and fears. It labeled the charter "illegal" and "counter to political principles," and vowed not to follow this "deviant path under a different banner." The Chinese government's actions not only violate its own constitution and undermine the human rights promises it has made to the international community, but also betray its deep insecurity in how to bring the country forward.<sup>16</sup>

So, in addition to bilateral and multilateral strategies, in addition to engaging governments, I would urge you to hedge your bets—and support the Chinese voices inside working for social justice and calling for urgent reforms.

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## THE US THROUGH ASIAN EYES

# Strengthening US-China Climate Change and Energy Engagement: Recommendations for Leaders and Policymakers in the US and China

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## Background

The United States and China are the most critical players in international efforts to address global warming and global energy security. Indeed, they are by far the largest emitters of greenhouse gases (GHGs) in the world, together accounting for over 40% of global CO<sub>2</sub> emissions from fossil fuel use.<sup>1</sup> They also represent 36% of the world's energy consumption and 32% of the world's economic output.<sup>2</sup> Therefore, efforts by these two players over the coming decades to cut greenhouse gas emissions and energy consumption will play a significant role in efforts to combat global warming.

Since 2006, the US and China have engaged in direct and regular discussions through the Strategic Economic Dialogue, which includes the establishment of the Ten Year Energy and Environment Cooperation Framework. The Framework presently has five priority areas for cooperation—electricity generation, transportation, clean water, clean air, and natural habitat protection—and will likely include a sixth goal on energy

efficiency. Given the urgent need to curb global warming and the key role that the US and China play in this effort, now is the time to accelerate and deepen these vital efforts by translating them into tangible actions. In the context of the global economic crisis, these efforts are even more pressing, since new technologies for "green" energy consumption will also promote economic recovery. Fortunately, both governments have focused a sizeable share of their economic stimuli on "green" actions.<sup>3</sup>

The Natural Resources Defense Council (NRDC) has been working on environmental issues in China for more than twelve years, with a particular focus on improving energy efficiency in industry and buildings, developing advanced sources of energy, and strengthening environmental law and governance in China. NRDC recently worked with a coalition of nearly 30 environmental, science, and conservation groups on a set of recommendations for the Obama transition team on environment and climate change. The recommendations from this coalition—"Transition to Green"—