

# The EU's Promotion of Human Rights in Global Information Age: the Case of China

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Paper to be presented at the UACES Annual Conference  
'Exchanging Ideas on Europe 2012: Old Borders – New  
Frontiers', 3-5 September 2012, Passau, Germany

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## **Introduction**

In contemporary political and academic debates, the European Union (EU) is widely seen as a new or emerging foreign policy actor driven by normative principles, including human rights. China, on the other hand, which stands for a normative system in its own right, has mounted a formidable challenge to the normative power of the EU, reinforced by its rising economic clout and presence around the world. The current financial crisis in Europe is another important backdrop for asking what ought to be done, when EU normative principles seem at odds with its economic interests.

This paper discusses the extent to which the EU influences national and international political debates on human rights in China, with a particularly reference to the role of the internet which facilitates and provide new platform for such debates. In so doing, I propose a

normative power perspective which helps us understand how human rights norms are diffused through a discursive form of power. Central to this paper is the assumption that human rights norms are better diffused through normative means in the global information age, such as knowledge-based cooperation and living by virtuous example. To verify this assumption, I look at two analogous issues of the death penalty and Tibet, and seek to understand the ways in which the EU shapes the international and Chinese discourses on these two cases, against the backdrop of the liberating impact of internet over the past decade.

*Section One* critically reviews the notion of normative power, and justifies how normative theorising can contribute to our understanding of norm diffusion. *Section Two* briefly looks at the impact of social media on Chinese society and politics, and discusses the implications on the ways in which the EU promotes human rights towards China. Instead of focusing on EU foreign policy instruments, *Section Three* seeks to understand the ways in which human rights norms are promoted by the EU. To that end, ‘Normative Power Europe’ (NPE) is not a foreign policy toolbox, but an independent power of EU norms that influence others (Aggestam 2009: 31, Diez 2005: 616). Through five norm diffusion mechanisms, I aim to identify norm diffusion with and without EU policy action, and discuss what ought to be done in the logic of deontological ethics in the global information age with regard to the issue of human rights.

## **I. A Normative Power Perspective to the EU’s promotion of human rights**

Manners (2002), whose work was theoretically enriched by social constructivism, proposes to locate EU foreign policy in the ontological attributes of the EU, arguing that the principles that guided the development and enlargement of the European project (peace, reconciliation, democratisation, multilateralism, human rights, etc.) are the ‘constitutive’ features that make the EU a distinctive and unique policy as a ‘normative power’ (Manners 2002: 252). In the current NPE literature, a descriptive account of NPE captures the ideological dimension of the EU’s international identity which Manners defines as having ‘the ability to shape the conception of “normal” in international relations’ because of ‘what it is’ (Manners 2002: 237). For Manners (2002: 240), this aspect of NPE traces the origins of Europe’s normative difference which produces a European international identity that is based on its constitutive norms embedded in EU treaties, declarations and policies, and ‘predisposes it (the EU) to act in a normative way in world politics’ (Manners 2002: 242). A normative definition of NPE

refers to what is regarded as ‘normal’ in world politics, which is being standardised by international law. An analytical dimension to the NPE is highlighted by Diez from a social constructivist perspective that NPE “focuses on the independent power of norms to influence actors’ behaviour” (Diez 2005: 616). Compared to its predecessors, namely ‘civilian power’ (Dûchene 1972) and ‘military power’ (Bull 1982) which focus on rational interests underlying relational power or structural power, a normative power refers to a kind of power that set standards in world politics with its influence exerted by norms themselves (Diez and Manners 2007: 175).

For some, however, the notion of NPE is not clear how these descriptive, empirical and normative definitions hang together with so much confusion (Aggestam 2009, Forsberg 2009, Haukkala 2008, Sjursen 2006a). Others notice that value pluralism can make the interpretation of NPE potentially problematic when it comes to the purpose of the concept. Some suggest that NPE is a discursive construction rather than an objective fact (Diez 2005, Pace 2007). Diez and Manners (2007) add that ‘reflection and reflexivity’ are crucial to the legitimacy of a normative power.

NPE, notwithstanding its problematic theoretical formulation, has made a vital contribution in conceptualising the unique international role of the EU in normative aspects. It introduces a multi-dimensional understanding of power and effectiveness, and articulates how the EU influences the normative conceptions of the world by standing by the principles and values it was founded upon. In this paper, this notion is adopted as an analytical tool for its strength in providing us an alternative way in understanding and judging EU influence on China beyond a rationalist paradigm, and mechanisms through which norms are diffused. By focusing on the norm diffusion mechanisms embedded in three stages of analysis, I intend to capture the EU’s normative power at work in the Chinese context.

### ***Analytical Framework***

Merely having normative identity does not make the EU a normative power (Manners 2002: 244). Thus, this paper addresses the ways in which human rights norms are diffused through a discursive form of power (Diez and Manners 2007: 187). I therefore look at normative actions taken by the EU to promote its principled beliefs. Such actions include persuasion, argumentation, or conferral of shame or prestige, rather than coercion or material motivations. This theoretical perspective thus reflects the nature of NPE at work with emphasis on both the normative power mechanisms and the normative character of EU foreign policy instruments.

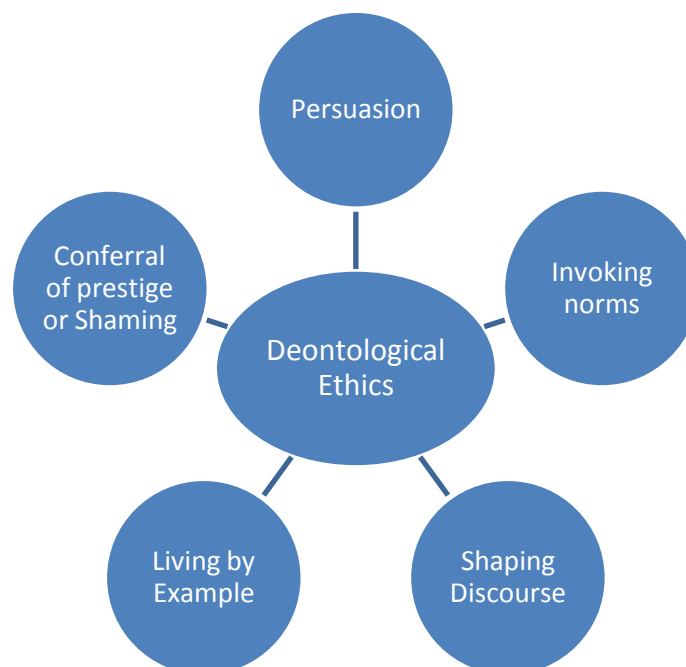
In view of deontological ethics drawn from the Kantian notion of public reasoning, the character of the action itself is an important process in terms of reaching valid moral judgements (O’Neil 2000, in Manners 2008: 57). Compared to other ethics, such as virtue ethics, deontological ethics does not seem to take good values for granted, but establishes them through practice of reasoning and law-making. The application of deontological ethics to NPE implies that the EU works to activate commitment and persuade by ‘being reasonable’; in other words, by referring to the general rules and practices, or cooperating with the third countries in form of engagement and dialogue (Manners 2008: 57-8; Forsberg 2009: 13)

In order to verify this hypothesis empirically, I begin with identifying whether human rights norms that the EU promotes in its external relations are indeed universal norms. From an NPE perspective, the EU’s activities should be, first and foremost, based on general principles of the highest level of International Human Rights Law which are binding on all subjects of international law, including the EU itself.

Moreover, the nature of norm diffusion also matters, especially when normative power is conceptualised alongside, and coexists with, military and economic power as an ontologically different concept (Diez and Manners 2007). Normative power as ‘ideological power’ or ‘power of opinion’ can be detached from, but not necessarily incompatible with, military and economic power (Diez and Manners 2007: 167). As opposed to other less or non-normative means, such as extensive use of material incentives including positive/negative conditionality, sanctions and military actions, the normative nature of the diffusion mechanisms is crucial to the understanding of NPE (Manners 2009a: 13).

Regarding how norms are diffused normatively, Foot (2001:9) suggests that, in the absence of a direct enforcement mechanism, one has to rely on moral persuasion, argumentation, shaming to invoke voluntary compliance in circumstances in which norms are well-established international standards. For Tocci (2008:9), methods based on dialogue, cooperation and engagement are normative because they reduce the risks of ‘imposing allegedly “universal” norms through sheer power and against the needs and desire of local population in third countries’. The use of persuasion, through constructive engagement and conferral of shame or prestige, is thus important if the EU is to be seen to ‘be reasonable’ in human rights policy (Manners 2009b: 795).

Drawn from Manners (2002, 2008, 2009a, 2009b, 2009c), and his critics (Forsberg 2009, Aggestam 2009), I identify five norm diffusion mechanism underlying policy approaches adopted by the EU towards China between 1989 and 2009, and evaluate their normativity through two case studies (Forsberg 2009: 20; Tocci 2008: 10). These five mechanisms include persuasion, invoking norms, shaping the discourse, power of example and conferral of prestige or shame. For instance, I seek to identify and evaluate the EU-China human rights dialogue as a form of persuasion that was intended to create opportunities to gain engagement, critical discussion and further cooperation with China on human rights issues (Baker 2002; Panebianco 2006: 140).



## **II. Human Rights, China and Social media, and implications for the EU**

Before applying the normative power perspective to the Chinese case, it is important to clarify the degree of contestation in interpreting human rights norms in the Chinese case, and shed light on the role of internet which has profound social and political impact in China, as well as the implications on the ways in which the EU promotes human rights, particularly with regard to the right to freedom of expression.

### *Universality of Human Rights*

The claim of universality has been considered as the fundamental basis of NPE construction (Tocci 2008, Gerrits 2009), even though liberal universalism is now increasingly challenged from both outside and inside the liberal world (Richmond 2006: 292). In this paper, my objective position on universal human rights is to a minimum extent. Universalists such as Donnelly and Henkin represent the mainstream human rights position in the West which is sceptical about collective rights advocated by countries like China (Donnelly 1989, 2007; Edward, Henkin and Nathan 1986). In a cross-cultural context, however, it is Parekh's position of minimum universalism that has a wider appeal. He argues that there are certain 'universal constants' such as human dignity, worth, equality and fundamental interest which 'generate appropriate universal values' (Parekh 1999:128). For constructivists, international human rights norms resonate with basic humanistic ideas of empathy and dignity shared in many cultures and societies in the world (Boli and Thomas 1999; Keck and Sikkink 1998). Despite their Western origins, these norms have universalistic qualities which should provide guidance to the fundamental purpose of statehood (Finnemore 1996b:343). While human rights norms might be agreed upon within the UN framework, their precise interpretations are subject to specific cultural and institutional settings. To that end, I concur with Donnelly (2007, 1998) that universal human rights, despite their conceptual validity, remain 'relative' and therefore limited by historical contingency and cultural particularity of states. To translate this position into normative standpoint of NPE, I suggest that, as long as the human rights norm under concern are institutionalised at the highest level of international law, such as UDHR, NPE should be spared of being accused of an expression of Eurocentric or cultural imperialism. Therefore, I define normativity based on the highest level of international human rights such as the Universal Declaration of Human Rights (UDHR). Nevertheless, the approach to human rights norms as undertaken in this paper situates itself in the middle ground between objectivist ontology to norm compliance and subjectivist ontology to norm contestation, which allows considerable space to recognise China's social conditions and moral understandings on a case-by-case basis.

### ***China and Social media: some background***

Arguably, China today has the largest population of internet users in the world. There are now estimated over 500m internet users, over 5m websites and over 3m bloggers in China.<sup>1</sup> The role of the internet is clearly more present in the economic and social lives in Chinese. This section briefly explores the impact that social media is having on Chinese politics and society.

According to the official statistics, the population of Chinese netizens reached 485 million by Jun 2011, with an increase of 27.7 million since the end of 2010. Within the first half of 2011, the number of people using Weibo, one of China's most popular social media, has tripled – rising from 63.11 million to 195 million. Of all the Chinese internet users, 346 millions used broadband whilst 233 million access the internet via their mobile phones.<sup>2</sup> Youtube, Facebook and Twitter are currently banned in China, but instead their Chinese substitutes are flourishing at an exceedingly rapid pace. A late arrival to the micro-blogging business, Sina's Weibo (literally meaning 'micro-blogging', and a homophone of 'scarf' is a Twitter clone with Chinese twists. Like Twitter, Weibo allows users to post 140-character message, and users can follow friends and celebrities, and retweet comments by others. Due to the linguistic efficiency of the Chinese language as compared to English, 140 Chinese characters usually carry much more information than 140 letters in English. In such ways, Sina Weibo has the potential to provide the Chinese users with a wider platform, facilitating the flow of information and online debates.

In light of rapid development of internet usage in China, particularly the growing number of cases of self-reporting by netizens themselves, understanding how social media reflects public opinion in China becomes ever more pertinent for the Chinese Communist Party, as the Party's traditional monopoly of information is now challenged more than ever before. On 29 April 2010, the Party's top official in charge of external propaganda, Wang Chen, discussed the development of internet over the past decades. In a speech to the Standing Committee of the National People's Congress, Wang warned that 'as long as our Internet is open to the public, there will be channels and means for netizens to express all sorts of speech on the Internet.'<sup>3</sup> While stressing the value of the Internet as an essential

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<sup>1</sup> *2010-2011 Report on Chinese internet market data*, Data Centre of China Internet (DCCI), available at: <http://www.dcci.com.cn/media/download/74855fb2b1d99befef3e91291fd9a258e297.pdf>, [accessed 20 Mar.2012]

<sup>2</sup> Ibid.

<sup>3</sup> *Concerning the Development and Management of Our Country's Internet (关于我国互联网发展和管理)*, speech delivered before the Standing Committee of the National People's Congress, Wang Chen, head of

propaganda tool for guiding public opinion, ‘unifying thinking’, and defying ‘the hegemony of Western media’, Wang spoke of ‘scientific, health, and orderly development of the internet in China. Wang was thus seeking how to balance between bringing the internet under control and facilitating its development. Wang also spoke about the need for a legal system for the Internet as well as the introduction of a security protection system for the Internet. Notwithstanding his vague working on the legislative reform agenda, Wang called for greater government transparency and accountability, and citizens’ supervision over the government via the Internet.

In June 2011, the State Council Information Office issued a lengthy white paper examining the stage of internet development in China, and elaborating on the government’s key policies.<sup>4</sup> Guiding by the principles of ‘active use, scientific development, law-based administration and ensuring security’, the paper recognised the Internet was a driving force of the Chinese economy and an indispensable tool in people’s daily life.<sup>5</sup> It noted that ‘Chinese citizens fully enjoy freedom of speech on the Internet’, evidenced by the number of internet users, and the launch of numerous official websites that facilitate the public need to express their opinions.<sup>6</sup> Party officials have also argued that the free flow of information is critical if China is to move towards a modern IT economy.

Despite these fine words there is evidence of more and more control on the Internet in China. According to China Daily and other news sources there has been an increasing tendency to block content that is deemed to be sensitive and harmful of social stability. True, the ordinary Chinese today have access to information in ways that were beyond imagination just several years ago, nevertheless, Beijing is treading a fine line. Allowing social media is key part of the government’s internet policy to ‘guide public opinion’, if it is under effective control. It also provides a useful way for the public to let off steam and the Party to understand what concerns citizens. It may also be too late to try and close down social media as there would be a certain public backlash. Few believe that users would really abandon Sina Weibo. That is partly because there is no real alternative. Those individuals who are equipped with knowledge to circumvent the firewall and consciousness of their citizens’ rights under the Chinese Constitution are the minority after all. Now, the penetration and impact of social

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external propaganda work, available at: [http://www.gov.cn/gzdt/2010-05/05/content\\_1599822.htm](http://www.gov.cn/gzdt/2010-05/05/content_1599822.htm), [accessed 20 Dec. 2011]

<sup>4</sup> *White Paper: The Internet in China*, the Information Office of the State Council, Beijing, 8 June 2010.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, pp. 5-6



media in China is both shaping and being shaped by the state's censorship engine. Whether Beijing will succeed in maintaining the Great Firewall in the long-term depends on how the authorities respond to the need of netizens as reflected on these online platforms.

### ***Implications on the EU***

The rapid evolution of information and communication technology over the past years has changed communication practices around the world dramatically. As the liberating impact of internet has brought new ways to fully realise human rights, particularly true of the right to freedom of expression, it potentially has important implications on the ways in which the EU promotes human rights to non-European countries. So far, the EU's externally policies in addressing internet censorship in third countries have been dismal. Neither the EU External Action Service nor the Council has issued any statements referring to the liberating impact of internet as the right to freedom of expression. Despite the current lack of mechanisms for this human right on the internet, the European Parliament stated that the EU '*is concerned that freedom of expression has come under attack in various new forms, especially using modern technologies such as the internet, [...] and urges countries that limit access to internet to lift restrictions on the free flow of information.*'<sup>7</sup> Moreover, the relations between new communication technologies and the defence and promotion of human rights have become increasingly topical in the public hearings organised by Subcommittee on human rights in the Parliament.<sup>8</sup>

### **III. The EU's Promotion of Human Rights: the Chinese case**

What is important about normative power of the EU is not just the universal nature of the norms being promoted, but also the means through which they are diffused. This type of norm diffusion in the absence of physical force is set to derive from the EU 'being reasonable', a notion which invokes the Kantian enquiry underlying deontological ethics (O'Neil 2000, in Manners 2008: 57). Thereby, this section looks at how the EU promotes its own principles towards China by focusing on the process of normative power at work and the nature or character of normative action.

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<sup>7</sup> P7\_TA-PROV(2010)0489, *Human Rights in the World in 2009 and EU policy on the matter*, European Parliament resolution of 16 December 2010 on the Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter, 2010/2202(INI)

<sup>8</sup> For instance, Public hearing on Human Rights in China and the role of the European Union following the last meeting of the EU China Human Rights Dialogue, 5 December 2011, European Parliament, Brussels, available at <http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN&body=DROI>, [accessed on 20 Mar.2012]

The putative existence of the EU as a ‘normative power’ often creates adaptation problems in translating normative actions into policy language. What constitutes normative action and non-normative action? What conditions foster and retract the diffusion of European ideas? How do the different diffusion mechanisms interact? In circumstances where European ideas meet with contestation and resistance, how do we measure the effectiveness of ‘soft’ normative mechanisms, such as persuasion, invoking norms and shaming? With these questions in mind, I draw from Manners (2002, 2009a) and Forsberg (2009), and illustrate how five types of norm diffusion mechanism – namely, persuasion and argumentation; invoking norms; shaping the discourse; showing example; conferral of prestige or shaming – can be applied to the Chinese case.

### *Nature of Normative Actions*

Deontological ethics suggests that the EU should focus on the rationalisation of responsibilities and rules in its external actions (Manners 2008: 57). According to deontological ethicists, public debates and reasoning are the means to identify common good and create the interest groups. In the practice of foreign policy, the making of domestic and international law is believed to be the key to identify such common good (O’Neil 2000: 52, cited in Manners 2008: 57). Speaking of normative actions, Manners suggests that ‘being reasonable’ ensure that the EU acts normatively through the process of engagement and dialogue.

### *Persuasion and Argumentation*

Normative power is most readily associated with persuasion as opposed to the use of ‘illegitimate force to shape world politics’ (Manners 2002: 244). Persuasion, as suggested by Forsberg (2009: 16), requires the abilities to bring eloquent rhetoric, personal or collective appeal and the relevant knowledge and expertise into play. For Manners (2009a: 12), persuasion by NPE refers to constructive engagement, institutionalisation of relations, and multi- and pluri-lateral dialogue between participants.

The twice-annually EU-China human rights dialogue is an evident policy process in which persuasion occurred. Instead of relying upon the imposition of the threat of sanctions which did not pay off in the early 1990s, the presumed strength of this non-confrontational approach lies in its discreet nature to which the Chinese appear to be more receptive. The key issues discussed over the years have been those concerning China’s cooperation with UN

human rights mechanisms, the death penalty, ethnic minorities' rights, freedom of expression, and individual cases. In the last two rounds of human rights dialogues and accompanying seminars, the issue of human rights and technology has been discussed by both sides in terms of 'the dangers and opportunities presented by the development of new technologies'<sup>9</sup>.

In the death penalty case, the dialogue approach has encountered major obstacles when it comes to implementation. During this reasoning process, the EU's cosmopolitan stance on the abolitionist norm has been consistently challenged by China via diplomatic tactics and ruptures. At the early stage of the dialogue between 1998 and 2000, the EU did not start with a strong abolitionist stance; instead it focused on excessive use and pushed China to make sure that all appeals are eventually dealt with by the Supreme People's Court, and to release data on the execution numbers and other relevant information on China's death penalty practice.<sup>10</sup> As a result, the principle which the EU has practically extended to China is reduced to international 'minimum standards', which do not prohibit the death penalty.<sup>11</sup> Therefore, the dialogue approach with China demonstrates several difficulties in implementation, especially in circumstances where the EU norm is not necessarily an international norm (Schabas 2002, 2009), and China's willingness to engage in the dialogue is largely instrumental. Moreover, the human rights dialogue with China is the only regular and institutionalised dialogue on human rights between the EU and third countries. Therefore, China is treated as a special case, in which the universality of human rights would inevitably be on the agenda in order to 'allow candid exchange of views on EU issues of concern'<sup>12</sup>. According to previous press releases, the process of the dialogue sessions is often described as being conducted in:

*'[...] a constructive atmosphere and was an occasion to express concerns and differences of opinion with regard to the implementation of international human rights standards in China and the EU.'*<sup>13</sup>

As a central place was given to the debate on cultural heritage versus universal human rights on the issue of the death penalty during EU-China human rights dialogues (Kjaerum 2000: 5),

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<sup>9</sup> 21<sup>st</sup> EU-China Human Rights Seminar held in Beijing (8 Sept.2011), *ibid.*

<sup>10</sup> EU Annual Report on Human Rights (1998/9), p.87; *ibid.*, (2000), p.29

<sup>11</sup> Statement by Vice-president Sir Leon Brittan, European Commission, 16 March 1998, in European Parliament Committee on Foreign Affairs (1998), Bilateral EU-China dialogue on human rights: Subcommittee on Human Rights, Delegation for Relations with the People's Republic of China: Notice to Members, No. PE 226.487, Strasbourg.

<sup>12</sup> See for instance *EU Annual Report on Human Rights (2003)*, p.36

<sup>13</sup> For instance, see press release on the 24<sup>th</sup> round of the EU-China Dialogue on human rights in Beijing.

the presumed strength of persuasion as a means to diffuse norms through reasoning is both limited by the certain circumstances in which China is willing to participate, and undermined by the fundamental challenge it posed to the legitimacy of the abolitionist norm.

In the Tibetan case, the process of persuasion is carried out not only in the form of human rights dialogue, but also EU troika visits and other delegation visits, which were dedicated to bridge the gaps in perception from both sides. Troika visits had been part of the negotiation package on the human rights dialogue since it was first launched in 1995. However, given its confidentiality and China's close supervision throughout the visit including all interviews, the actual process of the fact-finding can hardly be independent.<sup>14</sup> Moreover, it does not provide an open system for effectively engaging China on Tibet. Especially during the negotiation period leading up to the EU's decision to abandon co-sponsoring a resolution critical of China's human rights record at UNCHR in 1998, a permit for the EU Troika to visit Tibet was no more than a symbolic political gain to cover its concession over a more assertive form of pressure.

In either case, there seems no easy way out of the dilemma between seeking cooperation with China, and a hard-nosed position on the principles that the EU stands for. Thus, both cases suggest that, with a range of other measures at its disposal, the EU adopted the dialogue approach out of necessity in seeking partnership with China. To that end, being non-coercive in nature does not make the dialogue approach morally persuasive, but rather, it represents the triumph of reapolitik over principle, interests over values.

### ***Invoking Norms***

Another mechanism typically associated with NPE is invoking norms, or activation of commitments, which refers to agreements third powers have committed themselves to (Forsberg 2009: 17). In the context of EU promotion of human rights, this mechanism corresponds to the use of démarches, resolutions, declarations in which China's international obligations would be invoked in a responsive manner when violations on human rights in China are brought to the EU's attention. For successful norm diffusion through invoking norms, not only China has to subscribe itself to certain legal commitments, the EU needs to be clear and consistent as to which international legal norms should apply in certain issue areas and individual cases.

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<sup>14</sup> 'China launches attack on Dalai Lama prior to Clinton Meeting', Conor O'Clery, *Irish Times*, 27 June, 1998.

In the death penalty case, the use of *démarche*, evidencing the existence of such process, was adopted by the EU to complement the human rights dialogue for its responsive demeanour. Reviewing EU Annual Reports on Human Rights from 1998 to 2009, it shows that China is amongst the top recipients of EU *démarches* every year – both on individual cases as well as on the death penalty which is subjected to regular *démarches* under the EU's guidelines.<sup>15</sup> According to these Guidelines, general *démarches* are made when the Chinese legal and judicial systems are considered closed for public and international scrutiny and the death penalty might have been abused. For instance, EU concern about 'strike hard' campaigns has usually been raised through *démarches* towards Chinese counterparts within the framework of political dialogue meetings.<sup>16</sup> Specific *démarches* are carried out in individual cases which violate the UN minimum standards based on the sources provided by EU missions, delegations and international and local NGOs.<sup>17</sup> Following the death sentences of the Buddhist lama, Tenzin Delek Rinpoche and his assistant Lobsang Dhondup, fearing both would be soon executed, a *démarche* was immediately made before the Parliament had passed a resolution.<sup>18</sup>

The strength of the use of *démarche* thus lies in the speed of the EU's reaction. China's signature of the ICCPR provides a legitimate basis for the EU's normative action in a complementary manner with the work of NGOs and other institutions.<sup>19</sup> Nonetheless, compared to the dialogue approach, the use of *démarche* merely serves as a signal of concern rather than a push for China's concession. Moreover, the fact that China is not under any international legal obligation to comment on its death penalty practice has left this approach with little room for rationalising the principle of abolition with the Chinese.

In the Tibet case by contrast, through resolutions, declarations and *démarches*, the EU has in the past invoked various levels of international legal commitment which China has contravened.<sup>20</sup> In the early 1990s, EU concerns were squarely focused on the violation of the right to self-determination and minority rights in Tibet, and were reduced to specific

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<sup>15</sup> Given its confidential nature as opposed to public statements, the practice of *démarches* can only be traced from EU annual reports on human rights and the annual reports from the Council to the European Parliament on the main aspects and basic choices of CFSP. None of these documents reveal the details of content.

<sup>16</sup> For instance, see *EU Annual Report on Human Rights (2001)*, the Council of European Union, p.43

<sup>17</sup> *Guidelines to EU policy towards third countries on the death penalty*, pp.2-3

<sup>18</sup> Parliament resolution on 'Tibet, the case of Tenzin Delek Rinpoché, OJC 201 E, 18 August 2005.

<sup>19</sup> See *EIDHR Evaluation on the Abolition of Death Penalty Projects*, 2004, p. 31

<sup>20</sup> *Ibid.*, p.17

individual rights according to individual cases.<sup>21</sup> This absence of a consistent human rights agenda on Tibet is not unique to the EU, but characteristic of the international community as a whole, largely due to the controversial nature of the Tibet issue in international law.

Moreover, there was a tendency in deploying démarches and declarations for the EU to prioritise individual cases, which violated norms that were deemed fundamental to the EU moral order. This is certainly the case when it comes to the death penalty. Almost all the individual cases that involved death sentences or execution of Tibetans had been issued with démarches, declarations or/and resolutions.<sup>22</sup> The death penalty case also shares a similarity with the Tibet case – that is, the EU’s initial principled positions were both called into question, and the EU’s softening line has been justified by the need to engage, not confront China.

### *Shaping Discourse*

According to Manners (2002: 239), normative power refers to the ability to shape discourses. In Manners’ list of diffusion models, this type of normative power is closely associated with ‘cultural filter’, which refers to, according to Kinnvall (1995: 61-67, quoted in Manners 2002: 245), learning, adaptation or rejection of given norms as a result of international norms and political learning by third countries. In the Chinese case, shaping discourse could be identified within human rights dialogue and cooperation programmes, especially those designed to provide China with human rights education, training and academic exchange.

In the death penalty case, there have been a number of cooperation programs implemented on the ground, including ‘human rights network’ (2002-2006), ‘strengthening the defence of death penalty case in China’ (2003-2006), and ‘moving the debate forward: China’s use of the death penalty’ (2007-2009).<sup>23</sup> The programs that were most likely to have resulted in discursive change, are the ones in which the EU made creative efforts to gain a

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<sup>21</sup> Report of the Committee on Foreign Affairs and Security on the Situation in Tibet, by Rapporteur Mr Jannis Sakellariou, European Parliament, A3-0369/92, 16 November 1992, p.17

<sup>22</sup> Parliament resolution on ‘Tibet, the case of Tenzin Delek Rinpoché: OJC 201 E, 18.8.2005, Bull 10-2005, point 1.2.2

<sup>23</sup> ‘EU-China Human Rights Network’, Irish Centre for Human Rights, available at <http://www.nuigalway.ie/sites/eu-china-humanrights/about/page0.php> [accessed 3 Mar. 2011]; The Great Britain China Centre (GBCC), ‘Death Penalty Reform’, available at <http://www.gbcc.org.uk/death-penalty-reform.aspx#strengthdef> [accessed 28 Jan. 2011]

certain level of trust from the Chinese government by avoiding direct lobbying for the abolition, and focusing on enhancing the professional capacity of defence lawyers.<sup>24</sup>

This finding is contrasted with that of the Tibetan case in which China resolutely rejected the EU's principled position, consequently, the EU's discourse on Tibet ended up accommodating the need to cooperate with China to avoid challenging China on its fundamental concern over sovereignty and domestic stability. According to the Commission's first Communication in 1998 on 'Building a Comprehensive Partnership with China', the EU 'attaches great importance to the respect for the cultural, linguistic and religious identity of ethnic minorities' on issues relating to Tibet.<sup>25</sup> At the time, this EU position was manifested by raising the Tibet issue within the newly-established bilateral dialogue on human rights. In its updated version in 2003, the question of Tibet was only mentioned once in the context of ensuring a genuine autonomy for this region through encouraging China and the Dalai Lama to engage in dialogue.<sup>26</sup> Since then, Tibet has not been mentioned in the Commission's policy papers. This development in the EU's response to Tibet can be understood as accommodation and adjustment to its relations with China, in view of its normative agenda regarding which international standards to be upheld. However, the balance between open criticism and private diplomacy is not always easy to strike. As China's economy grew, so did the mutual interests between China and the EU. An ambiguous human rights language might be easy for the EU to pay lip service to, as the European domestic audience would see EU criticisms on China in both words and deeds. However, when China firmly insisted upon the principle of non-interference over its domestic affairs with regard to Tibet, the EU's criticisms of gross human rights violations in Tibet, however strong or mild, have been proven ineffective. Therefore, with a reduced scope of norms under concern and a focus on individual cases, one can argue that the EU's human rights discourse on Tibet has become a more defined but overall weaker position. Therefore, instead of shaping China's discourse, the EU's discourse on Tibet ended up being shaped by China's non-negotiable position, the need to encourage the process of engagement and dialogue with China, and the dilemma between the EU's sympathy towards the Tibetans and its economic interests with a strategic partner.

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<sup>24</sup> EIDHR Evaluation on the Abolition of Death Penalty Projects(2007), p. 86

<sup>25</sup> COM(1998) 181 final, *ibid.*, p.10

<sup>26</sup> COM (2003) 533 final

By comparison, the differences between the two cases lie in China's perception of whether proper adherence to international standards would threaten the Communist Party's rule. To that end, strengthening China's rule of law with the help of EU funded projects is certainly more appealing in the eyes of the Chinese leadership, than negotiating the non-negotiable question of Chinese sovereignty over Tibet.

### ***Power of Example***

For Manners (2002: 247), the essence of NPE is not what the EU does or says, but 'what it is', by which he indicates he normative power is the power of attraction through which the EU simply stands as a model for others to follow. Hence, 'power of example' is considered by some as the most normative form of power (Manners 2002, Zielonka 2008, Forsberg 2009). However, Forsberg (2009: 18) argues that the EU's attraction could be its economic power, too; whereas 'power of example' should convey a positive sense of learning. In the EU-China context, economic interdependence and the EU being an example are closely interrelated as neo-liberalists would assume that interdependence will automatically make China a responsible international stakeholder (Dent 1997; Dai 2007). This paper, however, focuses on the non-materialistic dimension of this diffusion mechanism, for instance, the Chinese desire to adopt various aspects of their perceptions of the 'European model' that may be of use to China's own reform process.

Contrary to all the other norm diffusion models, 'living by example' works without policy action. The rationale is that the others would emulate the EU simply for the example it sets and norms it stands by. Although there has been evidence that China drew extensively from European experience in law-making since the early twentieth century (Chu 2000), the vision to follow the footsteps of Europe towards abolition of the death penalty is only a recent phenomenon and controversial topic discussed by law academics on a purely conceptual level.<sup>27</sup> Without a long standing Christian humanistic tradition in law making, it is still unclear in those top thinkers' minds whether the abolitionist ideal could be realised in China in the future.

In the Tibetan case, the EU has been perceived to be setting a number of examples not only for the Chinese, but for the rest of the international community and the TGIE, seeking remedy for Tibet's political future. Compared to the cases of Kosovo and Baltic states, the

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<sup>27</sup> See Qiu, Xinglong, 'Sixing de dexing' (The Morality of the Death Penalty), cited in Zhang, N. (2005a: 3)



EU had drawn negative attention in its dealings with the Tibet issue, with its root cause stemming from the inherent contradictions within international law with regard to competing rights of territorial integrity of states and group/individual rights. Moreover, because the Tibetan case touches the ‘sensitive’ area of sovereignty and nationalistic sentiments, the EU as a model particularly runs the risk of reinforcing China’s arguments that attempts to “improve human rights” in China are merely a disguised form of imperialism and interference.

Finally, it is not clear the extent to which these views of Chinese leading law experts are driven by the ‘power of attraction’ of Europe. One of central premises of the NPE is that the EU’s principles are sufficiently attractive that others would emulate them (Manners 2009a: 3; Aggestam 2009: 49). Svensson’s work (2002) looks into Chinese discourse on human rights throughout the twentieth century. She concludes that Chinese thinkers were driven to foreign thinkers for wisdom by the urgent need of their own society, and for guidance on how to face some of the most difficult problems of modern politics. Therefore, she believes that those who translated and studied Western thinkers’ had developed their own ideas based on issues they perceived in China. Hence, she opposes the ‘diffusion’ model, and instead, argues that human rights arguments are generated from within China by the intrinsic need of its own people. Therefore, ‘the power of attraction’ argument as applied to this case is not well supported.

### ***Conferral of Prestige or Shaming***

According to Manners (2009a: 12), the attribution of prestige involves public declarations of support to membership of an international community, while the attribution of shame involves public condemnation or the use of symbolic sanctioning. For Foot (2001:9), shaming is an important form of norm diffusion mechanism because it is bound up with state identity, the idea of belonging to a normative community of states, civilised behaviour, or being an insider versus an outsider. For Risse and Sikkink (1999: 26), states often resent and sometimes are sufficiently disturbed by their own international image that they would start to make human rights concessions. In the Chinese context, raising China’s human rights problems at international fora and publicising the Tibetan cause are cases in which China is subject to the normative process of shaming. In the absence of direct material cost, shaming would be an effective tool if China is seriously concerned about its reputation and recognises the validity of international human rights norms (Foot 2001: 10; Risse and Sikkink 1999: 25).

Between 1989 and 1996, Member States of the EU co-sponsored a resolution each year deploring the human rights situation in China, including the issue of the death penalty. Despite a strong objection from the European Parliament, the General Council announced its abandonment of the resolution and listed a number of improvements to justify its change of strategy, one of which was China's commitment not to introduce the death penalty in Hong Kong and would report on the implementation of UN Covenants in Hong Kong. As a result, only Denmark and the Netherlands maintained a strong position on China at the UNCHR in 1997. However, apart from some diplomatic arrangements being postponed, both countries did not suffer from commercial retaliation from Beijing (HRIC 1998: 29-30). This bilateral dialogue 'coupled with specific cooperation projects' was subsequently described by the Commission as 'the most appropriate means of contributing to human rights in China.'<sup>28</sup>

On the other hand, invoking a sense of shame on China's behalf could lead to anti-Western demonstrations among Chinese nationalists and diplomatic defiance in the Tibetan case.<sup>29</sup> For the supporters of the Tibetan cause in the West, the event of 2008 Beijing Olympic Games was used as a platform to give more publicity to the Tibetan question. It was described by Thomas Mann, Chairman of the EP's Tibet Inter-Group, as a strategy to 'keep our eye on the ball'.<sup>30</sup> For China, the Beijing Games would allow China to symbolically declare an end to 150 years of national humiliation, that began with the Opium War, the subsequent collapse of the Sino-centric world, and the brutal exploitation of China by imperialist powers (Xu 2008: 4). Thus, the CCP would hope to use the Games to promote a story that focuses on three decades of high economic growth, the success of pulling millions out of poverty, and expectations in future to be proudly recognised and integrated in the global community (Askew 2009: 111).

When the Tibetan protest turned violent on 14 March 2008, the EU issued a statement urging China to show restraint towards demonstrations in Tibet, however the criticism by EU leaders of China's response to demonstrations in Tibet did not go as far as to threaten a boycott of the Beijing Games on human rights grounds.<sup>31</sup> In early April, European lawmakers urged EU leaders to boycott the Olympic Games opening ceremony in Beijing on August 8

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<sup>28</sup> COM(1998)181 final, *ibid*.

<sup>29</sup> 'A time for muscle-flexing: as Western economies flounder, China sees a chance to assert itself-carefully', *The Economist*, 19 March 2009.

<sup>30</sup> Meeting report, the 52rd meeting of the Tibet Intergroup, 16 May 2006, Strasbourg

<sup>31</sup> Presidency statements on behalf of the European Union, 7675/1/08 REV (Presse 73), *Situation in Tibet*, 19 March 2008, Ljubljana

unless China resumes talks with Tibetan exiled spiritual leader the Dalai Lama.<sup>32</sup> The President of the Commission, Mr Barroso said during his official trip to China that he was against the boycott of the Olympics which “must be a celebration of the youth of the world and it must be a success.”<sup>33</sup>

While the EU statement stayed clear of any mentioning of the Beijing Olympics and the EU officials, including Javier Solana and Jose Manuel Barroso “intended to be at the Olympics”,<sup>34</sup> some Member States were contemplating their own approaches. However, for Member States, the balance between open criticism and private diplomacy is always hard to strike. When the 27 foreign ministers met in Slovenia on 1 April 2008 to decide on whether to attend the Beijing Games and at what level in relation to China’s crackdown on Tibet, the outcome of the meeting was that Member States would decide on this individually. Germany and Poland would have no ministerial-level participants there. The Netherlands, Sweden and other nations ruled that out, whereas the French and UK head of States were undecided at the time.<sup>35</sup>

On the Chinese side, the backlash against China’s policy in Tibet generated anti-Western demonstrations in China to boycott the French retailer Carrefour.<sup>36</sup> The cancellation of a high-level summit with the EU over Tibet is an unprecedented and unusual move by China to send the EU a strong signal which carries multiple implications. For Robbie Barnett (2008), “there are internal divisions among the EU powers, and this is a squeeze to try and see who will stick to their principles and who believes they mustn’t upset China ... it’s a high-stakes game.” It also shows China’s increasing willingness to flex its strengthening global muscle.<sup>37</sup> A Chinese political commentator simply suggested that “China thinks the Tibet issue is more important than its relation with Europe”.<sup>38</sup>

Overall, China’s concern to protect its international image does provide the EU leverage over China. Massive public protests in Europe during the Olympic torch relay had sufficiently embarrassed China. However, the process of ‘shaming’ China on the

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<sup>32</sup> ‘EU trade chief warns of confronting China over Tibet’, *Agence France Presse*, London, 15 April 2008

<sup>33</sup> ‘EU chief says wants “positive” news soon on Tibet’, *Agence France Presse*, 25 April 2008.

<sup>34</sup> ‘The Threat of Boycott’, John Fox, *EUobserver*, 28 March 2008

<sup>35</sup> ‘EU expresses “strong concern” over Tibet but skates around China’s role’, *Associated Press*, 29 March 2008; ‘The Threat of Boycott’, John Fox, *EUobserver*, 28 March 2008

<sup>36</sup> ‘EU should support China on Tibet issue, government says’, *Agence France Presse*, 22 April, 2008

<sup>37</sup> ‘A time for muscle-flexing: as Western economies flounder, China sees a chance to assert itself-carefully’, *The Economist*, 19 March 2009

<sup>38</sup> ‘Did Britain Just Sell Tibet?’, *New York Times*, 24 Nov. 2008.

international stage had provoked nationalistic resentments against Western governments and media. Within the country, the official Chinese view of Tibet is universally accepted as Chinese have been subjected to decades of Chinese propaganda as the only source of information. Shaming might be successful in pressuring China into sharpening its propaganda language overseas or hiring more international public relations firms, it does not threaten China's fundamental concerns over its domestic legitimacy, or regarding Tibet – that is, China's territorial integrity (Grunfeld 2006: 340).

### ***What ought to be done: Deontological Ethics***

In the logic of deontological ethics, principles or good values should be established through practice of reasoning. Judging the EU's normative actions thus requires an evaluation of whether EU policy practices actually lead to the formation of human rights standards agreed by the Chinese.

In both cases, the Tibet issue and the death penalty have been addressed by the EU using normative means, thus in deontological ethics, the EU's action has been normative, neglecting the fact that the EU's principles on these issues were shaped by China and subject to change during the 'reasoning' process over time. However, findings from both cases show that benchmarks for the dialogue approach, together with its cooperation programs, were set up after concessions being made to allow certain level of agreement to be established as a result of the practice of reasoning.

Therefore, the often highly regarded normative means, dialogue and engagement, have called the EU's cosmopolitan disposition on abolition and its human rights approach to Tibet into question. By comparison, the EU's own reputation/record on abolition unquestionably bears more moral weight against China, than that in the Tibetan case. Furthermore, the capacity of EU institutions and member states to act in concert or speak in one voice has made the issue of the death penalty a rare case, highlighting the EU's persuasiveness without its engagement with China being undermined. In the case of Tibet, however, China resorted to other competing international norms to attach the validity of the ones raised by the EU, and tactically exploited the EU's fragmented approach in such a way as to find its own bargaining chip.

## **Conclusion**

China as a case study, is a curious amalgam of EU selfish and selfish interests, and human rights dichotomy between universalistic-versus-relativist paradigms, all of which sets to provide a litmus test for the EU's normative power. In this paper, I hypothesise that the EU's promotion of human rights is based on reasoning, and human rights principles are diffused through normative means. By 'reasoning', I mean that the EU activates commitment or has been morally persuasive by referring to generally recognised international law. By normative means, I particularly look into five norm diffusion mechanisms which help us understand the ways in which human rights norms are promoted through non-coercive action or inaction.

The norm diffusion mechanisms embedded in this approach seem comprehensive and consistent enough to capture the EU's normative power at work in the Chinese context. Especially through my analysis on 'living by example' and 'shaping discourse', some interesting findings emerge, and add to our knowledge on how norms can be diffused through 'inaction' and how the EU could end up being shaped by China in its policy rhetoric. However, the Chinese case suggests that the EU's normative power is often in conflict with not just economic interests, but also the need for engagement – a basic form of normative action itself. Moreover, that the NEP concept seeks to think beyond the agency of state of states makes the analysis rather problematic when norms are realistically intervening variables between interests and state preferences, due to the lack of due to the lack of a single EU voice on China with regard to human rights.

As a result of norms contestation on the concept of human rights both sides have been frustrated by the issues of the death penalty, Ai Weiwei, Liu Xiaobo, Hu Jia and the Dalai Lama's European tours. All of which have put formidable strains over EU-China relations over the last two decades. The twice-yearly EU China human rights dialogue has been criticised for its lack of tangible results and transparency, and the ritualistic manner in which officials from both sides often talk past each other. From a normative power perspective and deontological ethics, there should be a greater emphasis on and more creative efforts in initiating knowledge-based cooperation, educational exchange and people-to-people programmes. The 2011 EU-China Youth in Action Programme and the 2012 EU-China Year of Culture which develops partnership and networks between both sides are useful steps forward. With the liberating impact of the internet, social media also has an increasingly important role to play in providing new platforms for substantive intellectual debates and

exchange of ideas to better facilitate mutual understanding in the global information age. Hopefully, the more open-minded younger generation with the ‘capacity to aspire’ and the ‘dare to know’ (Hutton 2008: 53, 201) will be better equipped and informed when it comes to human rights.

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