

GETTING HUMAN RIGHTS RIGHT: CONSISTENCY, PATIENCE, MULTILATERALISM, AND SETTING A GOOD EXAMPLE

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EXECUTIVE SUMMARY

Human rights have assumed a new centrality in U.S. China policy. The traditional human rights agenda that criticizes specific abuses in China and assists rights defenders and civil society activists remains vital to American interests. The struggle for values must infuse other areas of American China policy as well, providing the foundation for a multilateral common front to shape China's behavior.

Because change in China will come from within, and will come slowly and discontinuously, the United States must be consistent and patient in our support for Chinese human rights defenders and change advocates. The U.S. government must consistently and publicly call out China on its human rights violations. Sanctions should be used only selectively. Government and society should increase support for legal reformers, academic freedom advocates, independent journalists, human rights defenders, and pro-democracy activists in China and in exile. We must nurture the rich and complex ties between the two societies, especially in education. Universities, think tanks, foundations, publishers, film producers, state and local governments, corporations and other actors should formulate voluntary group codes of conduct to govern how they interact with China.

The United States must rejoin the UN Human Rights Council and take a more active role in the important diplomacy that addresses issues of international norms there and in other UN institutions. The United States should compete actively for influence with China in all the intergovernmental institutions where international rules directly or indirectly relevant to human rights are formulated. The United States should ratify the major human rights treaties that it has still not joined. And it must respect democratic norms and rule of law at home and fulfill its international obligations toward asylum seekers.

THE HUMAN RIGHTS ISSUE IN U.S.-CHINA RELATIONS

Human rights have assumed a new centrality in U.S. China policy as relations between the two countries have worsened. During the engagement period of American China policy (roughly 1972 through 2016), policy makers saw human rights as a matter of values rather than interests, to be promoted when doing so did not interfere with higher-priority material concerns. During the first three years of the Trump Administration, although the U.S. declared a trade war with China, economic competition did not preclude areas of cooperation, and the trade issue itself was defined as a clash between fair and unfair economic systems rather than as part of a systemic clash of values. But in 2019 and 2020, in a coordinated series of speeches and documents, leading figures in the administration declared that the United States and China were engaged in an all-encompassing competition over ultimate values.¹ The issue was now which country's ideology and system would prevail globally. Values shifted from an ancillary position in the relationship to the unifying framework for all elements of the strategic competition between the two countries.

The Xi Jinping administration did not seek this ideological confrontation with the United States, but it helped to trigger it by many of the actions it took to try to improve its own security. Beijing pushed back against the decades-old American military-political encirclement through island-building in the South China Sea and expanded air and maritime operations around the contested Senkaku Islands and Taiwan. It expanded access to global resources and markets through the Belt and Road Initiative and used funding and personnel placements to enlarge its influence in global institutions like the UN Human Rights Council, Interpol, the International Telecommunications Union, and the World Health Organization. China used sometimes

clumsy propaganda and United Front strategies to try to win supporters and punish critics around the world. And it cracked down at home against perceived threats to regime security, including in Xinjiang and Hong Kong. It has responded on a tit-for-tat basis to American criticisms and sanctions.

These actions intensified the sense — not only in the United States, but also in Europe, Australia, Japan, India, and Southeast Asia — that China was becoming a threat to its neighbors and had become what the EU in 2019 labeled a “systemic rival” of the West. Western countries intensified their criticism of China’s human rights record, while other issues like trade, investment, educational exchange, global governance, foreign aid, and even military strategy came to be positioned alongside human rights as elements of a wider clash of values.

This “new Cold War,” as some have called it, is in several important respects different from the old Cold War. First, unlike the Soviet Union, China does not have an ideological program it seeks to export to the world. Although its policies are helpful to existing authoritarian regimes, it has no mission to turn them into Chinese-style regimes, and it is willing to work with regimes of any type to promote its economic and diplomatic interests. The soft power that Beijing brings to the contest over values is far weaker than that wielded by Moscow at its height. For all the damage that the United States has done to its own brand, it remains enormously more attractive than China’s brand. Second, China has no bloc of security allies and in fact is surrounded by countries that are wary of its influence. Third, China wants more say in international institutions but has shown no sign of wanting to overthrow them. Fourth, the two powers possess a far greater degree of interdependence than ever existed between the United States and the Soviet Union. For all the problems in the economic relationship, there is still much to be gained on both sides from trade, investment, and scientific, educational, and cultural exchange. Fifth, as far as we can tell now, the Chinese regime is less vulnerable to internal collapse than the Soviet regime turned out to be. Over the long run, China is likely to liberalize to some extent, but it is unlikely to either to split apart or to become a democracy in any foreseeable time frame. Sixth, and perhaps most important for American policy makers, China’s cooperation is necessary to deal with pressing global problems

like climate change, the health of the oceans, and the international circulation of diseases.

For these six reasons, the threat China poses to American values should be understood as important but not existential, and the costs of decoupling from China should be understood as substantial. Neither accommodation nor regime change will be effective policies. The right policy lies in between, whether labeled “managed competition,” “conengagement”, or some other name. Under whatever label, human rights will be a more central component of this policy than it was during the era of engagement.

The struggle for human rights — in China as in any other society — is a longterm effort. China’s crackdowns in Xinjiang and Hong Kong, and on lawyers, feminists, religious practitioners, and others are responses to what the regime sees as existential threats to its security. For that reason, we cannot expect the regime to change merely to mollify foreign critics, or even in response to diplomatic pressure or sanctions. Change will come ultimately from within, slowly and discontinuously. The United States must be consistent and patient in its support for human rights defenders and change advocates who may seem for long periods of time to make no headway. Because their cause is just, their moment will come.

GOALS

First, the traditional, and relatively narrow, human rights agenda that criticizes specific abuses in China and assists rights defenders and civil society activists remains vital to American interests. Although China cannot be expected to change in response to outside pressure, it is reasonable to expect that the Chinese people will succeed in the long run in their struggle to gain recognition for their dignity and rights, although within a political and legal system that will remain distinctively Chinese. A more liberal China with something closer to authentic rule of law will be less averse to American global influence and more open to cooperation with the United States in the numerous areas of common interest. At a time when internal forces for reform in civil society, academia, and within the ruling party are suffering severe repression, the United States must support them both verbally and whenever possible with practical measures.

Second, the struggle for values should continue to infuse other areas of American China policy. Human

rights is no longer a policy area to be pursued only out of conscience; rather, it should be the core of a comprehensive strategy to defend and promote universal, international law-based norms. Within the complicated democratic alliance that includes key actors with diverse interests such as Germany, Japan, Britain, France, Australia, and others, the struggle for core values is the only firm foundation for a common front that can gradually shape China's behavior. It is therefore appropriate to frame the economic competition between the two countries in terms of China's violation of WTO commitments, intellectual property rights, and fair market rules; to frame opposition to the expansion of China's military presence in the South China Sea as a defense of the principles of peaceful settlement of territorial disputes and freedom of navigation; to frame competition over cyber technology as a defense of personal privacy rights and freedom of information. These and other areas of competition entail not merely conflicts over material interests, but disagreement over how conflicts of material interests should be resolved.

Third, the competition with China over how to manage international relations takes place not only bilaterally but within international institutions like the United Nations Security Council, the Human Rights Council, the World Health Organization, and many others. The United States must be represented in these institutions in order to promote its vision of global order. The competition also takes place in countries around the world where China vies for influence with infrastructure investment, trade, media, educational exchange, training for officials, and in myriad other ways. To perform effectively in this competition, the United States must cultivate its alliances and improve its performance as a donor of development assistance.

RECOMMENDATIONS

- The United States must consistently and publicly call out China on its human rights violations, both in public diplomacy and in relevant UN settings. The reference point for these criticisms should be international law and not American values: although the two largely overlap, it is international law with which China has obligated itself to comply by participating in the United Nations and by acceding to most of the major human rights treaties.² "Quiet diplomacy" had promise in the past, but the worsening of relations between the two governments has reduced its potential to produce even small gains in the human rights field. Even so, restoring the past practice of regular "human rights dialogues" is a worthy negotiating goal, since such a dialogue would keep a bilateral governmental focus on human rights and might become productive when the time is right. Such a dialogue should be reinstated only under conditions that allow NGO participation and publicity of the results. Meanwhile, high-level public expressions of concern are the most important governmental tool, because they put violators on notice that their acts are visible to the outside world and draw the attention of senior Chinese officials to the reputational cost of human rights violations.
- Sanctions should be used only selectively. Sanctions are appropriate on companies that are engaged in implementing human rights violations. But most sanctions on individuals, which recently have been imposed increasingly frequently, are not useful. In contrast to verbal criticisms, these sanctions give an impression of decisiveness and strength to the American domestic audience, but are seen by Chinese and international audiences as expressions of high-handed unilateralism. And the fact that they are only symbolic, usually without practical effect on the targeted individuals, undermines even their symbolic impact.
- The United States government, foundations, the NGO community, the legal community, and other elements of civil society must support legal reformers, academic freedom advocates, independent journalists, human rights defenders, and pro-democracy activists, both those in China and those in exile, both verbally and with practical measures. Activists can make progress more easily on issues that the Chinese regime does not view as threatening its survival, such as disability rights, employment discrimination, sexual harassment, domestic violence, and the rights of the mentally ill and the LGBTQ community. The U.S. Congress should allocate robust funding to the National Endowment for Democracy to support persons and organizations peacefully promoting democracy and rule of law in China. It should increase support for U.S. government-funded media outlets such as the Voice of America and Radio Free Asia and protect

the independence of these agencies so that they continue to deserve the trust of listeners. The United States should continue to support the development of technology to enable more Chinese citizens to circumvent the Great Firewall that blocks their access to the global Internet. The United States should be generous in the award of asylum status to Chinese individuals who face a credible risk of persecution in China because of their human rights advocacy.

- The rich and complex ties between the two societies, especially in education, are a valuable policy resource to be treasured: providing sources of information, perspectives to protect against miscalculation on both sides, and, in the long run, channels of positive influence especially on China's young people. With the exception of areas of science and technology that are sensitive for military and security reasons, government and academic institutions should support educational exchange between the two countries. Most Chinese students and scholars should receive student and visiting scholar visas easily and rapidly.
- Universities, think tanks, foundations, publishers, film producers, state and local governments, corporations, and other actors should review their relations with China and formulate public voluntary group codes of conduct for interacting with China, in order to ensure that all such engagements meet their communities' standards of academic and intellectual freedom and corporate ethics. Codes of conduct will help counter the divide-and-influence tactics that China has developed in its effort to dictate what American institutions can say, publish, and film, who can participate in China-related activities, and how corporations can respond to inappropriate Chinese government demands. Government, media, academic, business, and other entities should seek reciprocity in their relations with Chinese counterparts, but not by emulating Chinese practices, which would constitute a race to the bottom.
- The United States must rejoin the UN Human Rights Council and take a more active role in the important diplomacy that addresses issues of international norms there and in other UN institutions. The most direct, focused, public, and

detailed confrontation by governments and NGO advocates with Chinese government officials over human rights norms and human rights violations can and should take place at meetings of the UN's Human Rights Council, at hearings of the Council's Treaty Bodies, and in the activities of the Council's Special Procedures. These UN agencies are an underused resource in American diplomacy. The United States must compete actively for influence with China in all the intergovernmental institutions where rules directly or indirectly relevant to human rights are formulated for the global community, including the World Health Organization, the International Telecommunication Union, the World Intellectual Property Organization, Interpol, and others. It should collaborate with other like-minded democratic countries to coordinate common positions on emerging norms that will affect people's access to their human rights in many dimensions.

- To promote universal values in the face of Chinese competition, the United States must set a model by enhancing its compliance with the same international standards that it urges China to respect. The United States should ratify the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities, as well as other international instruments that promote rule of law as a principle of international relations, like the UN Convention on the Law of the Sea.
- Above all, an effective human rights and values-promotion policy must be founded on the demonstrated success of the American model. The foundation of any nation's influence lies in its good example, which is why China is having a hard time "telling the China story well" despite its impressive investments in foreign aid and foreign media. When the human rights agenda was relatively specialized, the American example was the key to its credibility. Persuasion by example is all the more necessary when the values competition is all inclusive. Therefore, the first step in China policy, and in foreign policy more generally, is for Americans to respect democratic norms, honor rule of law, address the legacy of systemic racism, and comply with our international obligations toward asylum seekers.

REFERENCES

- 1 A coordinated series of speeches by National Security Advisor Robert O'Brien, FBI Director Chris Wray, and Attorney General William Barr culminated in a speech by Secretary of State Mike Pompeo, "Communist China and the Free World's Future," July 23, 2020, <https://www.state.gov/communist-china-and-the-free-worlds-future/>, accessed 2020.09.04.
- 2 See Human Rights in China, "UN Treaty Bodies and China," <https://www.hrichina.org/en/un-treaty-bodies-and-china>, accessed 2020.09.07.