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# THE FUTURE OF US POLICY TOWARD CHINA

## Recommendations for the Biden administration

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# THE FUTURE OF US POLICY TOWARD CHINA

## Recommendations for the Biden administration

EDITED BY RYAN HASS, RYAN MCELVEEN, AND ROBERT D. WILLIAMS

### **FOREWORD** *Ryan Hass and Robert D. Williams*

In recent years, the U.S.-China relationship has grown increasingly adversarial. Areas of confrontation have intensified, areas of cooperation have shrunk, and the capacity of both countries to solve problems or manage competing interests has atrophied. This monograph does not seek to examine the causes of this recent downturn in the relationship. Instead, the authors look forward with an array of affirmative and pragmatic proposals for how the United States should adapt its policy toward China to respond to current realities in a manner that best protects and promotes America's interests and values.

This monograph on the future of U.S. policy toward China is designed to be practical and policy relevant. It is the product of an institutional partnership since January 2018 between the Brookings Institution's John L. Thornton China Center and the Yale Law School's Paul Tsai China Center. Each chapter reflects the views of its author. The chapters — all written before the outcome of the U.S. presidential election was known — do not advocate any institutional position or promote any consistent viewpoint or common goal for the U.S.-China relationship. The authors approach the aspects of the relationship upon which they are writing from the perspective of their own experiences and expertise.

The monograph addresses a broad range of issues in U.S.-China relations but does not aim to be comprehensive in its coverage of such a dynamic bilateral relationship. The introductory section provides a framework for reconceptualizing the U.S.-China relationship. Section I focuses on new approaches to bilateral diplomacy and working with U.S. allies on common challenges. Section II offers proposals on security-related issues from Asia-Pacific regional and U.S.-China bilateral perspectives. Section III includes a variety of policy recommendations in the areas of economics, technology, and rule of law.



Viewed as a whole, there are policy areas where recommendations across the chapters are in alignment, and other areas where the recommendations are in tension. Where all the chapters are in accord, however, is in providing concrete recommendations that aim to move the U.S.-China relationship forward in a manner that strengthens America's security, prosperity, and values.

## INTRODUCTION

**Jeff Bader** provides a framework for understanding the current state of the U.S.-China relationship. He argues that while strategic competition with China will be the overriding feature of the relationship for the immediate future, it would be contrary to American interests to treat China as an enemy. To do so would distort our national priorities, increase the risk of war, damage our ability to compete by alienating partners, and render cooperation more difficult even when in our interest. To meet the China challenge, Bader urges the United States to prioritize maintaining its historic edge in technology innovation, building a multilateral coalition to confront Chinese violations of the rules-based international order, and rebuilding its political, economic, and social foundations. Bader encourages policymakers to take a long view of competition with China, factoring in both China's abundant strengths and its glaring weaknesses, in building a coherent national strategy for outcompeting China.

## I. BILATERAL DIPLOMACY AND WORKING WITH ALLIES

**Cheng Li** identifies three traps that the next administration should avoid in its conception and execution of a coherent China policy. First, the next administration should avoid public efforts to drive a wedge between the Chinese Communist Party and the Chinese state or the Chinese people. Li warns that such efforts may generate the opposite and unintended effect of enhancing the popularity and authority of the Chinese Communist Party within China, as a reaction to perceived attack from abroad. Second, the next administration should refrain from calls for the overthrow of the Chinese Communist Party, at least unless and until the United States has a grand strategy, political leverage, and a game plan for ensuring that whatever would succeed the Chinese Communist Party would be more conducive to American interests than the status quo. Third, the next administration should avoid crudely xenophobic assertions that ethnic Chinese people present a "whole-of-society threat" to the United States. Such broad-bush assertions validate Chinese propaganda about America's prejudicial biases. Instead, a new administration should construct a comprehensive strategy toward China that is guided by a clear-eyed recognition of the capacity and constraints of American power to influence China's choices.

**Ryan Hass** observes that a sharp deterioration in overall relations has coincided with a significant reduction in direct diplomatic dialogue. He argues that the reduction in direct communication in recent years has not improved America's ability to influence how China identifies or pursues its interests, nor has it generated leverage to compel Chinese concessions in exchange for high-level meetings. He encourages the next administration to settle on a pace and level of diplomatic interaction with Chinese leaders that is reflective of — or not in conflict with — the views of the American public and of American allies and partners on China. To strike such a balance, Hass encourages the next administration to take a gradual approach to restoring dialogue with Beijing, both to give allies and partners confidence that Washington prioritizes restoration of bilateral relations with them, and also to make clear to Beijing that the United States will be focused foremost in the U.S.-China relationship on advancing clear objectives not on laundering an appearance of "back to normal" for a relationship that is the opposite at the current moment.

**Paul Gewirtz** sees broad agreement among U.S. foreign policy experts that the United States would have much greater leverage in addressing China by “working with our allies” rather than acting unilaterally as the Trump administration has so often done. He argues, however, that for a new administration to act on this important idea — particularly with European allies — it must identify priority policy areas and concrete issues where effective collaboration is plausible and must develop a carefully considered diplomatic strategy. He identifies five promising areas for collaboration with European allies: economic issues, technology issues, human rights, reinvigorating the international system, and climate change. Gewirtz acknowledges that developing coordinated policies toward China will not be an easy effort given that U.S. and European perceived interests and current policies diverge in important respects, with Europe adopting a more multifaceted and nuanced approach to China even as its stance toughens. He cautions that building back Europe’s trust will take time and skilled diplomacy and even new understandings of what “American leadership” means. But the gains for the U.S. will be great if policymakers can work more collaboratively with Europe.

**Thomas J. Christensen** compares the failure of the United States and China to confront the common challenge posed by COVID-19 with past cases of countries that overcame tense and even hostile relations to work together for common goals, such as the United States and the Soviet Union in the 1940s, U.S.-Soviet collaboration on eradicating smallpox in the 1960s and 1970s, and the U.S.-Chinese alignment against the Soviet Union during the 1970s and 1980s. He notes that the failure of Washington and Beijing to cooperate during this crisis has already increased the suffering of the Chinese and American populations. If both sides remain unable to cooperate into 2021, an even greater catastrophe could spread to other parts of the world, particularly the southern hemisphere. He urges a new U.S. administration to take seven steps to adjust its approach: stop the blame game and drop race-baiting; re-fund the World Health Organization and work from within to shape its agenda; exchange best practices with China on limiting the spread of the virus and identifying effective care models; prepare in advance for mass manufacturing and global distribution of vaccines, regardless of which country’s scientists are behind the breakthroughs; cooperate with China and the WHO to build medical infrastructure capacity in the developing world; reinvigorate U.S. engagement with the IMF and the Paris Club and press China to coordinate its debt relief to the developing world; and supplement increased domestic production of critical medical products with diversified international sourcing and strategic reserves of imports.

**Todd Stern** observes that the deterioration of U.S.-China relations has complicated the capacity of both sides to work together on climate change, yet such renewed engagement is vitally important. Reviving climate coordination will depend both upon getting the mix of competition and collaboration right in the overall relationship and upon the extent to which both countries are prepared to dramatically ramp up their climate action. Vice President Biden has made clear his commitment to putting the United States on a path to reaching net-zero emissions by 2050. China’s record on the clean energy transition is mixed — the world leader in renewable energy, but still doubling down on coal at home and abroad. Biden will need to make clear to President Xi Jinping the centrality of climate change to his national security vision and the mutual opportunity for the United States and China if they are ready to embrace aggressive climate action. At the same time, the United States will need to deploy additional tools, working closely with Europe and other allies, to demonstrate that anything less than a genuine recognition of the climate imperative will be unacceptable.

**Andrew J. Nathan** argues that human rights have grown in importance in the U.S.-China relationship, and that U.S. policy on China must be updated to demonstrate America's strong, consistent, and patient support for Chinese human rights defenders and change advocates. As part of such efforts, the United States should call out China on human rights violations, be selective in use of sanctions, infuse values promotion in efforts to forge a multilateral common front to shape China's behavior, and at the same time deepen support for reformers inside China. The United States should nurture ties between the two societies, even as key groups within American society develop their own voluntary boundaries around acceptable interaction with Chinese counterparts. In the international sphere, the United States should compete actively with China for influence in all intergovernmental institutions where international rules relevant to human rights are formulated. The United States must rejoin the UN Human Rights Council and invigorate its diplomacy within the UN system on the development of rules and norms relating to human rights. The United States also must revive the power of its example at home, including by fulfilling its international obligations toward asylum seekers.

## II. ASIA-PACIFIC SECURITY AND U.S.-CHINA SECURITY

**Michael O'Hanlon** argues that the next administration should be deliberate and methodical about making any adjustments to U.S. force posture in Asia in response to China's expansion in military capabilities. He notes that the current American force posture aligns well with its commitments and interests, as well as the threats it faces in the region. The current concentration of American forces in Japan and the Republic of Korea corresponds with their overall strategic clout and their threat environment. Australia's geographical position insulates it from need for additional permanent American basing. An increased permanent presence in the Philippines would not be advantageous given the nature of the Duterte regime and the risk of getting drawn into potentially violent disputes over relatively strategically insignificant features. The U.S. already has strengthened its presence in Guam and added access options in Singapore and Palau that largely correspond with requirements in the present threat environment. Hypothetical new alliance relationships with Vietnam or other mainland Asian states would create as many vulnerabilities as benefits and need not be pursued at present.

**Susan Thornton** argues for a creative new approach to diplomacy with China and Southeast Asian countries regarding the South China Sea. She notes that Chinese military advancements and increasing capabilities in the South China Sea, as well as the country's bullying enforcement of its disputed maritime claims, threaten to undermine U.S. interests in the Asia-Pacific region, including preserving freedom of navigation, access to the global commons, and a credible security umbrella for allies and partners. She contends, however, that the U.S. will find it increasingly difficult to successfully defend the positions of allies and partners through displays of military presence as deterrence. Rather than continue to test the limits of the current approach in a situation where failure will be gravely damaging to U.S. interests, the U.S. should change tack and seek a *modus vivendi* with China that can return the emphasis to international law, clear communication of expectations and, eventually, agreements on resource exploitation and preservation. She proposes a "cooperation spiral" that could lead China and the United States, together with ASEAN South China Sea claimants, to restore trust and reestablish law, rules, and restraint in this vital waterway. While this aim will be extremely difficult to achieve in the current diplomatic atmosphere, U.S. and Chinese diplomats have made progress on challenges before and could do so again with good will and cool-headed pragmatism.

**Jonathan Stromseth** argues that, when observing U.S.-China rivalry in Southeast Asia, China is increasingly achieving its strategic goals through economic statecraft, and economic factors are playing a prominent role in shaping the choices of Southeast Asian leaders on policy issues that divide Washington and Beijing. To compete with China and sustain American power and influence effectively, Stromseth says, Washington needs to improve its economic game in Southeast Asia by operationalizing infrastructure coordination with allies and partners, including Japan, Australia, and Singapore. It should also establish a regional center for strategic economic engagement; explore the costs and benefits of joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); deepen ties with emerging partners like Vietnam; revitalize and reframe foreign aid cooperation; and coordinate with China to combat climate change in a region that is particularly vulnerable to global warming. Ultimately, the objective shouldn't be to confront Chinese economic initiatives and create a bifurcated region, imposing choices that could end up marginalizing the United States over time, but to develop compelling alternatives and then reengage China from a position of strength.

**Richard Bush** examines the evolution of China's increasingly coercive policies toward Taiwan and Hong Kong. He argues that the next U.S. administration will face decisions regarding whether to change policy toward each territory in order to secure its interests: for Taiwan, helping it sustain economic growth, security, international participation, and self-confidence as it faces China's challenge; for Hong Kong, preserving its prosperity and over time encouraging a return to a political system that allows for greater popular choice. Bush calls for the United States to open talks with Taiwan on a bilateral trade agreement that can foster the structural adjustment of the island's economic policies and reduce the PRC-induced marginalization of the Taiwan government from the international economy. He encourages the next administration to conduct a comprehensive assessment of U.S. technology policy and its implications for Taiwan relations, bolster the island's capacity to counter Chinese coercion, and improve the articulation of U.S. policy to audiences in the American and Taiwanese publics and in Beijing. With respect to Hong Kong, Bush contends that the next U.S. administration should take steps to ensure the freedom and safety of Americans in or intending to travel to Hong Kong. He urges the United States to avoid enacting any sanctions that would harm the people of Hong Kong and their standard of living. Finally, he encourages a revitalization of U.S. public diplomacy that rejects Beijing's false narratives and supports the protection of civil and political rights without suggesting that Washington can force China to radically change its Hong Kong policy.

**Jonathan Pollack** assesses North Korea's nuclear and missile development over the past four years, concluding that the Trump administration's failure to achieve any of its declared denuclearization objectives requires a careful reassessment of credible policy goals, the mechanisms needed to advance them, and steps to be avoided. He notes that adversarial relations between the U.S. and China have made cooperation on the Korean nuclear issue more difficult, but that a return to a disciplined approach to North Korea would have significant implications for U.S.-China relations. He argues that the immediate tasks for U.S. policy are to restore order and predictability in U.S.-South Korea relations; to reaffirm U.S. extended deterrence guarantees to South Korea and Japan; and then to assess whether U.S.-China understandings about North Korea are realistic or feasible. Should Washington again decide to rebuild institutional mechanisms with China, there are three dialogue levels that warrant particular attention: (1) intelligence sharing on North Korea; (2) policy-level coordination drawing on earlier approaches such as the six-party process that (at least for a time) generated meaningful results; and (3) deliberations among military operators, with particular attention on crisis management. He concludes that there will be no easy escape from questions that have burdened Northeast Asia and the United States for decades, but China cannot be excluded from this process.



**Rush Doshi** argues that U.S.-China crisis management and risk reduction should be a point of emphasis for the next U.S. administration. As mutual trust erodes and the two countries operate in greater proximity in the maritime, aerial, cyber, and space domains, crisis escalation risks are growing, yet the institutions to manage crises are woefully inadequate. Doshi assesses that although China has been the primary impediment to progress in this area, there are reasons for cautious optimism. He contends that in the period ahead, the United States and China will need to (1) signal consistently their interest in communication mechanisms and their willingness to sustain them even as political tensions rise; (2) expand rules and institutions designed for the maritime domain to include China's Coast Guard and its Maritime Militia, and make existing codes of conduct significantly more detailed; (3) follow a similar approach in the space and cyber domains; (4) eventually extend such mechanisms to emerging technologies; (5) build "operational trust" and familiarity with standard operating procedures through routine interaction; and (5) engage at the very highest levels of leadership to anchor and sustain these efforts.


### III. ECONOMICS, TECHNOLOGY, AND RULE OF LAW

**David Dollar** calls on the next administration to end the current "managed trade" approach to the U.S. economic relationship with China. Setting specific export targets has not worked and should be scrapped in favor of a focus on structural issues in the Chinese economy: non-tariff barriers; restrictions on foreign investment in some sectors; poor protection of intellectual property rights; forced technology transfer; the extensive role of state-owned enterprises in the economy; and subsidies to develop specific technologies. Bringing China up to advanced country norms would open new trading opportunities and raise American incomes. Dollar argues for an alternative approach that involves negotiating down the current U.S. tariffs for a "phase two" agreement with China on structural issues to level the economic playing field; deemphasizing the exchange rate and trade imbalances; coordinating economic policies with allies, ideally to include rejoining the CPTPP; negotiating with China over its role in international economic institutions; and rationalizing national security and technology-related policies to ensure that most of the U.S. economy remains open to trade, investment, joint research, and student exchanges with China.

**Robert D. Williams** assesses the geo-technological changes driving an array of national security, economic, and values-based concerns in U.S.-China relations. Calibrating technological competition and integration will be one of the foremost foreign policy challenges for the next administration, calling for a U.S. strategy that prioritizes cooperation with allies and partners. Williams argues that U.S. policies should seek to protect American intellectual property and strategic technologies while sustaining and strengthening the innovation ecosystem that makes those technologies possible, while upholding American values of human rights, democracy, and rule of law. He encourages the next administration to advance these objectives through a robust set of technology and cybersecurity policies that include: (1) establishing a comprehensive, high-standard national framework for data security and privacy; (2) launching a multilateral digital trade initiative with partner countries; (3) imposing meaningful penalties to disrupt and deter malicious cyber activities; (4) revitalizing international law and institutions addressing new technologies; and (5) empowering a high-level working group within the U.S. government to coordinate a range of technology policies across domestic and international dimensions.

**Samm Sacks** argues that U.S.-China technology interdependence creates a suite of challenges for cross-border data flows, data privacy, and data security that extend beyond the traditional risks of cyber espionage and protecting intellectual property. Daunting new problems in managing the vast quantities of data created by digital technologies call for a broader approach than narrowly focusing on them within the U.S.-China technology conflict. Instead, Sacks argues, it is time for the United States to propose a holistic vision for internet governance based on the following pillars: (1) passing a comprehensive federal privacy law with strong enforcement to manage how all companies collect, retain, and share data; (2) creating a multilateral approach focused on allowing commercial data to flow and creating incentives for countries whose data regimes meet agreed-upon thresholds; (3) developing a targeted way to evaluate the national security risks of different kinds of data involved in various transactions, because not all data has the same levels of sensitivity, and global cloud services require cross-border data flows; and (4) creating policy that works in coordination with the development of technical solutions to make security possible in low-trust environments.

**Jamie Horsley** urges the next administration to strengthen official U.S.-China legal cooperation to support China's efforts to establish rule of law and good governance. These initiatives, which have atrophied under the Trump administration, serve U.S. interests in protecting national security, developing trade and economic opportunities, and furthering rule of law and human rights both in China and globally. Among other things, such programs support greater substantive and procedural predictability for U.S. businesses and the Chinese people. Rule of law dialogues also provide platforms to address human rights concerns in the more technical language of law and regulation. While the United States should continue to address Beijing's violations of U.S., international, and Chinese law, Horsley encourages the next administration to: (1) inventory, evaluate, and restart government-led legal cooperation programs that have demonstrated positive impact over time; (2) seek China's "buy-in" to ensure that legal cooperation is productive; (3) restart negotiations on a high-standard U.S.-China Bilateral Investment Treaty; (4) join the CPTPP and encourage China to do so; (5) develop and utilize expertise on Chinese law and how China's legal and regulatory systems work; (6) approach bilateral legal cooperation with a constructive attitude; and (7) improve rule of law principles and practices at home.



# **INTRODUCTION**

## **MEETING THE CHINA CHALLENGE: A STRATEGIC COMPETITOR, NOT AN ENEMY**

**JEFFREY BADER**

### **EXECUTIVE SUMMARY**

China's dramatic rise to major power status will soon present the United States with an across-the-board near peer competitor. The challenge for the United States will be how to project and defend its political, economic, military, and technological interests in the emerging strategic competition without pursuing decoupling from China to the point of entrenching a new Cold War. The magnitude of the Chinese challenge is undeniable. It is on the way to becoming the world's largest economy, competing with the United States in innovation of technology platforms key to economic and military global leadership, developing military capabilities to balance the United States in the western Pacific and make possible forcible reunification with Taiwan, and exerting decisive influence and leverage in some multilateral institutions and standard-setting bodies where the U.S. has been preeminent. The ideological differences between the United States and China exacerbate their rivalry, but most of the issues are inherent in major power competition. They should be handled without the need to demonize China over systemic differences.

While China can appear to be a behemoth, it suffers from weaknesses that will limit its rise to global leadership. Its emphasis on sovereignty and internal control, especially on its territorial fringes, reflects anxiety, not strength. The need to address serious environmental, social, and public health problems will slow down the pell-mell growth of previous decades, as will the demographic curve that places burdens on a diminishing work force to support an expanding retired cohort. China's growing and modernizing military will complicate United States strategy regionally but will not approach American force projection capabilities globally.

The principal tasks for the United States to counter the Chinese challenge are to maintain our historic

edge in technology platform innovation, to build a multilateral coalition to confront Chinese violations of the rules-based international order, and to rebuild America's broken political, economic, and social foundations to reposition the country for international leadership. While strategic competition with China will be the overall framework for the immediate future, it would be contrary to American interests to treat China as an enemy. There are transnational issues where U.S.-China cooperation is essential, such as climate change, nonproliferation, public health and combatting epidemics, and tension reduction in regional hot spots. American hostility would be reciprocated by the next generation of Chinese, who have been generally positive about the United States until recently. The United States should not engage with China in a race to the bottom in diplomacy, scientific and student exchanges and cooperation, and economic protectionism. That is a competition that America as an open society should not seek and cannot win.

### **CHALLENGES AND PROBLEMS**

The relationship between the United States and China will be the most important one for the United States and the world in the 21st century. China poses challenges for the United States across the entire spectrum of our interests — political, economic, technological, ideological, military, and security — as an emerging peer competitor. Other countries pose challenges to the United States in one or more realm, but none across the board.

What will be the character of this relationship? What kind of framework would best serve U.S. interests?

Americans increasingly view China as a potentially dangerous rival because of four major changes in the last decade.

- China's growing power in all domains.
- The halt, and in some cases reversal, of market-driven reform of the economy and greater emphasis on central control and guidance at a time when Chinese economic power abroad is growing and, in many places, disruptive.
- The return of stress on ideology, including indoctrination of officials in Marxism, tightening of space for dissent, heightened domestic surveillance enabled through technological advances, mass incarceration and "reeducation" of Uighurs in Xinjiang, and the recent crackdown in Hong Kong curtailing its autonomy and political freedoms.
- Threats to neighbors through bullying and, in some cases, use of the PLA (People's Liberation Army), notably the change in the status quo in the South China Sea and recent border clashes with India.

These developments have driven favorable attitudes toward China in the United States to their lowest levels since the establishment of relations. But they are just a small sample of the manifold challenges China is likely to present. How should the U.S. think about a China in a decade or two that, for example:

- Will be the world's largest economy and the world's largest market.
- Vies with the U.S. for leadership in development of the key technological platforms that drive innovation in warfare and national security, biomedical care and innovation, education, communication, transportation, and infrastructure construction.
- Boasts a military that has parity with the U.S. in the western Pacific, that credibly could threaten to achieve reunification with Taiwan through use of force, and that can project power globally.
- Offers to others a governance model that strengthens the surveillance state, splinters the internet into censored and closed systems, and could make common cause with authoritarian states repressing domestic freedoms and minority ethnic groups.
- Is the world's largest emitter of greenhouse gases by a large margin.
- Has greater influence both in multilateral rule-making, standard-setting, and finance-providing multilateral organizations and more leverage in bilateral relations with U.S. friends and allies in Asia and Europe.

In response to these past actions and in anticipation of these future trends, much of the American foreign policy establishment has concluded that China is a strategic competitor, a strategic rival, and potentially a strategic enemy. This shift in perception of China has coincided with the arrival of the Trump administration, led by a president who sees foreign relationships primarily through the narrow prism of U.S. trade balances (vis-à-vis China, a long-standing highly negative one). His administration's senior ranks have been dominated by officials who see the Chinese Communist Party as an existential threat to U.S. security and interests. They have unleashed a cascade of actions aimed at decoupling the United States from China primarily in the economic and technological spheres but more broadly, enabled by a domestic atmosphere in which hostility toward China has peaked in the wake of the COVID-19 outbreak that began in Wuhan.

The result has been a free fall in relations built up over five decades since President Nixon's visit to China. If the goal is to have a new Cold War with China in response to what some view as an existential challenge to American interests and values, that may be regarded as unpleasant but necessary medicine. It is hard to see, however, how the near-daily onslaught of unilateral punishments of China in the last six months will seriously degrade the challenges its growth poses, position the U.S. to compete, or provide a sustainable framework for a relationship with a China that is thoroughly integrated into the global economy.

## WHAT ARE CHINA'S INTERESTS? CAN THEY BE RESPECTED, OR MUST THEY BE RESISTED?

We can identify China's current interests with some accuracy and confidence. Broadly speaking, the goal remains the same as what China's reformers pursued in the 19th century, namely a strong and prosperous China: strength to protect China against imperial aggressions by the West and prosperity to bring China from its present backwardness onto a par with the industrializing West.



China's core interests begin at home. In their eyes, they are defensive in nature, and reflect vulnerability to historically aggressive Western powers. China's leaders see internal stability as the foundation for a strong and prosperous China and contend that the leadership of the Communist Party is necessary to ensure that stability. While there are good historical reasons for the emphasis on stability, it also is obviously a self-serving argument for tight control of a range of groups, ideas, and activities that can be seen as challenging Party leadership. So religions, ethnicities, democratic ideas, nongovernmental organizations, mass protests, and demands for federalism or autonomy all are treated as potentially subversive.

Economic growth has been the key to Chinese stability and satisfaction of its people's needs for 40 years. The need for economic growth to absorb the continuing large migration from countryside to cities and expectations of a growing middle class remains fundamental. There have been swings between market-driven growth with encouragement of the private sector and periods of retrenchment featuring reimposition of controls. Large subsidies to state-identified "winners" and state-owned enterprises, IPR and technology theft, Party guidance of enterprises through commissars embedded in companies, regulatory discrimination against foreign companies, and other neo-mercantilist practices have persisted through 40 years of reform. In many respects these practices have worsened in the last decade. The pace and breadth of economic reform remains a divisive issue among Chinese officials and economists. It is not unthinkable that there could be dismantling of such practices in the future, but that does not appear on the horizon under the current leadership.

National unity, reunification, and sovereignty are central priorities, and would be regardless of whether the Communist Party ruled China. Hong Kong and Macau have already been reclaimed, and Beijing is determined that Hong Kong's traditional internationalism and openness not be a source of instability. No government in Beijing can renounce the goal of reunification with Taiwan, though in the short run the bottom line is the unacceptability of formal independence. Beijing's other core territorial concern is maintenance of control of Tibet and Xinjiang, both with restless populations of non-Han ethnic groups with strong religious heritages.

These interests, seen by Chinese leaders as defensive and China's own business, are of long standing. Over the last decade, we can identify some new Chinese objectives where trends are pretty clear and others that are more speculative but bear watching:

- In the military sphere, a rapid modernization designed to achieve at least a stand-off with U.S. forces in the western Pacific, a preeminent position over other territorial claimants in the South China Sea, a blue water navy that can show the flag around the world and project force, and technology advances in weaponry and military operations.
- State-encouraged infrastructure development on a vast scale in Asia, Europe, Africa, and Latin America through the Belt and Road Initiative (BRI), with the potential to alter political, economic, and security relations with recipient countries. The BRI also facilitates Beijing's goal of building multiple trade routes ending in China and ensuring access to sources of energy, minerals, and other commodities.
- Determination to be a global leader in key high technologies, including artificial intelligence, 5G systems, aerospace, semiconductors, electric vehicles, bioengineering, life sciences, and alternative sources of energy.
- Ability to play a leadership role in international political and economic institutions, influencing their operations, personnel, values, and objectives. Having a major role in setting international standards in information technology and product design.

This is a daunting set of objectives, some of which China may achieve in whole or in part and others which will remain out of reach in the coming decade or two. It is important to ask if China's aspirations go significantly beyond these goals, or whether greater ambitions will emerge with its growing strength. Will China seek to become a global peer military competitor of the United States? Will it become a threatening subversive actor in democratic societies? Even if we cannot answer these questions, we cannot dismiss these risks.

Some of these core interests, current objectives, and likely future trends are normal developments

for a major power and have nothing to do with the Communist ideology and character of the state, e.g., national reunification and aggressive behavior on its contested borders, development of a military seeking local preeminence and global capabilities, pursuing economic policies that bend and break the rules, playing a leadership role in international institutions, and looking to be a global innovator in technology. On the other hand, some of China's objectives as a major power, legitimate in its eyes, conflict with U.S. interests, e.g. military preeminence in the western Pacific, potential use of force against Taiwan and dominance in the South China Sea, innovation and control of 21st century technology platforms, leadership in international organizations and product standard-setting, and Chinese relationships with BRI beneficiary countries if they take an exclusionary direction. Other Chinese core interests offend American values when they are used to justify repression, notably in Xinjiang and Hong Kong. And finally, there is an ideological overlay on top of the emerging major power rivalry that sharpens normal major power rivalry.

## LIMITS TO THE CHINA CHALLENGE

While the breadth and magnitude of the challenges posed by China are large, they should not be exaggerated or misunderstood.

China will not be a global military power able to match the United States for the foreseeable future. America's nuclear and ballistic missile forces, ability to project power, global system of alliances and bases, and war fighting experience are advantages that are unlikely to be eroded. China's military poses a regional challenge but is not an instrument designed for an unprovoked attack on the United States.

China's economy will surpass the United States in gross domestic product, but it will lag well behind the United States in GDP (Gross domestic product) per capita for the foreseeable future. That will mean that demands for attention to domestic needs will continue to loom large for Chinese leaders. These domestic demands will provide some restraint on ambitious overseas spending (such as for BRI) that are unpopular in China. Internationally, there is no doubt that China's spectacular surge to global leadership in trade, investment, and infrastructure development provides the country with greater

influence, but China is many years, perhaps decades, away from being a rule maker rather than a rule taker in international finance, capital markets, and currency. It lacks the foundation of rule of law, currency and capital account convertibility, an independent central bank, and deeply liquid markets that international investors seek, all of which will be necessary for it to provide an alternative to the U.S. dollar as an international currency.

China no longer has the luxury of pursuing breakneck speed growth as it did in the 1990s and early 2000s. Its citizens are not willing to tolerate the environmental wasteland created by the uncontrolled industrialization of earlier decades, and the government will need to engineer a transformation of China's coal dependence, polluted water system, dubious food safety, and disease-prone markets and public spaces to retain the support of its urban population. It has to develop a broad-based pension system and social safety net to care for migrants and private sector workers. And it is facing a negative demographic curve, much as Japan did 30 years ago, with a current ratio of about 6.9 workers supporting one retiree, which is slated to fall based on current trends to 3.6 by 2030 and 1.7 by 2050.<sup>1</sup> If not mitigated, this will exert significant downward pressure on economic growth and tax revenues.

China's lack of international "soft power" is a huge weakness. Its ideology does not travel well and has found no copycats. Among Chinese ethnic societies in Asia, such as Taiwan and Singapore, there is no desire to emulate the Chinese system. China is traditionally a self-centered culture. It does not enjoy the broadening of outlook that comes from a multi-ethnic society, with its small ethnic minorities excluded from Han-dominated society and institutions. China's relationships tend to be cool, calculated, limited, and transactional on both sides, generally based on mutual economic benefits (Pakistan and Cambodia are exceptions, but there are not many). China does not have the luxury of living in a secure and friendly neighborhood. Its relations with India, Japan, and Vietnam are deeply distrustful, and with Korea and Indonesia problematic. Its current warm relationship with Russia is an historic anomaly, based on mutual hostility to American global leadership and energy interdependence, and neither Chinese nor Russian strategic thinkers have confidence about its long-term durability.

## IMPLICATIONS FOR U.S. POLICY

Chinese leaders understand their strengths, but they also realize that their problems cannot be wished away. Indeed, they will limit China's ability to compete as a global "superpower" even if China aspires to be one.

There is no evidence suggesting that China seriously aspires to threaten the United States homeland or seek a global confrontation with the United States replicating the pattern of the U.S.-Soviet Union Cold War. Rather, we can expect to face a China that strives for economic preeminence in East and Central Asia, military security against the United States in the western Pacific, and rising but not predominant influence outside of Asia based largely on economic connections. We should not expect China to build up a network of like-minded or satellite states that pose a security threat to the United States, or to adopt the U.S. role in recent decades as the world's policeman.

China is not an existential threat to the United States, but there is no avoiding the fact that we will be competitors and, in some respects, rivals — economically, politically, militarily, and technologically. That will require the United States to get its house in order in numerous ways that go beyond the scope of this paper, as domestic rejuvenation is the basis for successful competition. Such competition also will compel limitations on cooperation in some areas where the United States and China interacted relatively freely in the past. The U.S. will have to secure its fundamental foreign policy interests against Chinese attacks or erosion, through defense of our allies in the Asia Pacific, deterring use of force against Taiwan, and protection of the key values and institutions of the international rules-based order. We also will have to formulate an economic strategy that not only rebuilds competitiveness at home, but brings together a coalition of like-minded aggrieved countries, eliminates Chinese trade and investment privileges unsuitable for an advanced economy, fights for maintenance of an open internet, and preserves the dollar's special role in international trade and finance. The compilation of papers in this project offer specific recommendations for how the United States can most effectively compete with China across the full range of political, economic, military, security, and ideological domains.

The most important battleground for U.S.-China rivalry is likely to be in the field of technology. U.S. creation and domination of the chief technology platforms provided the springboard for the American century. With the astonishing advances in technology that mark the 21st century, whoever is the chief innovator will be strongly positioned to be the dominant military and economic power for years to come. The reality that the United States and China will be technology rivals does not mean that there can or should be radical decoupling. American companies will want access to the Chinese market for profits and to Chinese immigrants and researchers who contribute so extraordinarily to their advances. We need to recognize the trade-off between restricting Chinese access to advanced U.S. technology and the encouragement we inadvertently provide to Chinese competitors when we force them to develop the products we refuse to provide. We should aspire to a world that is not completely fractured between American and Chinese technology forcing the world's 190 countries to choose between mutually incompatible systems. We will need to protect technologies critical to U.S. national security and economic competitiveness without making export of every product with a chip an obstacle course. And we will need to redouble vigilance against Chinese theft of technology and impose enforceable penalties on Chinese entities that engage in such actions.

The central challenge for the United States, however, will be how to project and protect our interests in the face of this emerging competitor but without losing our way by exaggerating or misunderstanding the nature and magnitude of that challenge. We cannot compete with China by outbidding China in an unwinnable race to the bottom through technology and social media prohibitions, expansive definitions of national security in trade and investment, managed trade, cancellation of scholarly and research exchanges, visa and immigration bans, and imposition of diplomatic restrictions. When we feel the need to use such tools in order to gain greater reciprocity, our goal should be for both sides to eliminate restrictions whenever possible, not impose them permanently. Our strength lies in our traditional openness, which cannot be casually tossed aside in every skirmish that comes along. The United States also cannot neglect one of its great assets: the alliances and partnerships we have built up

over the last 70 years in Asia and Europe. Our allies and partners will not follow us in radical decoupling from China or a new Cold War, but they share many of the same grievances and can be a powerful force multiplier on all manner of issues if we treat them and their interests with respect.

Many of the trends in Chinese development can become serious threats, but in some cases, they could be opportunities for cooperation, depending on China's behavior but also on our intentions. China's economic growth and presence, for example, can close overseas markets to American companies or expand American opportunities as wealth is created abroad. It is worth recalling that the great recession of 2008 would have become a depression without U.S.-China joint efforts to cushion the fall and provide massive stimulus. Continued Chinese construction of coal-fired power plants will contribute to global warming, but if the United States doesn't work with China to combat global warming, the results will be catastrophic for the world. As two deadly epidemics (SARS and COVID-19) emerged from China in the last two decades, it is clear that isolation and sanctions alone cannot keep China-born viruses outside our borders. Rather, both countries must also engage in intensive scientific and public health cooperation. China does not agree with U.S. sanctions-based policies to deal with North Korean and Iranian nuclear weapons programs, but it does wish to roll back both, and it is naïve to believe that the United States will have success in containing either program without Chinese cooperation.

The costs of radical decoupling have received little attention in the rush to announce the arrival of an ominous new strategic rival. The inevitable ensuing enmity would exacerbate an arms race that would crowd out pressing domestic priorities. It would divide scientists, researchers, and scholars working on common problems. Ethnic hatred and stereotypes would find fertile soil. Above all, it would increase the risk of military conflict between two nuclear powers.

The temptation to see China as an enemy rather than a competitor is reinforced by its internal policies of repression. But there is much more to China's impact on the world than its appalling imprisonment of political dissidents and repression of ethnic minorities; U.S. policy cannot ignore

this behavior, but it cannot be the singular focus. Americans should not expect that the Chinese will yield to U.S. blandishments or pressure on human rights or governance issues. We should speak out on human rights and democracy because they have defined our character as a nation and our international standing. More importantly, we should live up to our ideals to inspire admirers abroad, including in China. Along with interaction with Chinese civil society when possible in the face of current restrictions, American soft power provides the best opportunity for modest progress.

The United States and China have areas of overlapping interest and issues on which they must work together. Additionally, the overall character of the relationship will affect Chinese decisions, for better or for worse. If the Chinese see the value of at least a non-hostile relationship with the United States, it will restrain them from taking actions that they think might damage that relationship. There are still strong voices in China favoring market-based reform, and their voices are amplified when they are met with encouragement and incentives by the United States. On the other hand, if relations with the United States deteriorate, the voices of recklessness and protectionism on the Chinese side will be strengthened.

The Xi Jinping years have seen a change in Chinese behavior that has elicited a sharp American reaction and brought us to our current state. Modern Chinese political history, however, rarely validates those who project a straight line forward from the present. The changes from Mao to Deng, from Tiananmen to double-digit growth, from the market-driven reforms and low-profile foreign policies of Jiang Zemin and Zhu Rongji to the retrenchment and risk tolerance of Xi Jinping should make us cautious about assuming that today's policies will persist. The United States has to plan on the basis of current unhappy realities and trends, but not pursue an approach that makes the worst-case evolution more likely.

## REFERENCES

- 1 See Yi Fuxian, *South China Morning Post*, January 4, 2019.



# **SECTION I: BILATERAL DIPLOMACY AND WORKING WITH ALLIES**







# AVOIDING THREE TRAPS IN CONFRONTING CHINA'S PARTY-STATE

CHENG LI

## EXECUTIVE SUMMARY

To navigate the current perilous and complicated situation in U.S.-China relations, the new administration will need to move beyond disputes over COVID-19 and partisan politics with the objective of establishing a long-term, well-grounded strategy toward China, rather than adopting short-sighted and sensational tactics spawned by an unbalanced and fatalistic outlook. This paper argues that the three prevailing policy objectives of the Trump administration — 1) the rhetorical separation of the PRC from the CCP, 2) calls for overthrowing the Communist regime, and 3) containment of China's "whole-of-society threat" — are conceptually contradictory, empirically misguided, and strategically self-deceiving and dangerous. The new administration should avoid these traps. Instead, Washington should prudently reassess the capacity and constraints of both China and the United States, review the costs and risks involved in all-encompassing decoupling with Beijing, and reaffirm the longstanding American foreign policy objective of promoting soft-power influence and people-to-people diplomacy.

## THE PROBLEM

Three policy objectives that reflect the Trump administration's assessment of the China threat have recently surfaced to challenge the decades-long engagement approach of the United States with Beijing. These three new objectives include: 1) the rhetorical separation of the Chinese state from the Chinese Communist Party (CCP), 2) calls for overthrowing the Communist regime, and 3) containment of China's rise by treating it as a "whole-of-society threat."<sup>1</sup> In the eyes of some officials in the Trump administration, Communist China is an "existential threat" that requires "all-encompassing decoupling." These new and radical initiatives have laid the ideological and political

foundation for decoupling. Some components of the initiatives have received bipartisan support. Although American decision-makers and analysts have by no means reached consensus that the United States should end engagement with the People's Republic of China (PRC), the prevailing view in Washington is that a new and more resolute strategy is needed.

Proponents of decoupling in Washington have raised legitimate concerns about — and valid criticism of — the CCP leadership's merciless crackdown on Uighur Muslims and political dissidents, unfair practices in the economic and technological domains, and aggressive behavior in the Asia-Pacific region. China has taken advantage of the openness of America's economy, universities, and research institutions, especially in terms of entrepreneurial and technological innovation. Some recent U.S. actions to decouple with the PRC can be seen as counterbalances to Beijing's long-standing policy practices and ideological doctrines. China's adoption of a foreign NGO law, for example, has greatly restrained the activities of American academic institutions and other organizations in the country.

A new administration should, however, subject these three radical policy initiatives to serious scrutiny. Implementation of these policies can potentially undermine American interests, causing tremendous damage to the power, influence, and leverage of the United States. This paper highlights the major flaws and inherent contradictions within these three radical policy objectives to explain why the new administration should avoid these traps. Any sound strategic approach should not "inevitably" lead the United States — by design or by default — to a fundamentally antagonistic or adversarial relationship with China resulting in a catastrophic war with no winner.

***Trap one: Separating the Chinese state from the Chinese Communist Party***

China is certainly not monolithic. Neither the Chinese leadership nor Chinese society should be viewed as a homogenous entity. Greater attention needs to be directed to the complicated and ever-changing relationship between the state and society in China. However, the way in which hawks in the Trump administration divide the CCP and China is highly problematic. Richard Haass has insightfully pointed out that Secretary Michael Pompeo “doesn’t speak of China but of the Chinese Communist Party as if there were a China apart from the party. This is meant to antagonize and make diplomacy impossible.”<sup>2</sup>

The defining feature of the Chinese political system is the party-state, in which the CCP has the power to command and control the government, the military, the legal system, and the media, and to make the state’s most important personnel and policy decisions. By design, the CCP is unequivocally in charge at all levels of leadership, and the state operates merely as the executor of decisions made by the party. Although some high-ranking Chinese leaders have sporadically called for greater separation of party and state, the overwhelming trend of the last three decades, especially under the leadership of Xi Jinping, has been to consolidate party rule and revitalize the party rather than change the party-state system.

The reach of CCP power within both the Chinese state and society has risen to a new level in recent years, as private companies, foreign firms, and joint ventures have been ordered to establish party branches. Observers both in China and abroad have criticized these developments. Critics of the Chinese party-state system can certainly challenge its authoritarian nature and political legitimacy, given that there are no open and competitive elections in the country. But it is one thing to condemn the omnipresence of the CCP in the country; it is quite another thing to separate, both conceptually and practically, this indivisible political structure. Ironically, the way in which American hawks separate the party from the state, or the party from society, may unintentionally enhance the authority and popularity of the CCP in the country.

From a personal perspective, let me be clear that I am not a fan of the Communist party-state; I am

a survivor of Mao’s totalitarian regime. I spent most of my childhood fleeing the “red terror” of the Cultural Revolution. My father, labeled “a capitalist” and a “class enemy” for owning two textile factories in Shanghai, and my mother, a Roman Catholic, both came under attack as the Cultural Revolution began in 1966, when I was 10 years old. I was not able to go to school for three years, because if I stepped out of my home, I would be beaten by my neighbors — not only by my peers, but by adults, as well. Yet, in my family, I was the lucky one. At least I was spared the fate of my elder brother, a graduate of Fudan University, who was caught listening to the Voice of America, then known as the “anti-China broadcasting of the foreign enemy.” Maoist radicals beat him to death and then moved his body to the railroad tracks, claiming that he committed suicide.<sup>3</sup>

Despite the serious problems that persist in today’s China, the doctrine, composition, work, and policies of the CCP have all profoundly changed throughout the reform era. Totalitarianism has made way for authoritarianism. The Communist party-state is no longer able to exert absolute control over Chinese society, which has become increasingly pluralistic, vigorous, self-reliant, and connected with the outside world.

Senior leaders in the Trump administration, most notably Secretary Pompeo, have referred to Xi Jinping as the party general secretary instead of the state president.<sup>4</sup> This was preceded in November 2019 by a bipartisan commission convened by the U.S. Congress claiming that Xi Jinping should be known by his party title, general secretary, rather than as president of the PRC.<sup>5</sup> But as long as U.S. government officials continue to meet with CCP leaders, the change of Chinese official titles by the U.S. government will convey to the world nothing but self-deception and incapacity to deal with China and its leadership.

Similarly, the proposal by the Trump administration to ban travel to the United States by CCP members and their families reaffirms its objective to target the ruling party. But this policy move also reveals an inadequate understanding of present-day China. China watchers in the United States have strongly criticized this effort, which, if adopted, would affect 92 million CCP members and over 200 million family members.<sup>6</sup> Given the size of China’s population, it

would be virtually impossible to enforce this ban, as there is no way to effectively determine the party membership or political background of Chinese visitors. But an unintended consequence is that such an excessive and radical policy, as it has been described by Chinese opinion leaders, “has designated at least 300 million – or more likely 1.4 billion – Chinese people as enemies of the United States.”<sup>7</sup>

### ***Trap two: Calling for regime change in China***

One intention of the hawks in the Trump administration in drawing a line between the CCP and China is to pursue regime change. In recent official speeches and legislation, they have tended to demonize the CCP regime as an evil nemesis. They have implicitly urged the Chinese people to overthrow CCP rule. From the perspective of the hawks, this seems logical – given that the U.S.-China conflict is perceived to be primarily the result of Communist ideology and Xi Jinping’s ambition for China to replace the United States and dominate the world, the only long-term solution for the United States in this zero-sum competition is to overthrow the CCP regime.

In addition to the flawed and fatalistic assessments of both the intentions and capacity of CCP leadership, the advocacy for regime change has additional defects: it is based on the assumption that there is widespread dissatisfaction among the Chinese people with CCP leadership. There are indeed serious tensions between the Chinese authorities and society in present-day China. Demands from the Chinese people for environmental protection, food and drug safety, social justice, information transparency, privacy protection, and government accountability are on the rise. The decision by Xi Jinping to abolish presidential term limits and the slow response by CCP authorities to contain the coronavirus in the early weeks of the Wuhan outbreak fomented strong criticism among public intellectuals, the middle class, and Chinese society at large.

But it would be hyperbolic to assume that a Chinese color revolution is on the horizon. State-society relations in present-day China are not fixed and are subject to changing domestic and international circumstances. The public support for the CCP that has been generated by Xi Jinping’s anti-corruption campaign, military reforms, and other populist (and nationalist) policy measures

should not be underestimated. The widespread perception among the Chinese people of rising racism and McCarthyism targeted at PRC scholars and students by some members of the Trump administration –paired with U.S. efforts to contain China’s rise – will not inspire them to challenge the authoritarian CCP leadership. Instead, these moves by hawks will alienate the Chinese people and push them to embrace anti-American nationalism.

Several recent opinion surveys in China conducted by American scholars all show a high degree of public satisfaction with the Chinese government. A longitudinal survey conducted by scholars at the Harvard Kennedy School found that the satisfaction of Chinese citizens with the government (township, county, provincial, and central) has increased virtually across the board.<sup>8</sup> According to this study, as a result of policy measures in the areas of economic well-being, poverty reduction, environmental protection, and public health, Chinese citizens rate the government as more capable and effective than ever before. This is particularly evident in public opinion of the central government, where satisfaction has been consistently high: 86% in 2003, 81% in 2005, 92% in 2007, 96% in 2009, 92% in 2011, and 93% in both 2015 and 2016.<sup>9</sup> Another recent opinion survey conducted by scholars of the University of California at San Diego reveals similar findings.<sup>10</sup> A comprehensive and cross-country comparative report written in early 2020 by Andrew Nathan, a renowned China expert, also echoed this observation.<sup>11</sup>

Both strategically and ideologically, the regime change approach has been driven by the conviction that the United States should pursue and try to win a new Cold War with China in much the same way it won the Cold War with the Soviet Union. As William J. Burns keenly observes, the hawks’ “contest with China is not another Cold War to avoid, but one to fight with confidence and win.”<sup>12</sup> Notably, Secretary Pompeo made comments pointing to the similarities between the former Soviet Union and today’s China.<sup>13</sup> But the reliance on past precedent is greatly misguided in the present circumstances. The Soviet Union was largely a closed society, while China has been integrated into the global community. China has shown more adaptability than the Soviet Union in both its domestic appeals and international outreach.



Most importantly, it would be a mistake for American policy makers to assume that a new Cold War would have a similar outcome. As Prime Minister of Singapore Lee Hsien Loong recently wrote in *Foreign Affairs Magazine*, “[any] confrontation between these two great powers is unlikely to end as the Cold War did, in one country’s peaceful collapse.”<sup>14</sup> The technological revolution and its implications for asymmetrical warfare has further complicated military competition, making the prevention of hot wars even more difficult.

Many crucial questions should be addressed before the United States decides to pursue a consistent and effective policy for regime change. With what Chinese group(s) can the United States expect to replace the current Communist regime? Is there an inclusive and potentially well-organized opposition party emerging in the country? Will regime change necessarily be in the American interest, given that it will almost certainly be very disruptive, severely impairing global economic development and regional security in the Asia-Pacific? Would a post-Communist regime necessarily be pro-U.S.? Could it potentially be even more revolutionary, militant, and xenophobic? Based on the narratives pushed by the Trump administration, no serious consideration has been given to any of these questions. It could be reasonably argued that the call for regime change in China comes with no plausible grand strategy, no political leverage, no game plan, and no road map.

### ***Trap three: Treating the China challenge as a “whole-of-society threat”***

While the hawks of the Trump administration hope that a push for regime change will win broader public support in China, they simultaneously perceive a “whole-of-society” threat coming from that same Chinese public. In 2018, FBI director Christopher Wray bluntly asserted that “[One] of the things we’re trying to do is view the China threat as not just a whole-of-government threat, ...but a whole-of-society threat.”<sup>15</sup> More recently, in July 2020, Wray claimed that “[o]f the nearly 5,000 active FBI counterintelligence cases currently underway across the country, almost half are related to China,” and that “the FBI is opening a new China-related counterintelligence case about every 10 hours.”<sup>16</sup> Some American policy makers believe that Beijing is “weaponizing” the large number of Chinese students enrolled in U.S. universities,

accusing these students of pilfering intellectual property and stealing advanced technology.<sup>17</sup>

For the first time in U.S. history, the Department of Justice has established an initiative focusing on a specific country (and ethnic group) called the “China Initiative.”<sup>18</sup> Some of the China-related cases are characterized by an odd new term, “academic espionage.” In 2018, the NIH and FBI jointly launched an investigation into the relationship between researchers in the biomedical field and China. The suspect list included 399 people, most of whom were ethnic Chinese.<sup>19</sup> Along with the proposed travel ban on 300 million Chinese citizens, these efforts would likely result in the ethnic profiling of all Chinese citizens and some Chinese Americans and could even become the 21st century version of the notorious Chinese Exclusion Act of 1882. While national security and intellectual property rights should be vigorously protected in the United States, racial profiling of PRC-born scientists and Chinese American researchers will hurt U.S. interests in three important ways.

First, a 2020 study by the Paulson Institute shows that the United States is home to 60% of the world’s top researchers in the field of artificial intelligence (AI). But of those researchers who work in the United States, native American researchers account for 31% and PRC-born researchers account for 27%.<sup>20</sup> The recent decision of the U.S. government to limit or even ban Chinese graduate students from majoring in STEM fields (sciences, technology, engineering, and mathematics) at U.S. universities and to prevent PRC scholars from conducting research in the United States on sensitive subjects is expected to result in a drastic reduction of Chinese scholars and students studying these fields in the United States in the near future.<sup>21</sup> As reporters for the *New York Times* have observed: “If the U.S. no longer welcomed these top researchers, Beijing would welcome them back with open arms.”<sup>22</sup>

Second, both the notion of the “whole-of-society threat” from China and the new form of McCarthyism targeting Chinese scholars and students have not only put pro-U.S., liberal Chinese intellectuals in the PRC in a terrible situation, but they have also helped hardliners in the CCP leadership consolidate power. The moves by the Trump administration to close the U.S. Consulate General in Chengdu, cancel the Peace Corps and Fulbright Programs

in the PRC, and restrict academic exchanges will significantly diminish America's access to China and opportunities to better understand this complicated country. At a time when it is imperative that the U.S. know more about China, decision makers want to cut off most channels for learning.

Third, if policy makers in Washington continue to employ an all-encompassing decoupling approach and hold onto the perception of a "whole-of-society threat" from China, they will likely negate any influence they could otherwise exert on broad constituencies in the PRC. Furthermore, if Washington disengages from China in the areas of economic and financial stability, public health cooperation, environmental protection, energy security, and cultural and educational exchanges, then there is little the United States can do to sway the opinions of China's middle class, the most dynamic force in Chinese society, and other important socioeconomic groups. The United States should not fall into the trap of adopting a strategy that attempts to isolate China yet only further isolates itself.

## RECOMMENDATIONS

Effective foreign policy begins at home with a resilient democracy, strong economy, inclusive society, pluralistic culture, and healthy living environment.<sup>23</sup> The United States needs to embark on its own domestic renewal. In international competition with China, the United States will not score well by engaging in a geopolitical race to the bottom. Rather, Washington should compete to hold higher standards and should continue to leverage the advantages of American soft (and smart) power.<sup>24</sup> The new administration should more explicitly articulate to Chinese elites and the public both the longstanding goodwill that the United States has toward China and America's firm commitment to democracy and diplomacy.

The following eight policy moves can be launched as the new administration embarks upon a more effective, vigorous, and forward-looking approach towards China.

- Regain moral high ground and diplomatic leverage by reconciling ethnic conflicts and addressing systemic racism at home.
- Resume the human rights dialogue with China and exert pressure on the Chinese authorities to implement concrete policy changes to address political repression in Xinjiang, Tibet, and Hong Kong.
- Condemn all forms of racism, violence, and anti-Asian sentiment in the United States; prevent unlawful racial profiling; and abolish the FBI "China Initiative."
- Work with the Chinese government to reopen the U.S. Consulate General in Chengdu and the PRC Consulate General in Houston.
- Resume the Peace Corps and the Fulbright programs in China and Hong Kong.
- Welcome law-abiding PRC students and scholars to American universities and laboratories.
- Establish risk management mechanisms with the Chinese government, especially in the areas of greatest risk, such as the Taiwan Strait and South China Sea.
- Launch collaborations with China to address climate change and to facilitate COVID-19 vaccine distribution and future pandemic prevention.

## REFERENCES

- 1 CNN Transcripts, February 13, 2018, <http://transcripts.cnn.com/TRANSCRIPTS/1802/13/cnr.04.html>. For an overall discussion of these three initiatives, see Michael R. Pompeo, "Communist China and the Free World's Future," (speech, Yorba Linda, California, The Richard Nixon Presidential Library and Museum, July 23, 2020), <https://www.state.gov/communist-china-and-the-free-worlds-future/>.
- 2 See the Q&A session in Pompeo, "Communist China and the Free World's Future."
- 3 To learn more about my family's tragic experiences during the Cultural Revolution and my 1993-1995 adventure when I returned to live and work in my native Shanghai as a fellow of the U.S.-based Institute of Current World Affairs, see Cheng Li, *Rediscovering China: Dynamics and Dilemmas of Reform* (Lanham, Maryland: Rowman & Littlefield Publishers, 1997).
- 4 Owen Churchill, "US Officials Now Call Xi Jinping 'General Secretary' Instead of China's 'President' — But Why?" *South China Morning Post*, July 25, 2020, <https://www.scmp.com/news/world/united-states-canada/article/3094669/us-officials-switch-calling-chinas-xi-jinping>.
- 5 "2019 Report to Congress," U.S.-China Economic and Security Review Commission, November 2019, 32. <https://www.uscc.gov/sites/default/files/2019-11/2019%20Annual%20Report%20to%20Congress.pdf>.
- 6 "China Says a US Travel Ban on Communist Party Members Would Be 'Pathetic'" BBC, July 16, 2020, <https://www.bbc.com/news/world-asia-china-53427782>.
- 7 "Meiguo kaolv xianzhi Zhonggong dangyuan fu mei?" [The United States is considering restricting Chinese Communist Party members from going to the United States?] *Guizhou ribao* [Guizhou Daily], July 22, 2020, <http://nx-1s.com/junshi/1039.html>.
- 8 Edward Cunningham, Tony Saich, and Jessie Turiel, "Understanding CCP Resilience: Surveying Chinese Public Opinion Through Time," Ash Center for Democratic Governance and Innovation, Harvard Kennedy School, July 2020, <https://ash.harvard.edu/publications/understanding-ccp-resilience-surveying-chinese-public-opinion-through-time>.
- 9 Ibid.
- 10 Lei Guang, Margaret Roberts, Yiqing Xu and Jiannan Zhao, "Pandemic Sees Increase in Chinese Support for Regime" China Data Lab at University of California at San Diego, June 30, 2020, <http://chinadatalab.ucsd.edu/viz-blog/pandemic-sees-increase-in-chinese-support-for-regime-decrease-in-views-towards-us/>.
- 11 Andrew J. Nathan, "The Puzzle of Authoritarian legitimacy." *Journal of Democracy*, vol. 31, no. 1 (January 2020): 158-168.
- 12 William J. Burns, "The United States Needs a New Foreign Policy." *The Atlantic*, July 14, 2020, <https://www.theatlantic.com/ideas/archive/2020/07/united-states-needs-new-foreign-policy/614110/>.
- 13 Pompeo, "Communist China and the Free World's Future."
- 14 Lee Hsien Loong, "The Endangered Asian Century America, China, and the Perils of Confrontation," *Foreign Affairs*, July/August 2020. <https://www.foreignaffairs.com/articles/asia/2020-06-04/lee-hsien-loong-endangered-asian-century>.
- 15 Lee Hsien Loong, "The Endangered Asian Century America, China, and the Perils of Confrontation," *Foreign Affairs*, July/August 2020. <https://www.foreignaffairs.com/articles/asia/2020-06-04/lee-hsien-loong-endangered-asian-century>.
- 16 CNN Transcripts, February 13, 2018, <http://transcripts.cnn.com/TRANSCRIPTS/1802/13/cnr.04.html>.
- 17 Christopher Wray, "China's Attempt to Influence U.S. Institutions" (Speech at the Hudson Institute, Washington, D.C., July 7, 2020), FBI, <https://www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese>.

[government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states.](#)

- 18 Mark Warner, "Global China: Assessing China's growing role in the world," (speech, Washington, D.C., The Brookings Institution, May, 9, 2019), <https://www.brookings.edu/events/global-china-assessing-chinas-growing-role-in-the-world/>.
- 19 Maggie Lewis, "Criminalizing China." *Journal of Criminal Law and Criminology*, vol. 111, no. 1 (June 2020).
- 20 *Zhong Mei yinxiang*, June 19, 2020, [http://www.uscnpm.com/model\\_item.html?action=view&table=article&id=22095](http://www.uscnpm.com/model_item.html?action=view&table=article&id=22095).
- 21 Paul Mozur and Cade Metz, "A U.S. Secret Weapon in A.I.: Chinese Talent," *The New York Times*, June 9, 2020, <https://www.nytimes.com/2020/06/09/technology/china-ai-research-education.html>. See also MacroPolo, "The Global AI Talent Tracker," The Paulson Institute, <https://macropolo.org/digital-projects/the-global-ai-talent-tracker/>.
- 22 National Security Strategy (NSS) (Washington, DC: White House, 2017), 22. <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>.
- 23 Mozur and Metz, "A U.S. Secret Weapon in A.I.: Chinese Talent."
- 24 Burns, "The United States Needs a New Foreign Policy."
- 25 For more detailed policy recommendations for both Washington and Beijing to put arguably the world's most important bilateral relationship back on the right track, see Cheng Li, *Middle Class Shanghai: Reshaping U.S.-China Engagement* (Washington DC.: Brookings Institution Press, forthcoming).





# DESIGNING A NEW DIPLOMATIC FRAMEWORK FOR DEALING WITH CHINA

RYAN L. HASS

## EXECUTIVE SUMMARY

The intensity of diplomatic activity between the United States and China in recent years has swung from intense to minimal. Such see-sawing has not been conducive to America's ability to manage its complex relationship with China — a relationship in which sharpening rivalry exists alongside deep interdependencies and shared transnational challenges.

The current state of the U.S.-China relationship does not support a return to the intense levels of direct diplomacy that characterized the Obama administration's approach to China. There is little reason for confidence that weighting the balance of diplomatic focus so heavily on China in current circumstances would leave the United States in a stronger position in Asia or globally.

Along the same lines, the paucity of results and the sharp decline of the relationship during the Trump administration suggests that malign neglect has not been a profitable diplomatic posture. The next administration will need to find a durable middle point between these two poles that is supportive of America's top priorities at home and abroad.

The objective of direct diplomacy with China is to influence how China identifies and pursues its interests, to press China to contribute its fair share to addressing challenges that confront both countries, to clarify top American priorities and concerns, and to mitigate risks of unintended clashes. For such an approach to be durable, it must reflect — or at a minimum, not be in sharp conflict with — the views of the American public toward China and the interests and concerns of American allies and partners regarding China.

To strike such a balance, the next administration could begin by taking a gradual approach to restoring channels of dialogue with Beijing, both to

give allies and partners confidence that Washington prioritizes restoration of relations with them as a first order of business, and also to make clear to Beijing that the United States will be focused foremost on advancing clear objectives and using substance to drive decisions on engagement. Given the Leninist, top-down structure of the Chinese government, it is necessary to develop a high-functioning leader-level relationship. For leader-level interactions to be maximally productive, they will need to be advanced and informed by cabinet and sub-cabinet-level dialogues on specific priority issues in the relationship.

## THE PROBLEM

By the latter part of the Obama administration, the two countries had established roughly one hundred distinct and active channels of communication on a wide range of functional and regional issues, from disability rights to nuclear security and everything in between. Many of these dialogues were nested under a sprawling umbrella mechanism, the Strategic and Economic Dialogue (S&ED), which met annually and was chaired by the Secretaries of State and Treasury and their Chinese counterparts.

The in-depth dialogues during the Obama years were an outgrowth of efforts dating back to the 1970s to explore cooperation on strategic issues or, at a minimum, to avoid unwelcome clashes. In recent decades, the focus shifted away from countering a common threat (the Soviet Union) toward searching for common interests that could cushion the relationship from frictions that inevitably would arise from differing political and economic systems and divergent visions of their respective roles in Asia and the world.

As both countries increasingly became global actors with global economic and security interests, the range of topics upon which both sides felt a need

to coordinate has steadily expanded. Today, a civil war in Sudan, a virus outbreak in Liberia, political instability in Venezuela, or a military clash in Ukraine implicates American and Chinese interests. And as the level of economic, social, academic, scientific, and investment links between the United States and China have deepened, the number of constituencies in both countries that are affected by developments in the relationship has grown.

Even so, the outputs that bilateral dialogues have yielded in each sector have varied considerably based on the reciprocal needs and enthusiasm of constituencies on the two sides. Senior-level government exchanges often have proven to be sterile presentations of well-worn talking points. The extensive architecture of dialogues generally proved to be more effective at preventing clashes than at aligning efforts around meaningful coordination on shared challenges.

The mismatch between effort and output in many diplomatic dialogues led many critics of past American diplomatic engagement with China to argue that Beijing was playing United States leaders for fools, i.e., buying time by stringing U.S. officials along with endless dialogues and unenforceable commitments while Beijing became ever more brazen in pursuing a state-directed mercantilist economic model, a repressive governance system, and an assertive foreign policy. The frequency of dialogue also invited political attacks at home for “coddling dictators.” Members of both political parties have leveled this criticism at American presidents of the other party in recent decades.

Extensive diplomatic interaction also generated anxieties among American allies and partners, particularly Japan, that the United States was prioritizing its relations with China above its partnerships with them. Beijing at times fueled such sensitivities with unsubtle assertions that the United States was elevating the importance of its relationship with China above all others. This created strain and suspicion that, however unjustified by the facts, proved difficult to overcome.

The Trump administration has broken from past practice on the role of diplomacy in managing bilateral relations. After initially announcing plans to sustain four cabinet-level dialogues in 2017, the administration has collapsed the channels of communication into a maintenance-focused trade

dialogue on the implementation of the Phase-One trade agreement, a workmanlike military channel to address irritants and clarify intentions about operational behavior, and an inconsistent leader-level dialogue that has gone cold in 2020.

The Trump administration’s decision to effectively discontinue diplomatic dialogue with China was driven by several judgments, including:

- China stood too distant from American values and interests to be influenced by traditional diplomacy;
- Engaging Chinese officials conferred legitimacy on the Chinese Communist Party that it did not merit;
- Past American administrations had been “suckers” for engaging in endless dialogues that did not deliver results;
- China’s ambitions and intentions already were understood and were in tension with American values and viewpoints. America needed to prevail over China, not talk with China.

The collapse of sustained, authoritative communication during the Trump years contributed to a deterioration in the overall relationship. Areas of confrontation intensified, areas of cooperation vanished, and the capacity of both countries to manage frictions atrophied. While the absence of effective means of direct communication is not the cause of the breakdown in bilateral relations, it likely has served as a contributing factor, though the extent is a subject of debate.

In short, both intense and minimal levels of diplomatic dialogue with China carry costs and risks that must be weighed against derived benefits. There is no indication that a return to intense dialogue resembling the approach during the Obama administration would deliver tangible benefits that would offset domestic and external costs of such an approach. By the same token, abandoning diplomacy has not delivered tangible benefits to the health, security, or prosperity of the American people. The challenge for the next administration will be to find a durable balance point for diplomatic dialogue with China that best positions the United States to advance its interests globally and in Asia.

## OBJECTIVE

The goal of American diplomacy with China is to advance America's strategic and economic interests and to strengthen America's influence and standing in Asia and globally. While direct diplomacy with Beijing can advance the important work to achieve these goals, effective overall strategy also requires close coordination with allies and partners. Washington must pursue a global strategy that includes China, not a China strategy for Asia. Since this paper is focused on the diplomatic architecture of U.S.-China relations, though, its recommendations are more narrowly centered on managing the bilateral relationship.

On China specifically, American interests are served by a relationship that is durable, produces tangible benefits, and provides for managing inescapable points of competition without need to resort to conflict. Achieving such a relationship will require persistent and sustained effort over many years. It will require an acceptance that incremental progress in pushing China in the direction of American interests and values is the measure of success and that both countries need to co-exist amidst intensifying competition.

Diplomatic dialogue is not a gift to be granted or an honor to be bestowed from one side to the other. Dialogue should not be conditioned upon acquiescence to demands or evaluated solely on the output of each interaction. Friction in certain areas of the relationship should not preclude dialogue in other areas. Rather, a consistent and direct exchange of viewpoints should serve as the standard operating procedure for how two mature global powers dispassionately deal with each other.

Within such a framework for viewing U.S.-China relations, the purposes of diplomatic dialogue are to: (1) clarify top priorities and concerns about the actions of the other side; (2) capitalize on opportunities for coordination when U.S. and Chinese interests align; (3) influence how Chinese leaders identify and pursue their interests; and (4) mitigate risk of conflict.

## RECOMMENDATIONS

Given the Leninist, top-down structure of the Chinese political system, leader-level engagement will be crucial for identifying priorities within the

relationship and then driving progress on those priorities. Leader-level meetings should be viewed as the pinnacle of a pyramid-like structure; they should be used as action-forcing events to clarify top priorities and push bureaucracies to finalize tangible outcomes that can be announced at the time of such meetings. The U.S. president should approach meetings with his Chinese counterpart as opportunities to spur the Chinese leader to speak in a manner that makes clear to China's leadership — and by extension, China's bureaucracy — the direction, tone, and substance of the relationship.

As a guiding principle, both leaders should maintain the unofficial norm of meeting whenever both attend multilateral meetings, such as the G-20, East Asia Summit, and UN General Assembly. Both leaders also should aim to meet on a bilateral basis roughly annually and communicate by phone or correspondence between such meetings as circumstances require. As a rule of thumb, it often is helpful for the U.S. President to send a private letter to his Chinese counterpart at the start of the preparatory process leading up to a leader-level meeting to clarify priorities and set ambitious goals for the summit. This guidance helps focus both bureaucracies on working toward negotiating specific, tangible outcomes in advance of leader-level interactions.

Given their proximity to the president, the White House national security advisor and his or her Chinese counterpart should oversee the overall relationship and address problems outside of the public eye whenever possible. The more the Chinese counterpart is seen as being part of the Chinese president's inner circle and speaking authoritatively on his behalf, the higher functioning this channel becomes.

Within the U.S. government, it is neither necessary nor advisable to designate a China policy czar. Such a position would create a channel through which Beijing could concentrate all its efforts to develop an internal advocate for China's own priorities and concerns. Policy is best advanced when coordinated by a national security advisor with a global remit than by a senior official whose performance would be evaluated by perceptions of the overall health of U.S.-China relations.

Below the White House level, department-level decisions on initiating or continuing dialogues with



Chinese counterparts should be guided by the administration's priorities as well as by a clear-eyed calculation of where progress can advance discrete objectives. These dialogues should be kept as small as circumstances permit, both to allow for maximum candor when discussing difficult issues and also to keep the balance tilted as much as possible toward substance over symbolism. Smaller meetings also are more conducive to the development of rapport and relationships among principals.

The common attribute of every difficult issue that has been managed effectively between Washington and Beijing over the past 40 years has been high-functioning relationships between key officials. The more that U.S. and PRC counterparts build and tend relationships with each other, the more likely they will be able to manage points of friction as they arise.

In the first months of a new administration, it will be important for senior American officials to demonstrate that they prioritize relations with America's key allies and partners by spending time repairing and reinvigorating them. Restoring America's moral and economic leadership and repairing America's ties with its closest partners will be crucial for enhancing America's leverage in its dealings with China. For these reasons, there need not be a rush to schedule a leader-level engagement at the outset of the next administration. It would be better to build toward such a meeting and ensure its success than to rush into an early engagement with Xi that would become politically radioactive at home, potentially alienating to allies and partners, and unlikely to yield significant tangible results.

The next U.S. administration will confront a once-in-a-generation collection of challenges. The level of attention leaders devote to direct diplomatic dialogue with China will be influenced by a calculation of whether doing so helps relieve pressure on the acute public health, economic, and security challenges the country confronts. The more that leading officials in both capitals can demonstrate progress on America's most pressing challenges in their early engagements, the more justification there will be for investing greater American diplomatic capital in developing relations with Beijing.

Over time, it will be important to restore functioning U.S.-China dialogue channels for managing areas of competition and potential cooperation.

Establishing standing dialogue mechanisms would build accountability for the policymakers in each government who own responsibility for advancing national priorities and addressing actions of concern. Although the form of such dialogue channels will depend upon the priorities that each country identifies, one potential format would be to lock in national-level dialogues on the following areas:

- Strategic stability (nuclear, missile/missile defense, cyber, space, arms control, emerging technologies)
- Security (maritime, Taiwan, North Korea, Iran, Afghanistan, others depending upon circumstances)
- Economics and trade (market access, IPR, SOEs, subsidies, non-tariff barrier restrictions)
- Climate/energy (climate change mitigation and adaptation, clean energy R&D and deployment, coordination on international climate agenda)
- Global issues (public health, sustainable development, nonproliferation, coordination within international organizations)
- Human rights and rule of law
- Law enforcement and cyber issues (counter-narcotics, visas, repatriations, political interference)
- Military-to-military (risk reduction, operational deconfliction, doctrinal exchange)

This list is intended to be illustrative, not exhaustive. The operating principle for developing these channels in a new administration should be to be judicious about determining the top American priorities that could be advanced through direct dialogue with China. Beijing will be eager to resume diplomatic engagement as a signal of stabilization of ties. Washington will need to approach decisions on where and when to resume direct dialogue channels with care and patience, both to make clear to allies that America prioritizes repairing relations with them as a first order of business and also to use the leverage that has accrued in the US-China relationship over the past four years with care and forethought about specific priorities that need to be advanced.



U.S. officials also should leverage China's political calendar to their advantage. In the coming two years, China will have incentive to stabilize relations with the U.S. in order to promote their preferred national narratives around, *inter alia*, the centenary of the founding of the Chinese Communist Party in July 2021, the Winter Olympics in February 2022, and the 20th Party Congress in Fall 2022. Washington may be able to exploit Beijing's preference for stable and non-conflictual relations during these periods to press for specific decisions or for Beijing to refrain from specific actions in order to prevent bilateral friction.

Restoring functionality to the U.S.-China relationship will be a multi-year project. For Washington, it should start with a focus on finding ways for the relationship to address America's most immediate priorities — combatting COVID-19, spurring global economic growth, and managing points of friction effectively — so that the president's inbox does not become burdened by preventable crises.



# WORKING WITH OUR (EUROPEAN) ALLIES

PAUL GEWIRTZ

## EXECUTIVE SUMMARY

U.S. foreign policy experts broadly agree that the U.S. would have much greater leverage in addressing China by “working with our allies” rather than acting unilaterally as the Trump Administration has so often done. For a new administration to act on this important idea, however, it must identify priority policy areas and concrete issues where effective collaboration is plausible and must also develop a diplomatic strategy to achieve that result. This essay identifies five promising priority areas for trans-Atlantic collaboration regarding China: (1) economic issues, (2) technology issues, (3) human rights, (4) re-invigorating the international system, and (5) climate change.<sup>1</sup>

But working with our (European) allies to develop common and coordinated policies toward China will not be an easy effort. Although the trend within Europe is clearly toward a significantly tougher approach to China, our perceived interests and current policies diverge in important respects, and Europe’s basic approach to China is more multifaceted and nuanced than the current U.S. approach. On the economic front, Europe has greater economic dependence on China than the U.S., even as it is increasingly pushing back against China’s unfair economic policies; moreover, Europe and the U.S. are tough economic competitors themselves. Europe also does not share the superpower focus of the United States on geopolitics and intense national security concerns in the Asia-Pacific. Although increasingly vocal in criticizing China’s human rights abuses, Europe’s willingness to take concrete actions to impose costs on China for those abuses remains unclear. In addition, Europe has embraced close cooperation with China in areas such as climate change alongside their tougher stance in other areas, while the U.S. has currently abandoned most cooperation with China. Added to these differences

between the current China policies of the U.S. and Europe, Europeans are extremely distrustful of the United States after four years of the Trump administration.

For a new U.S. administration, developing a more collaborative policy regarding China with Europe must fit within a broader and intensive diplomatic restoration of trust with our European allies and the EU. Building back Europe’s trust will take time and skilled diplomacy, and even new understandings of what “American leadership” means. But the gains for the U.S. will be great if policymakers can develop strong trans-Atlantic collaboration on global challenges — and in no area is this more important than policies toward a powerful China.

## THE PROBLEM

Virtually all foreign policy experts outside of the Trump administration agree that it has been a major mistake for the United States to act unilaterally on most foreign policy matters over the last four years and that we should be working with our allies — including on China policy. And rightly so. The U.S. will be much stronger and have greater leverage in addressing China if it develops and executes policies in coordination with allies and friends.

But what common policies are possible to develop and carry forward? This requires both understanding where the interests of countries converge and diverge even when they are “allies” and also what diplomatic strategies by the U.S. are needed to overcome the serious ruptures that have occurred with our allies during the Trump administration. This paper addresses these questions in the context of our European allies.

The election of Joe Biden as U.S. President creates major new opportunities. Both EU and European national leaders warmly welcomed the election outcome and the prospect of a broadly revitalized

trans-Atlantic partnership, with some explicitly including cooperative efforts regarding China. Josep Borrell, High Representative of the EU, stated on November 9, “We are ready . . . for close cooperation [with the incoming Biden administration] on China and the challenges it poses in terms of unfair trade practices, security and other issues where we both have concerns.”<sup>2</sup>

But a central problem in developing a collaborative approach with the Europeans is that U.S. and European interests related to China hardly converge across the board. Indeed, there are significant differences among different European countries, which China has been exploiting — for example, by separately engaging countries in Central and Eastern Europe (usually labelled the “17+1”). Nor have European policymakers followed the U.S. in starkly shifting their approach away from engagement with China. Debates about China policy are now vigorous in Europe, and the trend is clearly toward a significantly tougher approach to China. Nevertheless, substantial diverging interests exist between Europe and the U.S. and will almost certainly remain, and working with Europe on a joint China policy will have to deal directly with that reality.

Summits between the EU and China in June and September revealed both the potential and the challenges of trans-Atlantic collaboration on China.<sup>3</sup> Europe’s position toward China continues to toughen — especially because of China’s unfair economic practices, human rights abuses, COVID-19 actions, and “Wolf Warrior” diplomacy — but very substantially differs from the policies of the United States under the Trump administration. The most important comprehensive statement of EU policy toward China is the March 2019 EU Commission document titled “EU-China: A strategic outlook.”<sup>4</sup> It clearly signaled a sharper EU approach to China; but it describes the EU-China relationship in a multifaceted way:

“China is, simultaneously, in different policy areas, a cooperation partner with whom the EU has closely aligned objectives, a negotiating partner with whom the EU needs to find a balance of interests, an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models of governance. This requires a flexible and pragmatic whole-of-EU approach enabling a principled defense of interests and values.”

Many observers have correctly underscored the “systemic rival” concept as an importantly new and much tougher way in which the EU describes China. The EU has indeed increasingly underscored challenges to democracies arising from authoritarian systems — including China’s “influence” and “disinformation” activities, as well as the even more direct intrusions by Russia. But too many observers have ignored the other concepts that the EU embraces in the very same sentence: “cooperation partner,” “negotiating partner,” and “economic competitor.” EU Council President Ursula von der Leyen has confirmed that this multifaceted strategy remains the EU approach, and she concluded her prepared remarks after the June Summit with the statement, “It is not possible to shape the world of tomorrow without a strong EU-China partnership.”<sup>5</sup> At their press conference at the close of the September Summit, EU Commission President Charles Michel, EU Council President von der Leyen, and German Chancellor Angela Merkel continued the tougher trend in Europe’s approach, but they also continued to characterize China with a verbal mixture of “cooperation” and “competition,” “partner” and “rival.”<sup>6</sup> President Michel’s phrase “balanced relationship” succinctly summarized the EU’s current approach to China designed to “promote our values and defend our interests.”<sup>7</sup>

Thus, working with Europe on a joint China policy will have to confront directly these realities:

- Economic issues are clearly the top interest for Europe. Europe is far more dependent on trade and investment with China than the United States. China is the EU’s second largest trading partner, and the EU is China’s biggest trading partner. EU leaders have repeatedly expressed impatience with the progress of the EU’s multi-year negotiations with China on a comprehensive investment agreement to achieve more reciprocity and fairness, and a new U.S. president will find Europe much unhappier with China if no economic deal is reached by the announced goal of December 31. But Europe sees maintaining good economic relations with both the United States and China as core to its interests, certainly not wanting to choose between them. (Technology-related issues such as 5G and Huawei raise distinct issues.) Furthermore, the U.S. and the EU are themselves tough economic competitors, with

major complaints, lawsuits, penalties, and tariffs coming from both sides, very much including the high-tech space.

- Europe does not share the superpower focus on geopolitics and intense national security concerns related to the Asia-Pacific. Europe sees its interests in Asia overwhelmingly in economic terms. Europe's most important countries have long maintained a special relationship with the United States and a sense of shared values, but they do not want to be embroiled in a U.S.-China great power rivalry. Some European leaders like France's Emmanuel Macron are emphasizing "European sovereignty," which seems to mean European power as a kind of Third Way.
- Europe's leaders have been making increasingly strong public objections to China's human rights policies, most especially about Xinjiang and Hong Kong, but it is not yet clear what steps they will take beyond expressing public criticism. Significantly, on October 19 EU President von der Leyen announced a proposal to establish an EU Global Human Rights Sanctions Regime, although full EU endorsement remains uncertain.<sup>8</sup>
- The EU and European countries continue to embrace cooperation with China alongside their articulated differences and their announced systemic rivalry in models of governance. They work together on climate change within the Paris Accord, even as Europe presses China hard to do more; they have been cooperating on COVID-19 country-to-country and through the World Health Organization; and European parties to the Iran nuclear deal have continued to work with China. Europe will almost surely push the next U.S. administration to embrace similar cooperation with China.
- Europe itself is generally in political flux, exacerbated by continued COVID-19 threats, economic difficulties, and tensions within the EU. Working with our allies and friends in Europe requires navigating those political uncertainties, and also must carefully combine diplomacy with individual countries such as Germany and France and also with the EU as an institution. Importantly, Germany's leadership will change in 2021, and it is very unclear what ruling coalition will emerge and who will succeed Angela Merkel as chancellor.

- After four years of the Trump administration, European allies and Europeans more generally are extremely distrustful of the United States. President Trump has frequently expressed annoyance or even hostility towards Europe, and Washington is perceived as unreliable and unpredictable. A new U.S. administration should prioritize efforts to restore the lost trust among Europeans. But that will not be easy to do and will take time, skilled diplomacy, and a type of American leadership that includes listening, negotiating, and even compromising with our allies and friends in order to work effectively with them.

## OBJECTIVES

Taking account of the divergences and other problems noted above, the objectives of the United States should be:

- Developing with European governments and experts a priority list of concrete policy issues where effective collaboration is possible that could increase leverage on China to change problematic behavior that concerns both the U.S. and Europeans, and that could also enhance international cooperation in addressing global challenges; and
- Developing a diplomatic strategy to persuade European countries and the EU generally to implement a collaborative approach on these matters.

## RECOMMENDATIONS

### *Areas of specific policy collaboration:*

Working with our European allies on a joint China policy will require us to accept that our collaboration is unlikely to occur across the board. The most promising priority areas for trans-Atlantic collaboration on China policy include (1) economic issues, (2) technology issues, (3) human rights, (4) re-invigorating the international system; and (5) climate change. Specific examples where policy collaboration seems possible include:

- (1) Economic issues:** Because economic issues are Europe's top priority with China, and because Europe and the U.S. have similar objections and concerns about China's economic practices,



this is the most promising area for trans-Atlantic cooperation that could significantly increase leverage over China. But significant obstacles need to be overcome where American and European interests diverge and in fields where they are strong competitors. Promising economic areas for developing similar policies and a coordinated and united “carrots and sticks” approach to China include:

- state subsidies (promoting greater transparency and constraining rules);<sup>9</sup>
- intellectual property protection;
- market access reciprocity;
- in-bound investment screening;
- export controls;
- government procurement rules; and
- WTO reform.<sup>10</sup>

**(2) Technology:** Technology issues overlap with both vital economic and national security issues. The U.S. and Europe have shared (but not identical) concerns about Chinese practices. Even though the U.S. and Europe are themselves economic competitors in this crucial area, there are important potential areas for greater trans-Atlantic cooperation beyond the important areas of economic collaboration listed above, including:

- Developing shared approaches on 5G standards, supply chain security, acceptable state subsidies, and on Huawei, and manage our own 5G competition;
- Working together to advance international technical standards for new technologies that align with shared values, recognizing Europe’s opposition to U.S. technology dominance; and
- Attempting to overcome the current large divergence in approaches to data protection.

**(3) Human rights:** With greatly increased European concern about China’s human rights violations, especially in Xinjiang and Hong Kong, jointly pushing back on China’s human rights policies is a promising area of trans-Atlantic cooperation.

As noted throughout this monograph, the core of the China policy of the United States overall has to be strengthening America at home, and this applies to the areas of human rights and values promotion. The centerpiece must be that the U.S. demonstrates the success of the democratic political model and actual commitment to proclaimed values — and so too with Europe, which has seen the emergence of some authoritarian leaders, racist/fascist parties, and other threats.

With that premise, the U.S. and Europe should work closely to develop a common approach and collaborative actions that seek to impose costs on China for its human rights violations and wrongs, including:

- Imposing reputational costs by naming and shaming, both country-by-country and in multinational fora (a reason the U.S. should promptly rejoin the UN Human Rights Council);
- Imposing sanctions on officials and businesses (which the proposed EU Global Human Rights Sanctions Regime would facilitate, if adopted);<sup>11</sup> and
- Imposing export controls.

The effectiveness of these options in actually changing China’s behavior is uncertain, but a U.S.-Europe united front will increase the leverage over China and will also reinforce the U.S.’s own national values and a shared trans-Atlantic identity as liberal democracies.<sup>12</sup>

#### **(4) Reinvigorating the international system:**

As China seeks greater influence within international institutions — a trend accelerated by the U.S.’s absence, withdrawal, and criticism during the Trump Administration — a new administration must reengage these institutions and play a reinvigorated leadership role. COVID-19 has unfortunately strengthened nationalist trends rather than empowering global responses through international institutions. The global order, including international institutions, will necessarily evolve and adapt as power balances continue to shift worldwide (including the greater ambitions of the EU itself). Going forward, the global order is likely to include international institutions and their rules

and also more limited multi-lateral entities of like-minded nations. The latter are essential, as NATO and our alliance system demonstrate, but it would be extremely dangerous for international institutions to collapse and rival institutions reflecting adversarial camps take their place. Although U.S. and European interests will not always align, collaboration can do two main things to reinvigorate the international system in response to China:

- Counterbalancing China where values and policies diverge within international institutions (ranging from WTO reform to the Human Rights Council); and
- Providing like-minded approaches in “cooperative” efforts with China, such as seeking to control climate change (with the U.S. rejoining the Paris Accord), nuclear non-proliferation efforts involving countries like Iran, and, ideally creating better international processes for dealing with pandemics as a “lesson learned” from COVID-19.

**(5) Climate change:** Rejoining the Paris Accord will be only the beginning of new U.S. efforts to address climate change globally. Since China accounts for such a high percentage of greenhouse gas emissions, climate change cannot be contained without China doing more and both the U.S. and China cooperating to play leadership roles globally, as they did in shaping the Paris Accord. Bilateral cooperation with China on this issue is essential, and so too is working through multilateral fora. Collaboration on climate change with a climate-focused Europe is essential for its own sake in addressing this existential challenge and also to increase pressure and incentives for China to do more. Ways that a re-engaged next U.S. administration can work with Europe include:

- Building on the EU’s work with China on climate issues following the U.S. announced withdrawal from the Paris Accord in 2017 and the rapid deterioration of U.S.-China relations across the board;
- Working with Europe to jointly pressure China to reduce national targets and reduce its use of coal domestically and in Belt and Road projects; and

- Expanding global cooperation in developing clean energy technologies, green technology standards, and assisting developing countries to finance expanded use of clean energy technologies and practices.

### ***U.S. diplomatic strategy***

The U.S. will need a carefully considered diplomatic strategy toward Europe in order to develop and implement this collaborative approach. America needs to understand clearly the degree and depth of distrust and anger that many European officials currently feel toward the United States. Our diplomatic strategy with Europe must begin with a broad effort to rebuild trust, including a sense of like-mindedness and true alliance with our allies. We must also recognize that the United States and Europe often have diverging interests and are often tough competitors.

A collaborative policy regarding China must fit within this broader diplomatic restoration of trust with Europe. The U.S. and Europe have overlapping interests concerning China that should enable robust collaboration, but our interests also diverge. European countries may be willing to adjust some of their preferred policies to gain increased leverage with China through collaborating with the U.S. For the same reason, the U.S. may also have to adjust some preferred policies to gain European buy-in. A new U.S.-EU dialogue on China launched by the Trump administration just prior to the U.S. election might provide a nominal platform for going forward, but, if so, the substance, form and tone would need a makeover and the context should be broadly revitalized trans-Atlantic relations.

Rebuilding Europe’s trust will take time, concrete actions, proven predictability and reliability, and skilled U.S. diplomacy. To state the obvious regarding China or anything else, working with our allies should not entail telling the Europeans “here’s the policy” and expecting them just to sign on. Indeed, the concept of “American leadership” in almost all areas will require new understanding of what such “leadership” means: convening, listening, providing expertise, persuading, forging acceptable compromises and mobilizing, and most importantly, not dictating to others what they “must do.”

## REFERENCES

- 1 This short essay is part of a longer work-in-progress that will be published separately.
- 2 Josep Borrell, "Let's make the most of this new chapter in EU-US relations," European Union External Action, November 9, 2020, [https://eeas.europa.eu/headquarters/headquarters-homepage/88393/let%E2%80%99s-make-most-new-chapter-eu-us-relations\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/88393/let%E2%80%99s-make-most-new-chapter-eu-us-relations_en). See also, for example, statements by German Chancellor Angela Merkel, "Chancellor Dr Angela Merkel: Outcome of the presidential election in the United States of America," Federal Cabinet of Germany, November 9, 2020, <https://www.bundesregierung.de/breg-en/news/statement-corona-cabinet-1809740>, and German Foreign Minister Heiko Maas, "Statement by Foreign Minister Maas on the Presidential election in the United States," German Federal Foreign Office, November 7, 2020, <https://www.auswaertiges-amt.de/en/newsroom/news/maas-presidential-election-united-states/2413976>.
- 3 Paul Gewirtz, "The future of trans-Atlantic collaboration on China: What the EU-China summit showed," The Brookings Institution, June 26, 2020, <https://www.brookings.edu/blog/order-from-chaos/2020/06/26/the-future-of-trans-atlantic-collaboration-on-china-what-the-eu-china-summit-showed/>.
- 4 "EU-China – A Strategic Outlook," The European Commission, March 12, 2019, <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>.
- 5 "EU-China summit via video conference," The European Commission, June 22, 2020, <https://audiovisual.ec.europa.eu/en/video/I-192422>. See also Ursula von der Leyen, "Statement by President von der Leyen at the joint press conference with President Michel, following the EU-China Summit videoconference," The European Commission, June 22, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_1162](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1162).
- 6 Charles Michel, "Remarks by President Charles Michel after the EU-China leaders' meeting via video conference," Council of the European Union, September 14, 2020, <https://www.consilium.europa.eu/en/press/press-releases/2020/09/14/remarks-by-president-charles-michel-after-the-eu-china-leaders-meeting-via-video-conference/>; Ursula von der Leyen, "Statement by President von der Leyen at the joint press conference with President Michel and Chancellor Merkel, following the EU-China leaders' meeting via videoconference," The European Commission, September 14, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_1644](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1644); and "Open dialogue with China," Office of the Federal Chancellor of Germany, September 14, 2020, <https://www.bundeskanzlerin.de/bkin-en/news/eu-china-video-conference-1786870>.
- 7 Michel, "Remarks by President Charles Michel after the EU-China leaders' meeting."
- 8 "Sanctions and Human Rights: towards a European framework to address human rights violations and abuses worldwide," The European Commission, October 19 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1939](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1939).
- 9 "Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union," Office of the U.S. Trade Representative, January 14, 2020, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement-trilateral-meeting-trade-ministers-japan-united-states-and-european-union>; "White Paper on Levelling the Playing Field as regards Foreign Subsidies," The European Commission, June 2020, [https://ec.europa.eu/competition/international/overview/foreign\\_subsidies\\_white\\_paper.pdf](https://ec.europa.eu/competition/international/overview/foreign_subsidies_white_paper.pdf),
- 10 For a helpful summary of complications in achieving WTO reform, see Mark Wu, "Managing the China Trade Challenge: Confronting the Limits of the WTO," [https://cpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/b/732/files/2020/10/Mark-Wu\\_Limits-of-WTO\\_Final.pdf](https://cpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/b/732/files/2020/10/Mark-Wu_Limits-of-WTO_Final.pdf).
- 11 "Sanctions and Human Rights: towards a European framework."
- 12 Since important Asian allies and partners – e.g., Thailand, the Philippines, Singapore, Vietnam – are either not democracies or themselves are using authoritarian tools, the U.S. is unlikely to work collaboratively with them on China's human rights policies the way we work with Europe.



# DEVELOPING A NEW US APPROACH TO CHINA AND COVID-19

THOMAS J. CHRISTENSEN

## EXECUTIVE SUMMARY

Throughout history, common threats have allowed countries with otherwise tense and even hostile relations to cooperate: think of the United States and the Soviet Union allying against Hitler in the early 1940s; or U.S.-Soviet collaboration to eradicate small pox around the world in the 1960s and 1970s; or the United States and the People's Republic of China aligning against the Soviet Union during the 1970s and 1980s. The COVID-19 pandemic is a quintessential common threat. But instead of facilitating cooperation between Beijing and Washington, the COVID-19 pandemic has increased hostility through mutual public shaming, petty and largely baseless accusations, and, in the case of the Trump Administration, the President's adoption of race-baiting labels (e.g. the "China Virus" and "the Kung Flu"). Moreover, the United States has attacked and de-funded the World Health Organization (WHO), the major multilateral organization that could facilitate U.S.-PRC cooperation and maximize the utility of that cooperation around the world. Finally, the United States has allowed revealed reliance on foreign supply, particularly supply from China, of medical Personal Protective Equipment, including surgical masks, to catalyze a destructive pre-existing distrust of international commerce and globalization.

The failure to seize this opportunity for cooperation has already increased the suffering of the Chinese and American populations during this crisis. If that failure persists into 2021, an even greater catastrophe might metastasize in other parts of the world, particularly in the southern hemisphere. Developing countries will be hit hard by the health and economic fallout from the pandemic and the global recession that it created. The failure of Washington and Beijing to work together to mitigate the health and economic costs in Africa, Latin America, and Asia will hurt the diplomatic

reputations of both countries. And if Washington continues to appear to be the major obstacle to bilateral and multilateral cooperation regarding the pandemic, and Beijing moves unilaterally and engages multilateral institutions while the United States remains largely absent in them, the United States will have unnecessarily weakened its own diplomatic standing in the broader and on-going strategic competition with the PRC. Finally, if the United States tries to solve its dependence on imports of important manufactured goods through ham-fisted protectionist measures, Washington will exacerbate the harm already inflicted on international economic cooperation in the past 4 years through U.S. withdrawal from TPP, disregard of WTO rules, and attack on WTO adjudication bodies.

## KEY COMPONENTS OF AN ALTERNATIVE STRATEGY

The United States must:

- Stop the blame game and drop the race-baiting. Call for an international investigation into the lessons learned during the pandemic that includes critiques of mistakes made by both China and the United States. Such an investigation should be conducted only after the pandemic is brought under control.
- Re-fund the WHO and try to shape its agenda to reduce any undue or counterproductive Chinese influence in the organization.
- Share best practices with China about how to limit the spread of the virus and treat those whom it has afflicted.
- Prepare in advance for massive vaccine production and global distribution, regardless of which country's scientists are behind the breakthroughs.



- Cooperate with China and the WHO to build medical infrastructure capacity in the developing world.
- Reinvigorate U.S. engagement with the IMF and the Paris Club and press China to coordinate relief of its debts to the developing world with the major American, European, and Japanese lenders.
- Supplement increased domestic production of critical products with diversified international sourcing and strategic reserves of imports. Re-engage the WTO and push for needed reforms within the organization.

## THE PROBLEM

The governments of both China and the United States have handled the outbreak of the COVID-19 pandemic very poorly. Rather than accepting criticism for their mistakes, officials in both governments have blamed the other country for many of its problems and taken the occasion to mock the other political system as unable to manage the challenge at hand.

In China, where the epidemic began, the government managed the original outbreak of the virus terribly. The local governments in the city of Wuhan and surrounding Hubei province suppressed the bad news that a virus was spreading in the city, silencing through coercion the voices of doctors who were blowing whistles and pointing to the dangers of an epidemic. Until late January, the Chinese government did not even recognize publicly that the disease was clearly being spread between humans. But the disease has proven itself so contagious in multiple countries that it seems impossible to believe that health care workers in Wuhan were not among the early patients, which would be a very clear sign of human-to-human transmission. The absence of a free press in China also hampered the prompt dissemination of knowledge about the disease to the general public in Wuhan and beyond. The reluctance of local officials to draw attention to problems is predictable in a system that blames and often punishes those officials for bad outcomes, even if forces that were generally outside of their control were at fault. Most likely, there were also additional cover-ups at higher levels in the Chinese Communist Party. Central government elites do not want to see the PRC's

reputation tarnished on the international stage, and more importantly, want to ensure that the CCP's legitimacy at home is not harmed by coverage of the origins of the pandemic and the weak and even destructive early responses to it. In attempting to deflect blame on others, China's "Wolf Warrior" diplomats attacked the United States. Chinese Foreign Ministry spokesperson Zhao Lijian even amplified conspiracy theories about the U.S. Army planting the disease in Wuhan.

Once the Chinese central government publicly recognized the spread of the highly contagious disease and locked down Wuhan on January 23, the Chinese government appears to have been quite effective at limiting the spread of the disease, expanding hospital capacity quickly, distributing protective gear to health care workers, expanding testing protocols, and isolating, often forcibly, infected individuals and even people suspected of having been exposed to the virus. Chinese doctors and health care officials almost certainly have learned valuable lessons to share with the outside world, including the United States. This is true even if the system in which they work caused tremendous damage by allowing a large, international city like Wuhan to become a giant incubator for a highly contagious and dangerous disease that would spread through the country and around the world.

The reluctance of the World Health Organization to label COVID-19 a global health emergency until the end of January, a full week after the lockdown of a large, international Chinese city, may also have caused significant damage. While forthcoming investigations will likely reveal more fully why this delay occurred, it seems probable that some combination of Chinese political pressure on the member states or top leadership of the WHO to preserve the PRC's reputation on the international stage and the WHO's overreliance on official reports from member states like China were the cause.

The slowness of the WHO to reach that conclusion may have delayed reactions to the coming catastrophe in various part of the world in consequential ways, but oddly the one place where this does not seem to have been the case is the United States. And ironically, Washington has become the loudest critic of the organization. Even after the disease appeared threatening to the world, including the United States, the Trump

administration largely dismissed the danger as overblown or, worse, inflated intentionally by the administration's political opponents. It is very difficult to see how an earlier recognition by the WHO that the novel coronavirus constituted a global health emergency would have changed that flawed American reality. Critically important weeks were lost in implementing serious policies to combat the disease. And the much-touted ban on travel from China at the end of January, however sensible, apparently did little to stem the tide of the disease in the United States, since it had arrived earlier and begun spreading. In the case of New York, the disease apparently arrived indirectly from China via Europe before the travel bans on both regions were established. Subsequent repeated claims that tests were universally available and being provided in sufficient numbers to meet the challenge were — and remain — patently untrue in large swathes of the country. Governors were often left to fend for themselves and engage in interstate competition to acquire protective gear and medical equipment for physicians, which, in some important cases, had to be sourced from China.

During the Trump administration, the U.S. government has downgraded the importance of science and expertise in its decision-making processes, and, under the banner of “America First,” has generally avoided using multilateral organizations and agreements to protect and assert U.S. interests. Under President Trump, fewer government health experts were on the ground in the U.S. mission in China than in past administrations. President Trump clearly prefers making decisions based on gut instincts and on his hopes rather than on the results of careful research. To this end, he claimed early on that the disease posed limited risk to the American economy or society; that it would disappear soon “like a miracle,” perhaps when warm weather arrived; and that injecting disinfectants and UV light could be explored as potential cures for the disease. Following his own infection, President Trump downplayed the dangers of the virus again by drawing fallacious comparisons to the common flu.

The Trump Administration — and especially the President himself — has blamed the Chinese government and the WHO for the hundreds of thousands of deaths in the United States and the massive hit to the American economy. The

Administration has promised to “make China pay,” and has cut off all funding to and cooperation with the WHO. Finally, Trump Administration officials have spread rumors about how the virus escaped from a lab (a possibility, but an unproven hypothesis) and even that the disease may have been intentionally created there and then intentionally spread to the rest of the world (a near impossibility given the structure of the virus and the irrationality of such a move by Chinese leaders). Once he began taking the disease more seriously President Trump used race-baiting descriptions of the disease such as the “Chinese virus” and the “Kung Flu,” and seemed to celebrate a corrected increase in the Chinese official death totals, adopting a morally bankrupt standard for international competition. In the process, the reputation of the United States around the world, already reeling, has taken further hits, and rather than competing with China in organizations like the WHO, the United States has simply ceded its leadership in that organization while China has predictably moved partially into the void by increasing its own financial contributions.

## OBJECTIVES

### Learn negative lessons and best practices:

Finger pointing has saved no lives and has done nothing to prevent the next epidemic. A good dose of self-criticism on all sides will be needed to improve future responses to similar challenges, which will almost certainly arise. More urgently, a good dose of humility and self-reflection might allow for greater international cooperation in this ongoing crisis. Whatever mistakes and cover-ups occurred in Wuhan, China is now a repository of useful knowledge about the virus and how best to control its spread. It also has a very strong scientific community studying the origins of viruses and medical treatments to combat them. These scientists can cooperate with American experts both to find a vaccine and to develop effective treatments short of a vaccine, regardless of whether the virus actually leaked from a scientific facility in Wuhan with insufficient safeguards. There will be time later to assess the early mistakes of China and others in greater detail, but the disease is spreading now, and both countries should be tackling it together.

### **Enhance cooperation and build multilateral capacity to mitigate disasters, particularly in the developing world:**

The WHO and other multilateral institutions like the G20 should be bolstered to help address the medical and economic challenges that are likely to spread around the globe, particularly in countries with weak medical infrastructures and poor economies that will almost certainly suffer massive debt defaults. Again, this is true even if international politics and institutional weakness delayed the WHO's initial response to COVID-19. It simply does not follow any logic (except a tortuous political one) that the proper response to earlier failures by the WHO should be to cripple the major vehicle of international public health during a global pandemic. Heavily indebted nations will have a particularly hard time paying back their loans. Lending states, including China, should be encouraged to cooperate with each other to restructure their debt and avoid beggar-thy-neighbor approaches to debt repayment that will further weaken those developing economies and redound to no nation's advantage over the long run. Additional food aid should also be provided to prevent widespread hunger in Africa and Asia.

## **RECOMMENDATIONS**

The United States must:

- **Stop finger pointing, deflecting blame, and, especially, race-baiting about the nature of the disease.** By amplifying unfounded conspiracy theories, deflecting blame for clear U.S. failures, and adopting racist language, U.S. officials have weakened the United States diplomatically on the international stage. Ironically perhaps, this has improved China's relative position in relation to the United States in the bilateral strategic competition at a time when China's own diplomacy has been alienating many countries in Asia, Africa, and Europe.
- **Share best practices.** The two sides should share and learn best practices — including mistakes to be avoided — for how to slow the spread of the disease. COVID-19 will not be our last epidemic. Each country needs to learn lessons for the long run, and political tensions between the two nations in the near term can be reduced by recognizing the need for an international probe of the origin and spread of the pandemic. The United States should advocate for such a probe and be open to critical review of its own actions. If China refuses the proposal, which seems quite possible, at least the United States would have gained diplomatically at China's expense.
- **Cooperate on vaccine creation.** The United States and China should work on vaccines together and should pledge to share any breakthroughs with each other and the rest of the world promptly. Cooperation can occur on a government-to-government basis or between universities and companies. One sign of hope is that Chinese and U.S. scientists have managed to perform some collaborative research on the disease despite the conflicts between the two governments.
- **Prepare in advance for massive vaccine production and global vaccine distribution.** Vaccinating everyone everywhere will be a massive logistical undertaking that will require great forethought before a vaccine is invented. Delays in distribution of even several months could easily cost an astounding numbers of lives. If political fighting over who receives vaccines and when occurs, it would be devastatingly destructive to international cooperation on all fronts for years to come. And until the entire world is safe from the pandemic, no one truly will be.
- **Assist the poorest nations in battling the disease.** Cooperate to remediate suffering in the developing world by boosting the medical response capacity in highly vulnerable areas like sub-Saharan Africa and South Asia. In 2014, the United States and China cooperated effectively alongside many other countries to address the Ebola crisis in Africa. The WHO should be a major actor in this cooperation regardless of any problems related to the organization's public response in January 2020. And to the degree that the epidemic is accompanied by famines in some places, as seems likely, the United States and China should support the efforts of the World Food Programme to distribute provisions and eliminate distributional bottlenecks slowing the delivery of needed aid.
- **Cooperate to manage debt defaults in the developing world.** The possibility of systematic

debt defaults in the developing world seems quite real and could have ripple effects throughout the entire global financial system. More multilateral cooperation will clearly be needed. The then brand new G20 responded rather well to the 2008 financial crisis and should be called upon again to address the fallout from the 2020 global recession. The COVID-19 crisis should also provide an opportunity for global bankers to push China to join international development financing groupings like the Paris Club, which reduce conflicts among lenders when debt crises occur around the globe. Without cooperation on debt restructuring, the international economy could be severely harmed by beggar-thy-neighbor strategies among lending institutions. In this context, the many nontransparent, bilateral infrastructure development loans made by China as part of the Belt and Road Initiative could loom particularly large.

- **Prioritize development of strategic reserves over economic nationalism.** Nations are now more acutely aware of their dependence on foreign supplies of needed products in a world of globalization and transnational supply chains. But global trade has also generally been a very

positive factor for the world economy and the American economy. Any significant reductions in global trade will likely lead to more, not less, poverty and more, not less, vulnerability to disease and hunger. Two potential solutions to protect global trade would be the diversification of global supply chains so that a single country, like China, is not so essential to the supply of final manufactured goods. This diversification would result in even more complex economic interactions around the world than exist today, but it would provide a much more efficient solution than each nation trying to produce many products entirely at home to reduce their vulnerability. To supplement such a globalist strategy, individual countries should be encouraged to create larger strategic reserves of needed medical and other supplies as an alternative to simply moving all production of those products back to their own countries. Economic nationalism as an alternative to strategic reserves would carry huge opportunity costs for global efficiency and wealth and could also infect international security politics in destabilizing ways. Similar approaches to stockpiling of internationally purchased products for security purposes have long been used effectively in the energy sector.





# REBOOTING US-CHINA CLIMATE ENGAGEMENT

TODD STERN

## EXECUTIVE SUMMARY

The deterioration of U.S.-China relations has complicated the capacity of both sides to work together on climate change, yet such renewed engagement is vitally important. Reviving climate coordination will depend both upon getting the mix of competition and collaboration right in the overall relationship and upon the extent to which both countries are prepared to dramatically ramp up their climate action. Vice President Biden has made clear his commitment to putting the United States on a path to reaching net-zero emissions by 2050. China's record on the clean energy transition is mixed — the world leader in renewable energy, but still doubling down on coal at home and abroad. Biden will need to make clear to President Xi Jinping the centrality of climate change to his national security vision and the mutual opportunity for the United States and China if they are ready to embrace aggressive climate action. At the same time, the United States will need to deploy additional tools, working closely with Europe and other allies, to demonstrate that anything less than a genuine recognition of the climate imperative will be unacceptable.

During the Obama administration, the U.S.-China climate relationship was central to the global progress that culminated in the Paris climate agreement. The administration started developing that relationship right away, from Secretary Clinton's first trip to China in February 2009, to my first meeting in March 2009 with my Chinese counterpart, Minister Xie Zhenhua, where I proposed trying to make climate a positive pillar in an often-fraught relationship, through Secretary Kerry's establishment of a new U.S.-China Climate Change Working Group, the historic Joint Announcement by Presidents Obama and Xi in Beijing in November 2014 and the Paris Agreement itself a year later. The nature of our cooperation was never easy; Minister Xie and I were still battling down to the last two days in Paris in 2015. But the two sides came

to understand, over time, that at the end of the day agreement would be reached.<sup>1</sup>

Of course, Donald Trump pulled the plug on U.S.-China climate engagement. If Joe Biden wins the election in November, it will be vital to again work effectively on climate change with China because given our size — China accounted for 27% of global greenhouse emissions in 2019, the United States for 13% — our influence and the power of our example, there is simply no way to contain climate change worldwide without full-throttle engagement by our two countries. And yet reviving our climate cooperation will be no mean feat in light of both the deterioration of our overall relationship and the evolving landscape of the climate challenge.

## THE BROADER BILATERAL RELATIONSHIP

It is by this time obvious that the U.S.-China bilateral relationship has declined significantly in recent years, and not just because of Donald Trump. People on both sides of the aisle in the United States, including many of China's historic friends, are distressed about a range of Chinese behavior, from the destruction of Hong Kong's autonomy, to aggression in the South China Sea, the persecution of the Uighur minority, President Xi's broad authoritarian crackdown, the elimination of limits on his term in office, continued unfair trade practices, and more. These concerns about China are serious and cannot be wished away. But the call by some for a new Cold War or strategic competition across the board is a mistake. The United States will have to learn to manage a relationship marked by both competition and collaboration, working with allies to stand up against unacceptable Chinese behavior where necessary, while seeking to collaborate where possible and necessary. Unless the right mix of competition and collaboration can be found, renewed climate cooperation won't get off the ground. And that would have grave national security

consequences in the United States and around the world. You have only to look at the authoritative reports on the enormity of the climate risk, including the “1.5°C Report” of the UN’s Intergovernmental Panel on Climate Change (IPCC) in 2018, among others; or the warnings from institutions like the Pentagon and the intelligence community; or the crescendo of monumental climate events around the world, from wildfires in Australia and California to heat waves, floods, storms, and rapidly melting ice at our poles to see that what many once regarded as an environmental concern is in fact a full-fledged national security threat.

## A DIFFERENT CLIMATE LANDSCAPE

Reviving our climate cooperation will also depend upon the extent to which our two countries are prepared to bring an adequate level of commitment to the task of tackling climate change. The challenge of rapidly decarbonizing the global economy has grown even more urgent since the Paris Agreement was reached in 2015, with a growing consensus of climate scientists and experts persuaded that the world needs to pursue not just the Paris goal of holding global average temperature to “well-below 2°C but the Paris best-efforts goal of holding the increase to 1.5°C.<sup>2</sup> Vice President Biden has made clear his commitment to reaching net-zero emissions by 2050 in pursuit of the 1.5°C target. Executing on that commitment will require sustained executive and legislative action and a broad mobilization of national will. It is easy to dismiss the kind of effort required here as impractical. But before pronouncing judgment, it must be asked, “compared to what?” Most of the technology needed already exists, along with the innovative capacity to create more; it is clear which policy levers need to be deployed; the costs are affordable, and failing to act will cost much more. Knowing all this, will America look at the metastasizing threat and commit to conquering it or look away?

But what about China? To date, China’s record on the transition to clean energy is mixed. It is by far the world leader in the deployment of solar and wind power; in 2019, more electric vehicles were sold in China than the rest of the world combined; and 98% of the world’s 500,000 electric buses operate in China. The Chinese government has put in place a wide range of policies to propel these rapid advances, and insiders there claim that China is committed to a renewable energy future.<sup>3</sup> At the

same time, China’s coal infrastructure is immense and still growing. Although its coal consumption in 2019 fell as a percentage of primary energy (down to around 58%), it still consumed more coal than the rest of the world combined. Even more concerning, China is actively developing major coal projects both at home and abroad. With a current coal-fired power plant capacity of around 1040 gigawatts — about equivalent to the entire U.S. electricity system — China has roughly another 100 GW under construction and a further 150 GW on the drawing board (think of 1 GW as two full-scale, 500-Megawatt power plants).<sup>4</sup> Moreover, studies indicate Chinese support (development, construction, financing) for more than 100 GW of coal plants under construction around the world along the massive Belt and Road Initiative.<sup>5</sup> And, remarks by Chinese leaders over the past year have not been encouraging, including Premier Li Keqiang’s call for increased development of China’s coal resources at an October 2019 meeting of the National Energy Commission and at the May 2020 National People’s Congress.<sup>6</sup>

The magnitude of China’s embedded coal infrastructure might lead one to believe that change at the speed and scale required is just undoable. But that isn’t so. As an example, two expert analyses in the past year suggest that it would be technically and economically feasible for China to largely phase out its coal infrastructure by 2050, assuming they stop adding to their fleet.<sup>7</sup> With tremendous effort, to be sure, but, of course, that’s the point. To take a global energy system that relies on fossil fuels for around 80% of primary energy down to net-zero by approximately 2050, a fundamental transformation at speed and scale will be required, including China, the United States, Europe and others.<sup>8</sup> Nobody would even contemplate such a rapid transformation were it not that a more relaxed path threatens grave danger to our economic, national security, and general well-being, if not outright catastrophe.

China’s leadership will need to understand, before too long, that there is no way for China to maintain and enhance its standing in the world, with rich and poor countries alike, if climate change starts to wreak widespread havoc and China stands out as the dominant polluter who refused to do what needed to be done. If the world arrives at that dangerous place, the conventional rhetoric of UN climate negotiations — where all blame was traditionally cast upon developed countries and

developing countries, as listed in the original 1992 treaty, were held harmless — will be unavailing. The audience, at that point, will be the world, from citizens to leaders, not UN negotiators, and China, at that point, will be the world's largest economy. Citing chapter and verse from old climate agreements to justify inadequate action won't work.

## RESTARTING CLIMATE COOPERATION

To reboot climate cooperation with China, a new Biden administration will need to send the right signals early on. First, it will need to convey its determination to meet China in the middle to arrest the downward slide in the broader bilateral relationship and find a new *modus vivendi*, with climate change identified as a key issue on which the two sides should cooperate. Second, it will need to develop a set of strong policies demonstrating its commitment to transformational change. When President Obama was seen to “walk the walk” at home on climate, especially in his second term, it translated directly into international leverage. This will be no less true for Biden. The Chinese know he has made big promises on the campaign trail and will want to see whether he can deliver. Third, Biden will need to make clear that climate change will be an organizing principle of his national security strategy, not simply an issue to which his national security team give occasional lip service.

Biden will also doubtless plan a summit with Xi in his first year. The agenda for their meetings will be crowded, but climate change will need to be a featured topic, both to convey that Biden is serious about it and to provide the time they'll need for meaningful discussion. Biden should explain how seriously he views the issue, the transformational goals he embraces, the benefits he sees economically and politically in taking this path, and the enormous win-win opportunity for the United States and China if they can partner together. When Presidents Xi and Obama joined hands in their 2014 Joint Announcement, it paved the way for the Paris Agreement. The challenge now is even greater — to deliver on the promise of Paris.

There is a solid foundation on which to build new and expanded cooperation, starting with the US-China Climate Change Working Group (CCWG). With our global focus on economic transformation, the CCWG could become a key venue for sharing information on our decarbonization plans and collaborating on

low or no-carbon technologies and policies. Both countries could also work together to revive the Major Economies Forum, meeting at the leader level every other year and at the “Sherpa” level in between. And the U.S. and China could collaborate on ongoing issues related to the Paris regime.

## ADDITIONAL TOOLS

A new Biden administration will also need to deploy a broader range of tools to help shape China's approach on clean energy and climate change. The administration should conduct an active climate diplomacy aimed at building global support and spurring global action for transformational change at speed and scale. Europe has long been a climate ally of the United States, and now, with the drive to transform the global economy taking center stage, our alliance should become even closer. A Biden administration should also rekindle our traditional climate alliance with Canada, Mexico, Japan, Australia, and New Zealand, as well as pick up the torch with crucial international players such as India, Brazil, South Africa, and Indonesia. And a new Biden administration, with its allies, should work on a diplomatic initiative inspired by the so-called “High Ambition Coalition” — a gathering of island states, progressive Latin nations, less developed countries and others — which played a crucial role at the Paris conference in 2015. Such an initiative, outside of but supporting the UNFCCC, could be launched at the leader level and focus on building political support and moral authority for the transformational change required.

The administration should also work with the European Union on structuring trade adjustment measures designed both to support low-carbon exports and to impose tariffs on high-carbon goods to prevent countries that lack adequate carbon controls from gaining an unfair trade advantage.

## CONCLUSION

If Joe Biden wins in November, a great deal will be riding on the renewal of the U.S.-China climate relationship. The complications are plain to see — the tense state of the overall relationship; the challenges Biden will face in achieving necessary domestic progress on climate; and the step change implicit in what China needs to do to meet this moment. But the dangers of failing to revive climate cooperation are unacceptably high. America must get this right.

## REFERENCES

- 1 This paper repurposes the author's contribution to the Brookings Institution's Global China series. See Todd Stern, "Can the United States and China reboot their climate cooperation?" (Washington, DC: The Brookings Institution, September 2020), <https://www.brookings.edu/articles/can-the-united-states-and-china-reboot-their-climate-cooperation/>.
- 2 The Paris Agreement calls for holding the increase in global average temperature to "well below 2°C above pre-industrial levels" and pursuing best efforts to hold that increase to 1.5°C. See "Paris Agreement to the United Nations Framework Convention on Climate Change," T.I.A.S. No. 16-1104, Dec. 12, 2015. [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).
- 3 David Sandalow, "China's Response to Climate Change: A Study in Contrasts and a Policy at a Crossroads," (New York: Asia Society, July 30, 2020), <https://asiasociety.org/policy-institute/chinas-response-climate-change-study-contrasts-and-policy-crossroads>.
- 4 "A New Coal Boom in China." *Global Energy Monitor*, June 2020, <https://globalenergymonitor.org/wp-content/uploads/2020/06/China-coal-plant-brief-June-2020v2.pdf>.
- 5 Sandalow, "China's Response to Climate Change."
- 6 Ibid.
- 7 Ibid. See also Fredrich Kahrl et al, "Working Paper 007: Sunseting Coal Power in China," Lawrence Berkeley National Laboratory, September 2019, <https://eta.lbl.gov/publications/working-paper-007-sunseting-coal>.
- 8 The "net" in the net-zero formula is important. Some amount of carbon emissions, yet to be determined, can be captured and either used or stored, so net-zero would allow for some ongoing emissions, but, for a number of reasons, the safe assumption is not very much.





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

ANDREW J. NATHAN

## 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.<sup>1</sup> 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.<sup>2</sup> “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.

## **SECTION II: ASIA-PACIFIC SECURITY AND U.S.-CHINA SECURITY**







# EVOLVING THE U.S. BASE STRUCTURE IN THE INDO-PACIFIC

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## EXECUTIVE SUMMARY

How should the United States seek to posture its military in the broader Indo-Asia-Pacific region in 2021 and beyond? During an era in which China has expanded its military capabilities and access, from Sri Lanka to Pakistan to Djibouti, and in which the Pentagon has argued for more distributed basing and operations, the U.S. military should consider substantially broadening its footprint in the region, as well. However, the United States should be slow and careful in pursuing any such initiatives.

Today's U.S. force posture aligns rather well with commitments, interests, and threats. Japan and the Republic of Korea are America's two most important allies in the region, especially when weighting importance by a combination of the nation's size, economic/military/strategic clout, and threat environment. Australia is also important, but because that country is farther from the main potential area of action in the broader Indo-Pacific, and is less at risk, U.S. basing capabilities there can be correspondingly more limited. Hypothetical alliances with Vietnam or other mainland Asian states would create as many new vulnerabilities and obligations as benefits for the United States, so they do not make sense at present. A stronger alliance with the Philippines, possibly desirable under some circumstances, is not presently advantageous given the nature of the Duterte regime and the downsides of America being sucked into potentially violent disputes over relatively insignificant land formations. Increasing the U.S. military presence on Guam makes sense, but it has already occurred. The addition of access options in smaller places such as Singapore and Palau seems broadly consonant with strategic requirements and realities and should not extend much further given the present threat environment. The U.S. Navy's concept of basing 60% — rather than the traditional 50% — of total American naval power on the Indo-

Pacific side of the world, which dates back to the Obama era rebalance policy, makes sense and is sufficient for now.

To be sure, some small additional steps may be warranted. Deepening security cooperation with the "Quad" nations of Japan, Australia, India, and the United States makes sense; it might even be expanded to a Quint to include South Korea. Modest increases in U.S. presence here and there, for example in the Philippines, could make sense even if they do not involve major combat bases. But overall, the U.S. position in the broader western Pacific is sound, and the vulnerabilities that do exist cannot easily be mitigated by different basing arrangements. Rather, they call for different and more indirect, asymmetric strategies for protecting interests and allies.

## GENERAL STRATEGIC CONTEXT AND BACKGROUND

Secretary of Defense Mark Esper has called implementation of the National Defense Strategy (NDS) that he inherited upon taking the reins of the Pentagon in the summer of 2019 his top priority.

As is well known, the first-order goal of the 2018 NDS is to re-emphasize great-power competition with an eye toward strengthening U.S. and allied deterrence in conventional, nuclear, and advanced-technology realms.

This diagnosis of the global strategic environment leads naturally to the emphasis of the NDS on lethality, resilience, and innovation for high-end combat and thus deterrence, especially vis-à-vis China and Russia. It also leads to primary strategic emphasis on two theaters: eastern Europe and the broader Indo-Pacific region. Much of this thinking is widely accepted in both political parties and would undoubtedly inform a Biden administration, as well.

Yet the objective of greater strategic focus on great-power competition is at some tension with the global obligations of a country with around 60 allies and security partners, distributed across all continents except Antarctica. Redirecting the super-tanker that is the American Department of Defense is a slow process in which change is measured in modest reallocations of parts of the budget.

There is another potential downside to adding many more U.S. bases abroad. As a result of such presence, the United States could be entrapped in conflicts it would rather avoid — and that its core strategic interests might not otherwise require it to fight.

There is a huge positive side to stationing U.S. forces on allied territory when the alliances are highly important to the United States and when the threat to U.S. allies or security partners is serious: the essence of deterrence usually works in such situations. Japan and South Korea have not been attacked since American forces were consistently stationed on their territories, just as western European allies were not attacked by the Soviet bloc during the Cold War. By contrast, deterrence can fail when rhetorical commitments are not backed up by real military power, formal alliance commitments, and demonstrated resolve.<sup>1</sup> For example, Kim Il-Sung and Saddam Hussein doubted America's will to respond to their aggressions against South Korea and Kuwait in 1950 and 1990, respectively, after unfortunate comments by Secretary of State Dean Acheson and U.S. Ambassador to Iraq April Glaspie, among others (Indeed, it is difficult to classify these cases as deterrence failure, since the United States had no formal commitments to the security of these countries and signaled that it was *not* interested in defending them).<sup>2</sup>

But we should be wary of forward basing in other cases. That is especially true when potential host nations are either hard to defend, strategically secondary to our interests, shaky in their own commitment to democracy and good governance, and ambivalent in how they feel about the United States versus China. While it may be tempting to try to match every new Chinese airfield or missile battery on a South China Sea islet, it may not be so wise to get drawn into fights that do not engage core American strategic interests of a type which George Kennan or Hans Morgenthau would have recognized and approved.

## U.S. GLOBAL BASING, TRUMP, AND THE FUTURE

There has been much continuity in American global basing in recent decades. The most lasting big changes came with the end of the Cold War. In Europe, the U.S. presence decreased by two-thirds. In Asia, changes were less dramatic, especially after the withdrawal of U.S. forces from the Philippines in the early 1990s. Then-Assistant Secretary of Defense Joseph Nye spoke of the importance of strategic “oxygen” and put a floor under the U.S. military presence in the western Pacific region of about 100,000 GIs. Since that time, America's global military footprint has expanded dramatically and subsequently declined dramatically in the broader Middle East, especially in Iraq and Afghanistan. However, its overall size and scale in Europe and East Asia has changed only modestly.

These major basing countries for U.S. troops play different kinds of roles. The preponderance of U.S. forces stationed now in the Indo-Pacific region are in Northeast Asia. Japan is a regional and global hub, also hosting major combat forces from all services except the Army. U.S. armed forces in Korea are dominated by Army and Air Force capabilities, focused specifically on the defense of the peninsula.

Diego Garcia in the Indian Ocean, a British territory, is a crucial hub, particularly for transiting to and from the broader Middle East. Bahrain hosts the Navy's Fifth Fleet; Qatar hosts the Middle East region's major U.S. Air Force base known as al-Udeid; Kuwait provides logistics capabilities, many of them Army-focused, for U.S. forces in Iraq. Facilities in Djibouti provide a mix of capabilities across the services. Spain and Italy host U.S. naval capabilities; Italy also has considerable numbers of Air Force and Army personnel. Turkey's Incirlik base is an important U.S. Air Force facility. U.S. bases in Britain are principally Air Force installations; Germany hosts large contingents of both Army soldiers and Air Force personnel.<sup>3</sup> Turkey's Incirlik base is an important U.S. Air Force facility. U.S. bases in Britain are principally Air Force installations; Germany hosts large contingents of both Army soldiers and Air Force personnel.<sup>4</sup>

Despite President Trump's disruptive and often dismissive views toward American military alliances,



the United States global military footprint will not have changed dramatically during his first term.

Of course, under Trump, even if numbers haven't changed much, America's alliances are often in a state of greater agitation than before. For example, the United States has demanded at least a fivefold increase in the roughly \$1 billion a year that South Korea (a good burden-sharer by most measures, devoting 2.5% of GDP to its own armed forces) has been paying in host-nation support for American forces on its territory. The issue remains unresolved in late 2020, with Seoul proposing a much more modest increase. Similar disagreements continue, of course, with NATO allies, even as Trump claims credit for inducing them to spend \$130 billion more on defense since 2016. This situation is not to America's strategic benefit because it risks weakening deterrence if taken to extremes, and it should be remedied.

Any broader U.S. defense budget increase is unlikely — and that was true before COVID struck. Any expansion of American forces in the Indo-Pacific region will have to be drawn from a force posture that is no larger than what exists today, if not somewhat smaller.

Big changes seem unlikely and probably unnecessary. That does not rule out smaller shifts, as noted before. In terms of additional new ideas, the Commandant of the Marine Corps has written of the obsolescence of large-scale amphibious assault and directed his service to focus on smaller, more survivable platforms and more innovative warfighting concepts that might, for example, contest rather than seek to control areas of the western Pacific where China's anti-access/area-denial capabilities are strongest.<sup>5</sup> War plans for dealing with Russia and China contingencies are now being more robustly and regularly reviewed, as well.<sup>6</sup> That will likely continue even if particular formulations from the Trump years, like emphasis on succeeding in the "contact" and "blunt" phases of a future conflict, may be rethought. Together, these efforts could lead to some (hardened) prepositioning of supplies in a few places in the broader region to facilitate distributed operations in times of crisis or war and perhaps an "archipelago" defense strategy that could someday emerge.

A couple more points merit mention. The Trump administration also took several controversial steps

in the nuclear realm in recent years. A new low-yield nuclear warhead has been fielded (without requiring testing) to dissuade Russia by showing that it could dominate the low-yield nuclear battlespace. Two conventionally-armed intermediate-range missiles have already been tested in the wake of the U.S. decision to withdraw from the INF Treaty. But as Frank Rose has underscored, it is not clear where these missiles would be based in the region — or whether, given America's other long-range strike options like the B-21 bomber, they need to be.

And in 2019, the Department of Defense also released a new Arctic strategy. It emphasizes greater presence and situational awareness and the fostering of greater international cooperation in that region.<sup>7</sup> Still, in the Arctic, any expansion of the U.S. presence will likely be measured in terms of single-digit additional deployments of icebreakers (the United States now really only has just two) in the years to come.

## THE TAIWAN CHALLENGE

Taiwan has become more vulnerable to Chinese attack over the years. How should the United States address this troubling trajectory?

The concern is greatest for scenarios in which China might use a partial blockade, cyberattacks, and some menacing missile strikes against Taiwan in an attempt to coerce it into capitulation and forced reunification, and it is not clear that the United States could confidently defeat such a PLA strategy. Geography works heavily to China's advantage in such a scenario. To win decisively in classic military terms, we might determine the need to attack Chinese submarines in port, missile launchers on mainland soil, and Chinese command/control networks that are also used for China's nuclear arsenal. Escalation could certainly ensue; China could easily respond with attacks against U.S. bases in Japan or beyond. Any such scenario would be highly fraught and not easily or confidently won.

Hence, I would caution that, with all the improvements in Chinese military power that are documented in the 2020 Pentagon report on Chinese military power and other sources, attempting an indirect defense of Taiwan in such a contingency may make most sense. Rather than try to break a blockade comprehensively and directly, for example, the

United States might primarily rely on geographically asymmetric operations against Chinese shipping in the Persian Gulf, for example, together with moves toward a fundamental decoupling of our economy from China's as a punitive measure. These approaches would themselves be dangerous and painful — and they might not immediately rescue Taiwan, as I discuss in my 2019 book, *The Senkaku Paradox*. But they would have a much lower chance of escalating to what could become World War III. The military elements of such a response would benefit from America's impressive network of bases in the broader Middle East/Persian Gulf region, as well.

## CONCLUSION: THE PAST AHEAD

The U.S. military posture in the Indo-Pacific region, with its concentrations in Northeast Asia and the broader Persian Gulf region, as well as its additional key discrete capabilities from Guam to Palau to Australia to Singapore to Diego Garcia, is reasonably well aligned with American interests and strategy already. It may not gain headlines like China's recent "string of pearls" efforts. But America's presence is more like an armored necklace than a string of pearls, and it continues to provide the United States with big advantages.

To the extent modifications to existing posture are considered in the years ahead, they should be planned prudently, patiently and selectively. Three main guidelines or principles should be used to assess their utility:

- Do they improve hardness and resilience against modern precision weapons?
- Do they help the United States make more efficient use of existing force structure, at a time when American defense budgets will likely plateau? For example, homeported ships are a great advantage.
- Do they avoid new encumbrances and potential for strategic entrapment with countries that only share American values and interests to a limited and potentially fickle degree?

With these ideas in mind, the future of America as an Indo-Pacific power should be bright, and the ability of the United States and allies to push back when needed against a rising China should be promising.

## REFERENCES

- 1 Paul Huth and Bruce Russett, "Deterrence Failure and Crisis Escalation," *International Studies Quarterly*, vol. 32, no. 1 (March 1988), pp. 29-45.
- 2 John Lewis Gaddis, *Strategies of Containment: A Critical Appraisal of Postwar American National Security Policy* (Oxford: Oxford University Press, 1982), pp. 109-120; Donggil Kim and William Stueck, "Did Stalin Lure the United States into the Korean War?: New Evidence on the Origins of the Korean War," Woodrow Wilson Center, Washington, D.C., July 2011, available at <https://www.wilsoncenter.org/publication/did-stalin-lure-the-united-states-the-korean-war-new-evidence-the-origins-the-korean-war>; and Michael R. Gordon and General (ret.) Bernard E. Trainor, *The Generals' War: The Inside Story of the Conflict in the Gulf* (Boston: Little, Brown and Company, 1995), pp. 20-22.
- 3 Paul Huth and Bruce Russett, "Deterrence Failure and Crisis Escalation," *International Studies Quarterly*, vol. 32, no. 1 (March 1988), pp. 29-45.
- 4 Department of Defense, "Military and Civilian Personnel by Service/Agency by State/Country," December 2018; Michael E. O'Hanlon, *The Science of War* (Princeton, N.J.: Princeton University Press, 2009).
- 5 Ibid.
- 6 See David Berger, "Commandant's Planning Guidance," U.S. Marine Corps, 2019, [https://www.hqmc.marines.mil/Portals/142/Docs/%2038th%20Commandant%27s%20Planning%20Guidance\\_2019.pdf?ver=2019-07-16-200152-700](https://www.hqmc.marines.mil/Portals/142/Docs/%2038th%20Commandant%27s%20Planning%20Guidance_2019.pdf?ver=2019-07-16-200152-700).
- 7 Mark Esper, "Implementing the National Defense Strategy: A Year of Successes," U.S. Department of Defense, July 2020, <https://media.defense.gov/2020/Jul/17/2002459291/-1/-1/1/NDS-FIRST-YEAR-ACCOMPLISHMENTS-FINAL.pdf>.
- 8 "Report to Congress: Department of Defense Arctic Strategy," U.S. Department of Defense, July 2019, <https://media.defense.gov/2019/Jun/06/2002141657/-1/-1/1/2019-DOD-ARCTIC-STRATEGY.PDF>.



# AVERTING CONFLICT IN THE SOUTH CHINA SEA: STEPS TO RESTORE RULES AND RESTRAINT

SUSAN THORNTON

## EXECUTIVE SUMMARY

Chinese military advancements and increasing capabilities in the South China Sea, as well as the country's bullying enforcement of its disputed maritime claims, threaten to undermine U.S. interests in the Asia-Pacific region, including preserving freedom of navigation, access to the global commons, and a credible security umbrella for allies and partners. The U.S. will find it increasingly difficult, however, to successfully defend the positions of allies and partners who seek to exploit maritime resources or to exercise sovereignty in areas of overlapping or disputed claims in the South China Sea through displays of military presence as deterrence. The U.S. administration has recently announced that it will deploy U.S. Coast Guard cutters to the Philippines to aid in patrolling such disputed areas, which only makes this dilemma more urgent.

Rather than continue to test the limits of the current approach in a situation where failure will be gravely damaging to U.S. interests, the U.S. should change tack and seek a *modus vivendi* with China that can return the emphasis to international law, clear communication of expectations and, eventually, agreements on resource exploitation and preservation. It would behoove China and the U.S., together with ASEAN South China Sea claimants, to work together before a crisis occurs to pursue a cooperation spiral that could restore trust and reestablish law, rules, and restraint in this vital and heavily-trafficked waterway. Southeast Asian partners are loath to see a Sino-American clash in these waters and would welcome a reduction of military tensions in the shipping lanes, provided their interests could be addressed. While this aim will be extremely difficult to achieve in the current diplomatic atmosphere and given the recent history of the South China Sea issue, U.S. and Chinese diplomats have made progress on challenges

before and could do so again with good will and cool-headed pragmatism.

## THE PROBLEM

China's continuing aggressive assertions of its unlawful maritime claims in the South China Sea have inflamed regional tensions, harmed the interests of regional claimants, undermined the Law of the Sea treaty and international law more broadly, and violated China's commitments under the Declaration on Conduct of Parties in the South China Sea (DOC).<sup>1</sup> A Chinese coastguard ship sank a Vietnamese fishing boat in April leading to a flurry of diplomatic protests from around the region. Chinese military exercises, patrols, and construction in the South China Sea have increased, while China's aggressive enforcement of its sweeping claims to all resources in the South China Sea prevents other claimants from duly exploiting resources in their lawful EEZs (exclusive economic zones) and threatens commercial rights and activities in the region, including freedom of navigation, fishing, and other maritime actions. China's reclamation and militarization of land features it occupies has clearly made the disputes more complicated and violated the 2002 DOC principles.

So far, attempts by the international community to shape or counter Chinese behavior in the South China Sea have not been successful. These include attempts at diplomatic isolation, negotiation of mutual withdrawals (the 2012 incident at Scarborough Shoal); international dispute resolution; negotiation of a binding Code of Conduct with other claimants; and increased military pressure against Chinese claims in the form of intelligence, surveillance, and reconnaissance (ISR) and bomber overflights and "freedom of navigation operations" (FONOPs); as well as other presence operations. Despite high infrastructure costs, relative diplomatic losses, damage to China's international reputation, and the imposition of



U.S. sanctions on companies conducting South China Sea construction, China's position has not retreated and, indeed, has hardened. In the face of international pressure to bring its claims into conformance with international law, China has expanded the territory of the South China Sea features it claims to over 3,200 acres of reclaimed land, built significant and permanent civilian and military installations on those features, and declared civilian jurisdiction over the Paracel and Spratly Islands. It also rejected the findings of the International Tribunal on the Law of the Sea (ITLOS) in 2016 with respect to the status of features in the South China Sea and their relevance for lawful maritime claims, claiming that reservations China made at the time of its UNCLOS ratification allow the country to opt out of arbitration. The tribunal specifically rejected this claim in the case. China's disregard of international legal proceedings, international condemnation, and other sanctions for this behavior have contributed to frustration and alarm on the part of the international community and caused it to question China's longer-term intentions and likelihood of conformance to international regimes as its power grows.

China's claims in the South China Sea have assumed increasing prominence in the last 10 years, as China's economic and military power has grown along with its interests. China views the South China Sea firstly as part of its periphery that is increasingly important to defend against perceived external threats. These perceived threats include U.S. intervention in a Taiwan scenario, potential for interference with important shipping lanes relied upon by China, especially for shipments of crude oil through the Malacca Straits, and threats to the security and stealth of China's second-strike nuclear deterrent as provided by its submarine-launched ballistic missile force.<sup>2</sup> The latter figures increasingly in the calculus, as China feels more vulnerable to a possible U.S. first-strike nuclear attack than at any time since normalization of diplomatic relations. These security interests in the South China Sea have become more acute from China's perspective in the last decade. China also sees the South China Sea as crucial for its continued economic growth and development, as a transport corridor for Chinese cargo shipments to global customers, as a major resource base for fishing, and, potentially, as a new source of offshore hydrocarbon resources.<sup>3</sup>

U.S. interests in the South China Sea spring from the U.S. security umbrella that has maintained peace in the region since the end of the Vietnam War and the normalization of relations with China. This includes maintaining the credibility of U.S. alliance commitments, monitoring and balancing China's growing military power, deterring aggression, keeping important sea lanes open and orderly, and safeguarding freedom of navigation under international law.<sup>4</sup> While there is an ongoing debate in the U.S. about whether U.S. military dominance of the western Pacific is necessary (or realistic) going forward, traditional U.S. responsibilities and relationships with allies and partners in the region will inevitably pull the U.S. into any serious crisis or conflict, and a number of these events are just waiting to happen.<sup>5</sup> For example, the Philippine Sierra Madre tank landing ship perched on Second Thomas Shoal, a low-tide elevation, is perpetually unstable and could touch off a crisis. Conflicts between Chinese and Philippine ships at Scarborough Shoal could again escalate. Indonesia, Malaysia, and Vietnam have all engaged in standoffs with China over resource rights during the last year. And the possibility of accidents in this very crowded air and sea space, between both civilian and military vessels, is not trivial, as has been proven in recent years. Given the potential seriousness of any of these scenarios escalating, it is certainly in the interests of both China and the U.S. to dial down the possibility of such incidents erupting.

One problem in addressing this serious situation has been the impenetrable nature of the South China Sea narratives in each country, with the result that the U.S.-China discussion of the South China Sea has become a dialogue of the deaf. The Chinese narrative is that the South China Sea is China's historical patrimony; that no Chinese leader can compromise on Chinese claims; that China was the last claimant to establish "defensive" installations on its occupied features; that other claimants have been duplicitous, and China must prevent encroachments; that China has an interest and responsibility to protect South China Sea shipping and resource extraction; that parties to the claim disputes can resolve their issues without interference from those outside the region; and that China is not beholden to the ITLOS tribunal's ruling and interprets UNCLOS differently. This narrative is viewed in the U.S. as a smoke screen for China's preponderant but unstated interests: keeping U.S. forces from intervening in a Taiwan or

other regional contingency, degrading U.S. credibility and relations with its allies in the region, upgrading its nuclear deterrent with triad SLBM capabilities, and securing the lion's share of sea and seabed resources for itself.

The U.S. narrative is that China's interest in and claims to the South China Sea have tracked its military expansion and designs on newly-discovered resources. According to this narrative, China has proven that international commitments and law will not prevent Chinese encroachments or interference with freedom of navigation and that this is a foretaste of coming 'grey zone' coercive moves at the expense of other claimants and U.S. allies in the region. Moreover, China's aggressive approach to its South China Sea claims reflect a determination to exclude the U.S. from those waters, thus undermining U.S. security partnerships in East Asia. The U.S. narrative is viewed in China as a smokescreen for U.S. preponderant but unstated interests: thwarting China's burgeoning naval capability and preventing the execution of China's nuclear plans and strategic naval expansion by escalating close-in U.S. surveillance and reconnaissance of Chinese installations, especially Chinese submarines. The U.S. maintains that FONOPs are aimed at "neutral" exercise of rights protected in international law, whereas China views the increasing frequency, publicity, and risk profile of recent FONOPs as indicators of intent to provoke.

While dueling narratives are setting up the South China Sea as a zone of confrontation and possibly conflict, it would be the height of human folly for the U.S. and China, two nuclear armed major powers and global leaders, to come to blows over conflicting interpretations of customary law or over uninhabited land features in the South China Sea. While neither side will eschew the possibility of conflict, both sides would prefer to avoid it. Certainly, countries in the region do not want to see a U.S.-China conflict in the South China Sea, much as they may wish to see a moderation of Chinese behavior. A major power conflict in the South China Sea would reverse hard-won gains in the region over recent decades and gravely damage global stability and prosperity.

## OBJECTIVES

In the absence of any marked change in current trends, U.S. partners with claims to South China

Sea features (rocks) are likely to continue to lose ground in the South China Sea to de facto beefed-up Chinese presence and capabilities. Some American security specialists have said that the U.S. should not pursue a goal of reducing tension and avoiding conflict in this region, as it must be resolved to "push back" against Chinese aggression. Others maintain that the U.S. should only safeguard freedom of navigation and avoid involvement in disputes over excessive maritime claims in the South China Sea, leaving claimants, who almost all have excessive claims, to settle differences over South China Sea features and resources among themselves. Neither of these scenarios offer much hope for improving long-term security and stability in the region, a goal that should be at the forefront of U.S. interests. They also tend to ignore the interest of U.S. partners in the region and hold the potential to gravely damage U.S. credibility or reliability.

The U.S. and China are already engaged in an escalating security dilemma in the maritime and aerospace domains in the South China Sea, with their forces operating in increasing proximity. This configuration could lead to crisis or conflict should tit-for-tat provocations and determinations to show resolve continue apace. In a scenario in which China decides to test U.S. commitments to enforce its interpretation of international law or to defend the maritime rights of its partners regarding claimed EEZs, continental shelves, or shoals and rocks in this area, the U.S. may find itself faced with an unhappy choice: military escalation with China or perceived abandonment of regional friends and an emboldened China. U.S. equivocation at such a test would be catastrophic for the U.S. position in Asia, but an outright conflict with China over such a test would likewise be catastrophic. Any Chinese test is unlikely to be clear-cut and will be designed to peel-off allied support. There are many partial scenarios with which the U.S. would have a very hard time dealing effectively, and in which U.S. interests are likely to be badly damaged no matter the response.

The U.S. goal should therefore be to discourage China from testing U.S. commitments to partners in the South China Sea who have claims to land features and from interfering with clearly outlined actions to ensure freedom of navigation. This must be done by concluding enforceable agreements, laws, and understandings that codify acceptable

behavior and impose reasonable restraints, even as claims and interpretations remain disputed. Many will say that China will not agree to such restraints nor abide by agreements and rules in the region and wants to dictate terms to ASEAN claimants, preserve space for unilateral moves, and build its naval and other military capabilities in the service of “might makes right.” This is a theoretical possibility, but it remains untested.

The U.S., China, and all countries in the region share some fundamental interests: they want to avoid major power military conflict in the region; they want to keep shipping lanes open, accessible and orderly; and they want to preserve the common marine environment for future generations and mitigate damage and natural disasters. China also wants stable relations with the U.S., wants to be viewed as a “responsible leader” in the region, cares about its international reputation, has prioritized economic development over conflict in the service of long-running claims disputes, and wants to prevent the U.S. from “stirring up trouble” in its backyard. These common and other interests should provide a basis for intensified diplomatic work. Before the U.S. and China stumble into a conflict in the South China Sea, they owe it to their peoples, the region, and the world to look seriously at possibilities for deconfliction and compromise.

## **RECOMMENDATION: VIRTUOUS ESCALATION LADDER TO LEND STABILITY AND AFFIRM ACCESS FOR ALL**

The current U.S. approach in the South China Sea is to use military FONOPs and other surveillance and presence operations to deter China from testing U.S. commitments and to counter China’s maritime expansion. Such an approach is provocative, escalatory, and unlikely to be effective, given the changing military balance in the region. China’s strategy is clear and unlikely to change unless the U.S. changes. Senior Colonel Zhou Bo of the Central Military Commission’s Office of International Military Cooperation recently wrote,

“If U.S. ships and aircraft continue to maintain high-intensity surveillance of the South China Sea, there is always the POTENTIAL of a confrontation... Eventually, it may be that the sheer size of China’s military prompts a US rethink. The Chinese army enjoys the

convenience of geography, to say the least. Its navy also outnumbers the U.S. navy in terms of warships and submarines, although the U.S. fleet is more heavily armed.”<sup>6</sup>

Ideally, the U.S. and China would seek a *modus vivendi* together with others in the region that could stabilize the South China Sea for commerce and resource exploitation by various claimants, preserve access for legitimate activities, and provide space for environmental conservation. It should be possible in such a compromise for both sides to preserve their priority interests (although falling short of maximalist goals) and avoid a worst-case outcome for one or both sides. China might see such a *modus vivendi* to be in its interest, given a serious and thoughtful approach by the U.S.

Developing a cooperation spiral on the South China Sea could not only help avert a conflict or a wasteful arms race in the region, but it could also lead to clarifying an interim legal regime, improving definition and adherence to agreed maritime practices, and solidifying international understandings around the status quo and de facto administrative control of South China Sea land features. The idea of cooperation spirals to deal with difficult issues in U.S.-China relations was elaborated by Lyle Goldstein in his book *Meeting China Halfway*.<sup>7</sup> There are many difficult issues and conflicting interests in the South China Sea among relevant parties, and the cooperation spiral below focuses particularly on building confidence over the legal regime for navigation in claimed waters and over conflicts related to features of the Spratly Islands, which tend to be linked in U.S. and Chinese conceptions of interests in the region.

### ***What a South China Sea Spratly Islands cooperation spiral could look like:***

**Step 1:** The U.S. proposes a high-level U.S.-China strategic discussion on the South China Sea with a view toward developing a roadmap for diplomacy and notes willingness to present details of its positions on issues in the South China Sea.

**Step 2:** China, at that meeting, presents the details of its claims and positions with respect to military activities, maritime and territorial claims, resource management, and access control. (At this point, both sides will have reiterated and clarified their positions to the extent possible.)

**Step 3:** The U.S. declares its intent to ratify UNCLOS. This, of course, must be approved by Congress, and China may not really be interested in seeing U.S. ratification. It is a necessary signal, however, of U.S. commitment to rules; will reinforce China's continued membership in UNCLOS, which is in U.S. and global interests; and could be presented in a way that induces an appropriate positive response by Beijing.

**Step 4:** In the interest of maintaining its claims in the South China Sea (within the nine-dash line) but at the same time eliminating confusion regarding access for military vessels, China unilaterally declares a change to its interpretation of UNCLOS requiring permission for military activities in the EEZ and innocent passage in territorial seas. (China's position that military vessels require permission to operate in EEZs or in innocent passage combined with the claim that the entire South China Sea is effectively China's EEZ has amplified concerns about freedom of navigation. If China modifies its interpretation, it would remove the stimulus for certain freedom of navigation operations to protest this excessive claim.)

**Step 5:** It is understood that, since China's claims in this regard no longer conflict with UNCLOS, U.S. FONOPs meant to challenge this claim are no longer necessary. (Of course, FONOPs meant to challenge other claims might continue.) The U.S. makes a statement to this effect. The subsequent tempo of FONOPs meant to challenge permission claims decrease.

**Step 6:** The U.S. and China hold consultations about informal understandings about close-in military maneuvers, the Taiwan Strait, Aleutian Islands, and transit in international waterways. The two sides agree to a mutual notification (not permission) mechanism when transiting these sensitive waterways.

**Step 7:** Based on balanced and smooth implementation of the above understandings, the U.S. could offer assurances that it would not sail within 15 NM (nautical miles) of South China Sea features when conducting presence or freedom of navigation/overflight operations in the interest of crisis and accident avoidance, noting that this would be strictly voluntary.

**Step 8:** The U.S. could propose a joint U.S.-China-ASEAN survey of environmental health of the South China Sea and sponsor a joint project for plastic removal.

**Step 9:** The U.S. could propose a South China Sea environmental resource commission, with interested observers, to support marine conservation efforts.

**Step 10:** Both sides could reach a mini agreement on the stabilization of the status quo regarding Spratly Islands features including:

- Recognition of de facto administrative control of features without prejudice to settlement of claims, as per the DOC;
- Agreement by all claimants on limits to further military development of features;
- Agreement by all claimants on no occupation of Scarborough Shoal or other unoccupied features, in accordance with the DOC;
- Removal of the Sierra Madre ship from the Second Thomas Shoal by the Philippines. Because this is a low-tide elevation clearly within Philippine EEZ, Philippines is recognized as having "de facto administrative control" until claims are peacefully adjudicated; and
- Although Mischief Reef, an LTE, was developed outside of UNCLOS and is considered artificial, recognize Chinese de facto administrative control without prejudice to settlement of claims.

**Step 11:** China agrees to establish a regional marine scientific collaboration center on Mischief Reef and allows access to other SCS claimants.

**Step 12:** Claimants jointly declare marine preservation zones in the South China Sea with understandings negotiated about use and access.

## CONCLUSIONS

While many of the steps outlined above may seem far-fetched, one-sided, or subject to other criticism, they are clearly possible given sufficient political will and leadership from the parties involved. While the political will or vision to realize these steps may not exist today, political will could evolve or, indeed, events may force change. The first step, which will be crucially important, requires engaging in a more serious discussion both domestically and among the parties about what is at stake and how to realistically avoid worst case outcomes and work toward the common interests of security, stability, resource conservation, and prosperity in the decades to come.



## REFERENCES

- 1 See “Declaration on Conduct of Parties in the South China Sea,” Association of Southeast Asian Nations, November 4, 2002, [https://asean.org/?static\\_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2](https://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2) , in particular, “The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.”
- 2 Leszek Buszynski, “The South China Sea: Oil, Maritime Claims and U.S.-China Strategic Rivalry,” *Washington Quarterly* 35 no. 12 (Spring 2012): 139-156.
- 3 See Wu Xinbo, “Regional Security Roles and Challenges” in *Debating China*, Nina Hachigian, ed. (Oxford, UK: Oxford University Press, 2014).
- 4 See for example, Oriana Skylar Mastro, “Military Confrontation in the South China Sea,” (New York: Council on Foreign Relations, May 2020), <https://www.cfr.org/report/military-confrontation-south-china-sea>.
- 5 Secretary of State Mike Pompeo noted in 2019, for example, that the U.S. is obligated by treaty to respond to any attack on Philippine forces on the seas, regardless of whether they occur in disputed areas. See Raul Dancel, “US will defend Philippines in South China Sea: Pompeo,” *Straits Times*, March 2, 2019, <https://www.straitstimes.com/asia/se-asia/us-will-defend-philippines-in-south-china-sea-pompeo>.
- 6 Zhou Bo, “The Risk of U.S.-China Military Conflict is Worryingly High,” *Financial Times*, August 25, 2020, <https://www.ft.com/content/0f423616-d9f2-4ca6-8d3b-a04d467ed6f8>.
- 7 Lyle Goldstein, *Meeting China Halfway: How to Defuse the Emerging U.S.-China Rivalry*, (Washington, D.C.: Georgetown University Press, 2015).



# COMPETING WITH CHINA IN SOUTHEAST ASIA: THE ECONOMIC IMPERATIVE

JONATHAN STROMSETH

## EXECUTIVE SUMMARY

As great power rivalry intensifies in Southeast Asia, China is increasingly achieving its strategic goals in the region through economic statecraft — illustrated most vividly in its signature Belt and Road Initiative (BRI) — and economic factors are playing a prominent role in shaping the choices of Southeast Asian leaders on policy issues that divide Washington and Beijing. Security concerns will continue to resonate within this decision-making calculus, of course. Southeast Asian countries can be expected to push back against Beijing (and be more open to U.S. policy positions) when they feel threatened by China, especially where territorial integrity is concerned. These concerns will provide a continuing opening for Washington in the security domain. Yet, the security-centric paradigm that has long guided American thinking is an insufficient lens through which to view and understand the region. As Southeast Asia begins to recover from the COVID-19 pandemic, the United States must also improve its economic game in a region where China has come to dominate trade and tourism and is matching if not exceeding Japan in infrastructure investment. The objective shouldn't be to confront BRI and create a bifurcated region, imposing choices that could end up marginalizing the United States over time, but to develop compelling alternatives and then reengage China from a position of strength.

To compete with China and sustain American power and influence effectively, Washington should take the following steps to improve its economic standing in the region:

- **Operationalize infrastructure coordination in Southeast Asia with allies and partners:** The U.S. should operationalize existing multi-country platforms to facilitate infrastructure investments in the region. Washington shouldn't miss this opportunity to compete with China, produce benefits for American investors, and demonstrate high standards and best practices in collaboration with key regional partners.
- **Establish a regional center for strategic economic engagement:** To galvanize cooperation with allies and partners, Washington should appoint a special infrastructure envoy to lead a new regional center at the U.S. embassy in Singapore. The center should be staffed by representatives of the U.S. International Development Finance Corporation, U.S. Agency for International Development, U.S. EXIM Bank, and U.S. Department of State.
- **Explore the costs and benefits of joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP):** When the Trump administration withdrew from TPP negotiations in January 2017, the United States effectively ceded economic leadership to China in the Asia-Pacific. The U.S. should explore returning to the TPP family, starting with Congressional hearings that examine the costs and benefits, assess the impact on the American workforce and middle class, and identify possible areas for renegotiation.
- **Deepen bilateral ties with emerging partners like Vietnam:** Washington should establish a “strategic partnership” with Hanoi before the end of 2021. This would signal that U.S. relationships are innovative and growing in Asia and could facilitate broader development cooperation in mainland Southeast Asia. A central component of the partnership should be expanding economic ties with a country expected to be the world's fastest growing economy this year, having controlled COVID-19 with remarkable success.
- **Revitalize and reframe foreign aid cooperation with the region:** The Trump administration presented foreign aid and development as

a “Journey to Self-Reliance,” but today’s development needs increasingly emanate from global governance challenges like pandemics and climate change — challenges that require multilateral solutions. Going forward, in part to protect America’s economic future, the United States should expand support for regional efforts addressing these urgent global challenges.

- **Reengage China on select issues like climate change:** Washington should coordinate with China to combat climate change in Southeast Asia, a maritime region that is particularly vulnerable to global warming. The U.S. could work with Beijing to establish a multi-donor trust fund at the World Bank, to which third countries could apply for climate support, or simply encourage co-financing from regional development banks to address this issue.

## THE PROBLEM

The U.S.-led security system has underpinned regional peace and stability in East Asia for decades. China is now challenging this system as it woos American allies like Thailand and the Philippines, seeks to reorient Asia’s security architecture in its favor, and takes aggressive steps to enforce its far-reaching territorial claims in the South China Sea. At the same time, China is increasingly achieving its strategic goals in Southeast Asia through economic statecraft or the use of economic tools to achieve foreign policy goals. Starting in 2018, the Trump administration launched some new economic initiatives with allies and partners under its Free and Open Indo-Pacific (FOIP) strategy, but so far these efforts pale in comparison to China’s financial might and growing economic integration with the region. Meanwhile, U.S. efforts to brand BRI as “predatory economics” or “debt-trap diplomacy” have failed to resonate with Southeast Asian countries. The COVID-19 pandemic has only increased the policy challenges for Washington as China recovers faster from the outbreak, reinforcing its already advantaged economic position and advancing its strategic goals as a result.

### *America’s economic challenge*

Much is at stake for U.S. foreign policy and American interests in the region. Southeast Asia not only includes two U.S. allies, but also important security

partners like Singapore and key emerging partners such as Vietnam and Indonesia. Taken together, the 10 countries that make up the Association of Southeast Asian Nations (ASEAN) boast the third largest population in the world at 650 million. In addition, ASEAN is the fifth largest economy in the world with a gross domestic product (GDP) of \$2.8 trillion and the top destination for U.S. investment in the Indo-Pacific at \$329 billion (more than the United States has directed to China, Japan, South Korea, and India combined). Almost 42,000 U.S. companies export to ASEAN countries, supporting about 600,000 jobs in the United States.<sup>1</sup>

Yet, while the stakes are high, the region is confused about the objectives and focus of U.S. policy. At a trilateral dialogue organized by Brookings in Singapore in late October 2019, just before COVID-19 emerged in Wuhan, experts from Southeast Asia asked tough and probing questions about U.S. Asia strategy in the context of escalating U.S.-China rivalry. Southeast Asian participants said the United States should better define the goal of U.S. Asia policy today: Is it to reestablish preeminence, construct a new balance of power, preserve the rules-based order, or some combination of these elements? They said strategic competition should be a means to an end, not an end in itself. They also felt U.S. policy was too concentrated on defense and security, to the detriment of diplomacy and development, allowing China to fill the soft power vacuum and capture the narrative through BRI.<sup>2</sup>

U.S. economic engagement with the 10 ASEAN countries remains substantial. The United States exports about \$75 billion in goods and \$31 billion in services to ASEAN on an annual basis. Washington disburses over \$800 million annually in foreign assistance to ASEAN countries, as well.<sup>3</sup> This includes support for the new Mekong-U.S. Partnership, successor to the Lower Mekong Initiative (LMI) that lasted from 2009 to 2020. Under the new partnership, launched in September 2020, the U.S. will contribute about \$150 million to support the autonomy, economic independence, and sustainable growth of Mekong partner countries, with \$33 million of this total coming from the existing Asia Enhancing Development Growth through Energy (EDGE) initiative.<sup>4</sup>

Under FOIP, the Trump administration also took steps to expand its efforts in the infrastructure domain. In late 2018, it joined Japan and Australia to form the Trilateral Partnership for Infrastructure Investment in the Indo-Pacific to promote sustainable infrastructure based on high standards. Subsequently, it partnered with Tokyo in launching the Japan-U.S. Mekong Power Partnership, or JUMPP, with an initial U.S. commitment of \$29.5 million, and created the Blue Dot Network with Japan and Australia, a multi-stakeholder initiative designed to evaluate and certify nominated infrastructure projects based on high quality standards and principles.<sup>5</sup> Yet, few concrete projects have resulted from these initiatives apart from an electrification project in Papua New Guinea and recently-announced plans to finance an undersea telecommunications cable for the Pacific Island of Palau, although the three countries also sent a joint delegation to Indonesia in 2019 to explore potential projects there.<sup>6</sup>

### ***China's growing economic influence***

Meanwhile, Chinese economic engagement has grown dramatically and surpassed U.S. levels in most areas. China has been ASEAN's largest trading partner for over a decade. ASEAN's total annual bilateral trade with China is currently valued at \$642 billion, compared to about \$291 billion with the United States.<sup>7</sup> China ranks third in annual foreign direct investment in ASEAN, behind the United States and Japan, but Chinese investment is quickly approaching U.S. levels if foreign direct investment (FDI) from mainland China is combined with FDI from Hong Kong. In addition, Chinese FDI does not include the billions of dollars Beijing is lending to the region through its powerful development banks under the Belt and Road Initiative (BRI).

BRI is China's most visible platform for advancing its influence and diplomatic goals in Southeast Asia. Projects include hydropower dams, oil and gas pipelines, and Beijing's extensive railway plans to connect the southwestern city of Kunming not just to Laos and Thailand, but eventually to Singapore through Malaysia.<sup>8</sup> Although exact figures are difficult to pin down, Indonesia, Vietnam, and Malaysia consistently rank as the top recipients of Chinese capital for infrastructure development in Southeast Asia. In terms of projects that are at

the stage of planning, feasibility study, tender, or currently under construction, Indonesia currently leads the list at \$93 billion, followed by Vietnam and Malaysia at \$70 billion and \$34 billion, respectively.<sup>9</sup>

China is also developing new sub-regional initiatives, such as the Lancang-Mekong Cooperation (LMC) mechanism, to coordinate BRI projects and advance its economic and political ambitions in mainland Southeast Asia. Established in 2015 among the six countries that comprise the Greater Mekong Subregion (Cambodia, China, Laos, Myanmar, Thailand, and Vietnam), the LMC promotes cooperation across a range of economic and cultural domains, but the driving force is infrastructure.<sup>10</sup> Beijing has set aside over \$22 billion under the mechanism to support projects focusing on technological connectivity and industrial development as well as trade, agriculture, and poverty alleviation.

The strategic implications of China's dam building along the Mekong are particularly daunting. China has built 11 mega-dams along the upper Mekong within China, apart from the hydropower dams it is financing in Laos and Cambodia, effectively giving it the power to "turn off the tap" for the five ASEAN countries that rely on the river for economic stability and security in the Lower Mekong Subregion. A recent study from U.S.-based climate consultant Eyes on Earth has offered evidence that Chinese dams held back water in 2019 — exacerbating drought in Vietnam, Laos, Cambodia, and Thailand.<sup>11</sup>

Although the Trump administration has accused China of practicing "debt-trap diplomacy" in the region, almost all ASEAN countries are in good shape according to pre-pandemic data on their external debt relative to gross national income. The exceptions are Laos and to a lesser extent Cambodia. Laos highlights the risk of taking on too much debt too quickly, especially non-concessional debt, a problem exacerbated by the economic challenges brought on by COVID-19. Although Laos is eligible for the Debt Service Suspension Initiative promoted by the G20, it recently chose instead to negotiate directly with China, its main creditor, including a debt-for-equity swap in which the China Southern Power Grid Co. is taking a direct stake in Laos's power transmission company.<sup>12</sup>



China's rising economic influence has generated some unease and pushback in Southeast Asia over contract terms, corruption, and lack of transparency. However, as reflected in Malaysia's successful renegotiation of the Chinese-financed East Coast Rail Link project in 2019, most ASEAN countries appear to be getting smarter in the way they are managing BRI and negotiating with China.<sup>13</sup> Beijing is also showing a capacity to learn from its implementation mistakes, make adjustments, and preempt criticism from the region going forward. In sum, there appears to be a mutual learning dynamic at play that could make BRI more resilient and enduring in Southeast Asia over time.<sup>14</sup>

### ***The accelerating effects of COVID-19***

Meanwhile, the COVID-19 pandemic is only reinforcing China's economic position as it recovers faster from the pandemic. While the U.S. economy remains mired in recession, the Chinese economy is rebounding and surged by 4.9% in the third quarter of 2020 compared to the same period last year. Chinese exports and imports are growing as well, showing a recovery in trade. In fact, ASEAN has recently become China's largest trading partner — not just the other way around — eclipsing the European Union and the United States for the first time.<sup>15</sup> Furthermore, China is building new supply chains in Southeast Asia as tensions with Washington are resulting in reduced access to U.S. technology.<sup>16</sup>

In addition, the pandemic has further enhanced U.S.-China tensions as seen in the ongoing “tech war” surrounding the use of Huawei technology. In Southeast Asia today, Vietnam appears to be siding with Washington in barring Huawei (albeit for its own reasons), whereas countries like Malaysia, Thailand, and the Philippines are open to deploying Huawei's 5G technology into their domestic networks.<sup>17</sup> The pandemic has also deepened American interest in a broader-gauged decoupling of the U.S. and Chinese economies. Decoupling is a nightmare scenario for ASEAN countries because it could impose a wider choice, preventing them from navigating U.S.-China competition issue by issue. It could also increase the region's economic interdependence with China if supply chains fragment and then realign in China's favor — potentially boxing out American businesses, increasing China's soft power, and inadvertently contributing to a Chinese sphere of influence over the long run.

The Chinese economy also faces serious domestic challenges, of course, and could well stumble.<sup>18</sup> Yet, as ASEAN governments try to recover from the pandemic, they are watching the Chinese economy closely for signs of a sustained recovery and possible knock-on effects. Even before COVID-19 hit, 79.2% of Southeast Asian policy elites viewed China as the most influential economic power in the region, compared to just 7.9% for the United States and 3.9% for Japan, although they remain distrustful of China's long-term strategic intentions, according to a respected regional survey.<sup>19</sup> ASEAN policymakers will be clear-eyed about these economic realities as they look to the future, estimate China's economic footprint, and calculate their likely interdependencies and opportunities with Beijing. These interdependencies are expected to deepen further with the completion this month of the Regional Comprehensive Economic Partnership (RCEP), a free trade agreement involving the 10 ASEAN countries, China, Japan, Korea, Australia, and New Zealand.

National University of Singapore Professor Khong Yuen Foong has aptly framed the strategic implications for ASEAN as the recovery unfolds: “I will not underestimate the U.S.'s economic resilience and technological ingenuity, but if China were to do better on the economic front, its narrative about being the wave of the future will fall on receptive ears in Southeast Asia.”<sup>20</sup>

## **OBJECTIVES**

An enduring goal of U.S. Asia strategy has been to prevent the emergence of a hostile hegemon, thereby sustaining America's role as a Pacific power and making the region safe for American pursuits like trade and investment and democracy support.<sup>21</sup> To achieve this goal, the United States has cultivated and sustained a regional security order through a network of alliances and strategic partnerships with countries as far flung as Japan, Australia, the Philippines, and Singapore. What was not anticipated, however, was how a rising power like China could begin to undermine this U.S.-led security order by using economic tools to achieve its foreign policy goals in the region. To meet this challenge and sustain U.S. power and influence in Asia, the United States needs to rapidly improve its own economic game in coordination with key allies and partners like Japan, Australia, Singapore,

and Vietnam. Washington should also take steps to engage China in the region, rather than forcing choices that could redound to China's benefit over the long term.

## RECOMMENDATIONS

China's emerging economic dominance in Southeast Asia begs the question of what Washington can realistically do to compete with Beijing economically in its own backyard. Yet, concrete policy options are available to the United States in the region. Below are series of steps that could be taken to develop a more effective economic strategy in 2021.

**Operationalize infrastructure coordination in Southeast Asia with allies and partners:** The United States should increase cooperation with longstanding partners to support sustainable infrastructure development based on high governance and environmental standards. As discussed above, the Trump administration signed an infrastructure memorandum of understanding (MOU) with Japan and Australia and announced a U.S.-Japanese partnership to support energy development in the Mekong. It also inked an agreement to work with Singapore's Infrastructure Asia initiative to promote infrastructure development in the region.<sup>22</sup> Washington should now operationalize these platforms to facilitate investments and loans, especially in mainland Southeast Asian countries like Cambodia, Laos, and Vietnam. Partnerships are difficult to implement, and MOUs often languish with little activity or output. The United States shouldn't miss this opportunity to compete with China, produce benefits for American investors, and demonstrate high standards and best practices in collaboration with key regional partners.

**Establish a regional center for strategic economic engagement:** To galvanize cooperation with allies and partners in Southeast Asia, Washington should appoint a special infrastructure envoy to head up a new regional center at the U.S. embassy in Singapore focusing on strategic economic engagement. The new center should be staffed by representatives of the U.S. International Development Finance Corporation, U.S. Agency for International Development, U.S. EXIM Bank, and U.S. Department of State, with the special envoy helping to triangulate efforts and improve intra-agency coordination.

**Explore costs and benefits of joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP):** When the Trump administration withdrew from TPP negotiations in January 2017, the United States effectively ceded economic leadership to China in the Asia-Pacific. Today, American companies are disadvantaged because the United States isn't part of the CPTPP, the free trade agreement with 11 parties without the U.S., under which signatories can trade with each other at preferential rates that U.S. exporters don't enjoy. The CPTPP also makes it more cost effective to situate supply chains within participating countries rather than outside of them. Conversely, U.S. participation in the CPTPP could potentially facilitate supply chain integration between the United States and key allies and like-minded partners in Asia — building resilience in critical sectors like medical equipment, semiconductors, and telecommunications infrastructure. Returning to the TPP family would not be an easy lift from a domestic political perspective. The option should be explored, however, starting with Congressional hearings that examine the costs and benefits, assess the impact on the American workforce and middle class, and identify possible areas for renegotiation, including provisions related to labor and environmental standards.<sup>23</sup>

**Deepen bilateral ties with emerging partners like Vietnam:** In addition to supporting regional initiatives, the United States should deepen relations with emerging country partners. In recent years, U.S. relations with Vietnam have expanded considerably owing to growing trade ties, strong people-to-people relations, and a common concern over China's actions in the South China Sea and growing economic influence in mainland Southeast Asia. Highlights include the establishment of a "comprehensive partnership" in 2013 and the dramatic visit of a U.S. aircraft carrier to Danang in 2018. In September 2020, the U.S. Centers for Disease Control and Prevention also announced plans to open a regional office in Hanoi to increase public health engagement in Southeast Asia.<sup>24</sup> As a next step, Washington should establish a "strategic partnership" with Hanoi before the end of 2021. This would signal that U.S. relationships are innovative and growing in Asia, and it could facilitate broader development cooperation in the Lower Mekong subregion. A central component of the partnership should be expanding economic ties

with a country expected to be the world's fastest growing economy this year, having controlled COVID-19 with remarkable success.<sup>25</sup>

Revitalize and reframe foreign aid cooperation with the region: Inspired by escalating rivalry with China, the Trump administration presented foreign aid and development as a “clear choice” between China's authoritarian and predatory approach, on the one hand, and U.S. efforts to support a “Journey to Self-Reliance” for developing countries, on the other.<sup>26</sup> The U.S. approach not only put regional countries in an uncomfortable position, since they prefer to have constructive relations with both Washington and Beijing, but it failed to recognize that today's development needs increasingly emanate from global governance challenges like pandemics and climate change — challenges that require multilateral solutions and regional cooperation. Going forward, in part to protect America's economic future, the United States should support regional efforts to address these urgent global challenges. It should also support homegrown initiatives such as the ASEAN Institute for Green Economy and the Ayeyawady-Chao Phraya-Mekong Economic Cooperation Strategy (ACMECS), enhancing ASEAN's capacity to develop viable economic strategies for the region.

Reengage China on select issues like climate change: Finally, the United States should consider engaging Beijing to help combat climate change in Southeast Asia, a maritime region that is particularly vulnerable to global warming. For instance, Washington could work with Beijing to establish a multi-donor trust fund at the World Bank, to which third countries could apply for climate support or simply encourage co-financing from regional development banks to address this issue. Such initiatives would not only send a reassuring signal that U.S.-China cooperation is possible but would combine the substantial resources of the world's two largest powers to address a global challenge that threatens both the region and the American homeland.

## REFERENCES

- 1 “ASEAN Matters for America / America Matters for ASEAN,” (Washington, DC: East-West Center, 2019), 14-20, <http://www.eastwestcenter.org/system/tdf/private/aseanmatters2017.pdf?file=1&type=node&id=36244>.
- 2 Jonathan Stromseth, “Beyond Binary Choices? Navigating Great Power Competition in Southeast Asia,” (Washington, DC: The Brookings Institution, October 2019), <https://www.brookings.edu/wp-content/uploads/2020/04/Beyond-Binary-Choices-Jonathan-Stromseth-April-2020.pdf>.
- 3 This figure denotes “spent” assistance to ASEAN countries, as calculated from [www.foreignassistance.gov](http://www.foreignassistance.gov).
- 4 “Fact Sheet: Launch of the Mekong-U.S. Partnership: Expanding U.S. Engagement with the Mekong Region” (U.S. Department of State, September 14, 2020), <https://www.state.gov/launch-of-the-mekong-u-s-partnership-expanding-u-s-engagement-with-the-mekong-region/>.
- 5 See “Joint Statement on the Japan-United States Mekong Power Partnership (JUMPP),” U.S. Department of State, August 2, 2019, <https://www.state.gov/joint-statement-on-the-japan-united-states-mekong-power-partnership-jumpp/>; and “The Launch of Multi-Stakeholder Blue Dot Network,” U.S. International Development Finance Corporation (DFC), November 4, 2019, [www.dfc.gov/media/opic-press-releases/launch-multi-stakeholder-blue-dot-network](http://www.dfc.gov/media/opic-press-releases/launch-multi-stakeholder-blue-dot-network).
- 6 “U.S., Australia, Japan Delegation Travels to Indonesia to Explore Investment Opportunities” United States Department of State, August 28, 2019, <https://id.usembassy.gov/u-s-australia-japan-delegation-travels-to-indonesia-to-explore-investment-opportunities/>. On the undersea telecoms cable in Palau, see “Australia, Japan, U.S. to Fund Cable for Pacific Island of Palau,” Reuters, October 28, 2020, <https://www.reuters.com/article/uk-palau-cable-australia/australia-japan-u-s-to-fund-cable-for-pacific-island-of-palau-idUKKBN27DOFC>.
- 7 2019 trade data, as calculated from IMF Data, <https://data.imf.org/regular.aspx?key=61013712>.
- 8 Mitsuru Obe and Marimi Kishimoto, “Why China is Determined to Connect Southeast Asia by Rail,” *Nikkei Asian Review*, January 9, 2019,



- <https://asia.nikkei.com/Spotlight/Cover-Story/Why-China-is-determined-to-connect-Southeast-Asia-by-rail>.
- 9 Data from Fitch Solutions as cited by Bloomberg. Fitch only counts pending projects — those “at the stages of planning, feasibility study, tender and currently under construction.” See Michelle Jamrisko, “China No Match for Japan in Southeast Asia Infrastructure Race,” Bloomberg, June 22, 2019, <https://www.bloomberg.com/news/articles/2019-06-23/china-no-match-for-japan-in-southeast-asia-infrastructure-race>.
  - 10 Pongphisoot Busbarat, “Grabbing the Forgotten: China’s Leadership Consolidation in Mainland Southeast Asia through the Mekong-Lancang Cooperation,” (Singapore: ISEAS Yusof Ishak Institute, February 6, 2018), 4, [https://iseas.edu.sg/images/pdf/ISEAS\\_Perspective\\_2018\\_7@50.pdf](https://iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_7@50.pdf).
  - 11 Alan Basist and Claude Williams, “Monitoring the Quantity of Water Flowing through the Upper Mekong Basin under Natural (Unimpeded) Conditions,” (Bangkok, Thailand: Sustainable Infrastructure Partnership, April 2020), [https://558353b6-da87-4596-a181-b1f20782dd18.filesusr.com/ugd/81dff2\\_68504848510349d6a827c6a433122275.pdf?index=true](https://558353b6-da87-4596-a181-b1f20782dd18.filesusr.com/ugd/81dff2_68504848510349d6a827c6a433122275.pdf?index=true).
  - 12 David Dollar, “China and the West Competing over Infrastructure in Southeast Asia,” forthcoming in *Rivalry and Response: Assessing Great Power Competition in Southeast East Asia*, edited by Jonathan Stromseth (Washington, D.C.: Brookings Institution Press). See also Keith Zhai and Kay Johnson, “Exclusive: Taking Power — Chinese Firms to Run Laos Electric Grid amid Default Warnings,” Reuters, September 15, 2020, <https://www.reuters.com/article/china-laos/exclusive-taking-power-chinese-firm-to-run-laos-electric-grid-amid-default-warnings-idUSL8N2FW068>.
  - 13 In 2018, Malaysia halted this \$20 billion railway project funded by China, citing the country’s inability to pay. Subsequently, Malaysia renegotiated with Beijing, reduced the cost by about a third, and resumed the project. See Bhavan Jaipragas, “Malaysia To Go Ahead with China-Backed East Coast Rail link,” *South China Morning Post*, April 12, 2019, <http://www.scmp.com/week-asia/geopolitics/article/3005831/malaysia-decide-today-stalled-china-backed-east-coast-rail>.
  - 14 For further analysis of this dynamic, see Jonathan Stromseth, “Don’t Make Us Choose: Southeast Asia in the Throes of US-China Rivalry,” (Washington, DC: The Brookings Institution, October 2019), <https://www.brookings.edu/research/dont-make-us-choose-southeast-asia-in-the-throes-of-us-china-rivalry/>.
  - 15 See Keith Bradsher, “With Covid-19 Under Control, China’s Economy Surges Ahead,” *The New York Times*, October 19, 2020, <https://www.nytimes.com/2020/10/18/business/china-economy-covid.html>; and Issaku Harada, “ASEAN Becomes China’s Top Trade Partner as Supply Chains Evolve,” *Nikkei Asia*, July 15, 2020, <https://asia.nikkei.com/Politics/International-relations/ASEAN-becomes-China-s-top-trade-partner-as-supply-chain-evolves>.
  - 16 Issaku Harada, “ASEAN becomes China’s Top Trade Partner as Supply Chains Evolve,” *Nikkei Asia*, July 15, 2020, <https://asia.nikkei.com/Politics/International-relations/ASEAN-becomes-China-s-top-trade-partner-as-supply-chain-evolves>.
  - 17 “Vietnam Carrier Develops Native 5G Tech to Lock out Huawei,” *Nikkei Asia*, January 25, 2020, <https://asia.nikkei.com/Business/Telecommunication/Vietnam-carrier-develops-native-5G-tech-to-lock-out-Huawei>; and “US Threat to Rethink Sharing Information with Nations Using Huawei Has Implications for Thailand and Philippines,” *South China Morning Post*, April 29, 2019, <https://www.scmp.com/news/asia/southeast-asia/article/3008186/us-threat-rethink-sharing-information-nations-using-huawei>.
  - 18 For a discussion of the tremendous challenges facing the Chinese economy, such as fostering innovation and dealing with an aging population, see David Dollar, Yiping Huang, and Yang Yao, *China 2049: Economic Challenges of a Rising Global Power*



- (Washington, D.C.: Brookings Institution Press, 2020).
- 19 “The State of Southeast Asia: 2020 Survey Report,” (Singapore: ASEAN Studies Center, ISEAS-Yusof Ishak Institute, 2020), [http://www.iseas.edu.sg/images/pdf/TheStateofSEASurveyReport\\_2020.pdf](http://www.iseas.edu.sg/images/pdf/TheStateofSEASurveyReport_2020.pdf).
  - 20 Danson Cheong, “COVID-19 Will Strain US-China Ties further, Pressure ASEAN to Pick Sides, Say Experts,” *The Straits Times*, April 28, 2020, <https://www.straitstimes.com/asia/east-asia/covid-19-will-strain-us-china-ties-further-pressure-asean-to-pick-sides>.
  - 21 For a description of this goal and strategy, see Kurt M. Campbell, *The Pivot: The Future of American Statecraft in Asia* (New York: Twelve, 2016), 134.
  - 22 Charissa Yong, “Singapore, US to Cooperate in Promoting Infrastructure Development in Asia,” *Straits Times*, March 21, 2019, <https://www.straitstimes.com/asia/singapore-us-to-cooperate-in-promoting-infrastructure-development-in-asia>.
  - 23 “China and Russia.” 116th Cong. 1 (2019) testimony of Ely Ratner before the Senate Armed Services Committee. [https://www.armed-services.senate.gov/imo/media/doc/Ratner\\_01-29-19.pdf](https://www.armed-services.senate.gov/imo/media/doc/Ratner_01-29-19.pdf).
  - 24 “US to Open Regional CDC Office in Vietnam to Tackle COVID-19,” *Nikkei Asia*, September 10, 2020, <https://asia.nikkei.com/Spotlight/Coronavirus/US-to-open-regional-CDC-office-in-Vietnam-to-tackle-COVID-19>. See also Jonathan Stromseth and Hunter Marston, “As U.S. Aircraft Carrier Departs Vietnam, What are the Implications for Regional Security?” The Brookings Institution, March 9, 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/03/09/as-a-u-s-aircraft-carrier-departs-vietnam-what-are-the-implications-for-regional-security>.
  - 25 Ruchir Sharma, “Is Vietnam the Next ‘Asian Miracle’?” *The New York Times*, October 13, 2020, <https://www.nytimes.com/2020/10/13/opinion/vietnam-economy.html>.
  - 26 “The Journey to Self-Reliance,” USAID, last updated August 2020, <https://www.usaid.gov/selfreliance>. See also “U.S. Agency for International Development Administrator Mark Green’s Remarks at the Brookings Institute’s ‘The Marshall Plan’s 70th Anniversary and the Future of Development Cooperation’ Event” (remarks, Washington, D.C., June 5, 2018), <https://www.usaid.gov/news-information/press-releases/jun-5-2018-administrator-mark-greens-remarks-brookings-institute>; and “U.S. Agency for International Development Administrator Mark Green’s Remarks at the U.S. Global Leadership Coalition 2018 Tribute Dinner” (remarks, Washington, D.C., December 5, 2018), <https://www.usaid.gov/news-information/press-releases/dec-6-2018-usaid-administrator-mark-green-usglc-2018-tribute-dinner>.



# CONTENDING ON THE PERIPHERY: TAIWAN AND HONG KONG

RICHARD BUSH

## EXECUTIVE SUMMARY

China's policies toward Taiwan and Hong Kong became more aggressive in the last four years. The PRC has undertaken a more coercive policy toward Taiwan out of frustration that its past efforts to persuade the island's citizens to accept unification on Beijing's terms have not succeeded. Regarding Hong Kong, it has restricted the political freedoms it had previously granted the city's residents in the interests of political control. The next U.S. administration will face decisions regarding whether to change policy toward each territory in order to secure its interests: for Taiwan, helping it sustain economic growth, security, international participation, and self-confidence as it faces China's challenge; for Hong Kong, preserving its prosperity and a political system that allows for popular choice.

## CONTEXT

As in the past, the next U.S. administration's policies toward Taiwan and Hong Kong will be contingent upon and shaped by its policy toward the People's Republic of China (PRC). In this regard, the fundamental question is whether Washington and Beijing will jointly try to re-invigorate the cooperative dimension of their relationship (and succeed in doing so) or remain trapped in competition and conflict. If competition and conflict are the future norm, should Washington include the Taiwan and Hong Kong issues in that competition, and if so, how?

In the early 1980s, Beijing set forth the same approach for incorporating the two territories, over which it claimed ownership, into the PRC. Each would be administrative units within the PRC regime but not under direct control of the Communist

Party. Local people would administer local affairs, but Beijing would retain control over picking those leaders. This was the one country, two systems formula.

From the U.S. point of view, however, the two territories are quite different in legal and practical terms. The U.S. government recognizes that Hong Kong is part of China's sovereign territory; it merely "acknowledges the Chinese position" that Taiwan is a part of China. The PRC has an official and unofficial presence in Hong Kong that gives it ways to influence events in the city — levers that it is increasingly pulling. It has no official presence in Taiwan but does have a degree of political influence, which is a sensitive issue in Taiwan politics.

## THE PROBLEM: TAIWAN

Taiwan has been a neuralgic issue for the PRC since the founding of the regime. Beijing sought to restore the boundaries of the last imperial dynasty, within which Taiwan was included. It was to Taiwan that the Chinese Communist Party's civil war rival, the Kuomintang regime, had retreated after they lost control of the mainland. No armistice or peace treaty has been signed, so technically that conflict is not over. The PRC regards any U.S. security relationship with the island's military to be a threat to its security. Moreover, Chinese leaders assert that without the incorporation of Taiwan, their country can never be a great power.

The PRC government had hoped they would be able to persuade the island's leaders and public to accept unification under the one country, two systems formula. However, the dynamics of Taiwan's democratic politics have reduced the odds that persuasion will work to a minimum. During the Ma Ying-jeou administration, Beijing had excessive hopes that providing Taiwan with economic benefits would accelerate movement on political issues, but

it was not to be. Since Tsai Ing-wen, who is also leader of the Democratic Progressive Party (DPP), became president, China has persistently charged her with pursuing *de jure* independence when she has actually been quite cautious. Beijing has also sought to punish and undermine her government through intimidation, pressure, international marginalization, manipulation of Taiwanese public opinion through social media, and cooptation of allies within the island's political system. So far, however, Taiwan's democracy has proven quite resilient. It is worth noting that Taiwan faces both a military threat because of China's growing military capabilities and a psychological threat from its "coercion without violence."

Fundamental U.S. interests regarding Taiwan remain the same: helping the island's leadership promote a secure, resilient, prosperous, and democratic society that is free from PRC attack and coercion. In pursuit of those interests, Washington depends on Taiwan's leaders pursuing prudent policies and avoiding steps that Beijing will perceive — or misperceive — as challenges to its fundamental interests and trigger a disruptive response. Fortunately, Taiwan's PRC policy since 2008 has been marked by such caution.

## THE PROBLEM: HONG KONG

From 1997, when Britain returned Hong Kong to China, until the late 2010s, Hong Kong had a partial democracy. Civil and political rights were protected. Elections for half of the Legislative Council were free and fair. But the system blocked people and parties that Beijing mistrusted from coming to power. In the mid-2010s, a process began that might have led to a fuller democracy, but Chinese policy was biased toward preserving control; the pro-democracy forces made tactical mistakes; mutual mistrust between the Hong Kong establishment and Beijing on the one hand and the democratic camp on the other was profound; and so, the process foundered. Beijing began nibbling away at political rights. In 2019, the Hong Kong government proposed legislation on extradition that local activists correctly gauged would put their freedoms at risk. The resulting demonstrations, sometimes violent, led Beijing to impose a national security law (NSL) in June 2020 that gave it and the Hong Kong government significant powers to criminalize the exercise of civil and political rights.

The United States has an array of interests regarding Hong Kong: business, law enforcement, and so on. The emergence of a political system reflecting the popular will is certainly one of them. For complex but correct reasons, Washington chose not to insert itself in the city's political struggles. But the imposition of the NSL has created a harsh new environment for U.S. policy.

## RECOMMENDATIONS: TAIWAN

In conducting its relations with China, Washington must be wary of consciously or unconsciously creating negative consequences for Taiwan's interests. On the one hand, if a "re-set" of U.S.-PRC relations is possible, with a movement back to some degree of cooperation, Washington should reject any demands by Beijing to reverse the improvements in U.S.-Taiwan relations that have occurred during the Obama and Trump administrations that fit U.S. interests.

After all, the reason the PRC's Taiwan policy has failed so far is not because of anything the United States has done. Beijing has simply not made a compelling case to the Taiwan public why they should agree to unification on PRC terms. Its 2020 crack-down in Hong Kong has weakened its case even further. On the other hand, if the U.S.-China rivalry is to continue and deepen, the United States should not use Taiwan as a weapon in that competition to its detriment. Nor should it take actions that play into Beijing's coercive approach. Whatever the overall trend, Washington should maintain a robust dialogue with Taiwan's senior leaders in order to understand how they define Taiwan's interests.

There is significant potential to improve U.S.-Taiwan policy. What is required in Washington at the outset is the formulation of a coherent policy that reflects all of its interests.

The top priority for the United States is to undertake an economic policy that will support Taiwan's prosperity, innovation, and reform of government policy. For too long, the U.S. Trade Representative (USTR) has refused to begin consideration of a 21st century economic agenda with Taipei unless it makes politically difficult concessions on market access for pork and beef. It is high time to realign this grudging economic policy with Washington's positive view of Taiwan's political and security

importance. The U.S. administration's target should be opening talks on a bilateral trade agreement (BTA), with two underlying purposes. One is to foster the structural adjustment of the island's economic policies (including de-regulation) to stimulate innovation, growth, and broad-based employment. The other is to reduce the PRC-induced marginalization of the Taiwan government from the international economy. In August 2020, Taiwan unilaterally met the USTR's preconditions for advancing the economic relationship. The ball is now in the American court.

In one specific area — technology — the Trump administration's campaign to impede the growth of Chinese power has damaged the interests of Taiwan's most successful companies and therefore the island's economy more broadly. The central role that Taiwan tech firms have played in creating trans-Pacific supply chains has meant that they do business with both American and Chinese counterparts. As the Trump administration has sought to squeeze the access of PRC companies like Huawei to semiconductors and other key components, and as it has tried to pull supply chains out of China, Taiwan companies are caught in the middle. Because preserving a healthy Taiwan economy remains a key U.S. interest, the next administration should conduct a comprehensive assessment of U.S. tech policy, especially the commercial and security risks of transferring technology to China and the consequences for Taiwan's economy. It should consider approaches that are more selective and create less collateral damage than those pursued by the Trump administration. For example, how much harm does it do to allow Taiwan companies to sell products that embody lower-end technology to Chinese counterparts?

On security, Washington and Taipei face three tasks. Taipei must first fully implement its "overall defense concept," which starts with a more realistic definition of its threat environment and of available budgetary resources. It must then identify the asymmetric capabilities required to better deter the likely PLA campaigns against the island. Procurement, personnel, and training policies must be aligned with those appropriate capabilities. Washington must be clear-eyed about how improved PLA capabilities constrain its ability to intervene in a Taiwan conflict, if the order to do

so is given. Countermeasures should be developed to address areas of PLA advantage and to identify its points of exploitable weakness.

The third task is less related to military affairs. It concerns Beijing's ongoing "coercion without violence" efforts to influence Taiwan's domestic politics and, over the long term, sap the confidence of the government and public to maintain Taiwan's autonomy and special identity. In view of that concerted PRC campaign, Taipei must continue and expand its countermeasures. The United States has already provided some support to Taipei concerning Beijing's theft of its diplomatic allies and in countering its cyber and social media efforts. But more could be done. Creating an FTA between the United States and Taiwan would be a strong counter to Beijing's long-standing effort to marginalize Taiwan internationally.

When it comes to matters germane to the United States' one-China policy, since the 1990s Washington has faced the desire of Taiwan administrations and the public to upgrade the conduct of the bilateral relationship and to expand Taiwan's international participation with American assistance. Since 2008, Washington has been willing to liberalize how it interacts with Taipei bilaterally as Taiwan leaders have better aligned their interests regarding China with those of the United States. In Washington's view, those improvements are plausibly consistent with the pledge of unofficial relations that Washington made to Beijing at the time of normalization of relations.

Concerning international organizations, Taiwan has been most successful in expanding its international space in cooperation with the United States when it does not target institutions and arrangements where Beijing already has a presence and can block Taiwan's participation. A key example here is the Global Cooperation Training Framework. Such creative initiatives should continue.

The next U.S. administration should step up efforts to articulate the rationale for its Taiwan policy, with three audiences in mind. The first is the American public, to whom it should explain why Taiwan matters to the United States and what is at stake in the island's relationship to China. The second is the Taiwan public, whose understanding of U.S. policy is clouded by the ambiguity that U.S. officials traditionally have employed in their public



statements and by the sensationalist coverage of the Taiwan media. The third is the PRC government, with which the focus should be stressing the importance of Taiwan's democratic system in determining the future of cross-Straits relations and the respect the United States accords to the will and wishes of the Taiwan people. As noted above, Beijing has not been able to achieve unification for the simple reason that it has not made a convincing case to change the broad spectrum of Taiwan public opinion. U.S. diplomats should also stress to their PRC counterparts that Washington does not believe, as Beijing asserts, that President Tsai is moving toward Taiwan independence, and it believes that the PRC's "coercion without violence" is an inappropriate tool for resolving the Taiwan issue. (In an optimal world, the Chinese public would be another audience, but circumventing the government's monopoly of information is almost impossible.)

## RECOMMENDATIONS: HONG KONG

In response to the PRC-imposed national security law (NSL), the Trump administration sanctioned eleven senior Hong Kong Special Administrative Region (HKSAR) and PRC officials, "de-certified" the city's autonomy according to the terms of the Hong Kong Policy Act, and suspended U.S. special treatment under U.S. law in certain areas, originally granted on the assumption of the city's continued autonomy (for example, technology transfer and extradition of fugitives). So far, those steps have not changed PRC or HKSAR policies, but their impact, if any, is likely to be long term.

In response to the city's circumscribed political environment, the next U.S. administration should first ensure the freedom and safety of Americans in or intending to travel to Hong Kong. Article 38 of the NSL applies to "offences...committed against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region." Article 55 concerns "strengthening the management" of foreign NGOs in the city. The State Department has already updated its travel advisory to take account of the threats implied in these provisions. It should also inventory the activities of all NGOs working in Hong Kong to assess their legal vulnerability, consult with them on the NSL's effects on their operations, and periodically assess whether new changes in the travel advisory are necessary.

Second, the United States should do no harm with respect to the people of Hong Kong. Any proposed sanctions that would diminish their standard of living should not be considered. Given Beijing's narrative that Washington promoted the 2014 and 2019 protests, the U.S. administration should be guarded in conveying public support to anti-establishment activists, which might put them in greater danger. At the same time, Washington should quietly assist Hong Kong people at risk to re-locate to America and find jobs.

Hong Kong's tragic political situation will remain frozen for the foreseeable future, unamenable to any real change by the United States. Under current circumstances, Washington should follow the approach suggested by former consul general Kurt Tong, that of "crafting a medium-term strategy" regarding future relations with the city.<sup>1</sup> It should work with other like-minded countries to sustain international attention on the Hong Kong issue and press Beijing diplomatically to relax its crack-down. The U.S. administration should engage officials of the HKSAR government to identify ways in which it can restore sufficient autonomy in specific policy areas in order to resume cooperation with the United States. In specific circumstances as appropriate, the U.S. administration should also consider using the waiver authority in the amended U.S.-Hong Kong Policy Act to adjust or eliminate sanctions on individual officials.

Finally, the next U.S. administration should step up its public diplomacy in and toward Hong Kong. It should reject Beijing's false narrative about the U.S. role over the last six years. It should reaffirm its legal position that Hong Kong is a part of China's sovereign territory. It should stress its hope for an early return to the HKSAR government's protection of civil and political rights, as was the case before 2016 and for a revival of discussions of electoral reform. At the same time, the next U.S. administration should dampen any lingering illusions among Hong Kong activists that Washington can force Beijing to radically change its Hong Kong policy.

## REFERENCES

- 1 Kurt W. Tong, "Playing a Long Game on Hong Kong," *The Brookings Institution*, August 26, 2020, <https://www.brookings.edu/articles/playing-a-long-game-on-hong-kong/>.

# TESTING THE POSSIBILITIES OF RENEWED COOPERATION WITH CHINA ON NORTH KOREA POLICY

JONATHAN D. POLLACK

## EXECUTIVE SUMMARY

This paper assesses North Korea's nuclear and missile development under the Trump Administration; the next administration's priorities in constraining North Korea's strategic goals; and whether renewed cooperation with China can contribute to these efforts.

During his tenure, President Trump hoped that a personal relationship with Kim Jong-un might convince the North Korean leader to pursue different policies toward the United States. Though the administration was able to secure China's support for heightened Security Council sanctions, it largely sought to circumvent existing diplomatic and policy approaches. Trump sought to relegate Beijing to a sideline role on North Korea policy, reflecting the severe deterioration in U.S.-China relations over the past four years.

The Trump Administration's failure to achieve any of its declared denuclearization objectives requires careful reassessment of credible policy goals, the mechanisms needed to advance them, and steps to be avoided. Among U.S. policy priorities, rebuilding coordination with U.S. allies in Seoul and Tokyo is the most important priority. Reestablishing policy channels with China cannot be safely assumed, but this effort also warrants careful exploration.

North Korea's ability to sustain pursuit of a fully operational weapons program is not in the strategic interest of either Washington or Beijing. This makes renewed cooperation on the nuclear issue (or the inability to achieve new understandings) an important test case of whether both sides can overcome the acute policy setbacks of recent years. As long as the bilateral relationship hovers close to an adversarial level, the incentives for leaders in either country to resume cooperation will remain

very limited.

Should the U.S. again decide to rebuild institutional mechanisms with China, there are three primary dialogue levels that warrant particular attention: (1) intelligence sharing on North Korea—arguably among the hardest of targets; (2) policy-level coordination drawing on earlier approaches that (at least for a time) generated meaningful results, with a reconfigured six party process offering relevant precedents; and (3) deliberations among military operators, with particular attention to crisis management. Such mechanisms will also improve the possibilities for effective alliance management as the ROK approaches its next presidential election in 2022. None of these exchanges guarantee easy success: fully verifiable constraints on the North's nuclear advances will be a long-term process, ultimately depending on internal transitions in the DPRK that are not discernible at present. But without diligent efforts between the U.S. and China the strategic environment on the peninsula and in Northeast Asia as a whole could become much more severe, to the pronounced detriment of all countries neighboring North Korea.

## THE PROBLEM

North Korea's pursuit of nuclear weapon and ballistic missiles first became a major US policy concern under George H.W. Bush. Its importance has grown immeasurably over the past three decades. All four presidents since Bush 41 have tried to impede North Korea's nuclear weapons program, but none have succeeded. Agreements and understandings with Pyongyang have rarely outlasted each administration. North Korea has repeatedly protected its nuclear and missile assets, opting to run out the clock and await the next president.

This pattern is again evident in late 2020, but

(compared to the outset of the Trump Administration) the strategic circumstances are now far more worrisome. Despite grievous economic problems and the imposition of UN Security Council sanctions, the North has made major breakthroughs in nuclear and missile development and sustained its progress toward a fully operational deterrent. These included the detonation of a thermonuclear weapon and three successful tests of longer-range missiles able to reach American territory.

Though the North has not resumed tests of its most capable systems since late 2017, Pyongyang's commitment to nuclear and missile development is unabated. The appearance at a major military parade in October 2020 of the world's largest, liquid fueled road mobile ICBM and a solid fuel SLBM highlight North Korea's longer-term objectives. It is intent developing operational nuclear capabilities that can threaten all of Northeast Asia as well as the U.S. mainland. These capabilities will directly affect the vital security interests of all neighboring states, including China.

The next administration will face policy choices under strategic circumstances very different from those at the outset of the Trump Administration. Policy cooperation with China must be among the choices the U.S. needs to weigh carefully, based on the future behavior of North Korea and on the directions of U.S.-China relations in the next administration.

## THE LEGACY OF THE TRUMP ADMINISTRATION

The U.S. policy missteps of the past four years cannot be undone, but they necessitate careful review.

From his initial weeks in office, President Trump was deeply involved with the nuclear issue. When Pyongyang accelerated its testing programs in early 2017, Trump threatened the preemptive use of force; deployed U.S. strategic bombers close to North Korean territory; and repeatedly belittled Kim Jong-un, all with minimal attention to the risks for the ROK and Japan. Kim quickly responded in kind, generating fears of an uncontrollable crisis that for a time threatened to envelop the entire region and the United States.

In March 2018, Trump abruptly shifted course.

Without deliberation among his senior advisers, he agreed to meet with Kim Jong-un. The summit occurred in Singapore three months later. This was the first time a serving U.S. president had met with his North Korean counterpart, though Bill Clinton had contemplated meeting with Kim Jong-il at the end of his second term, only to demur during his final weeks in office.

Trump opted to ignore nearly all established diplomatic and security tools for addressing the nuclear issue. His approach would entail neither carrots nor sticks, and instead he would deal directly and very personally with a young leader seeking affirmation and validation. Trump also recognized that a meeting with Kim would generate a global television audience as well as enhance his domestic political standing. Finally, he believed that a face to face meeting would alter Northeast Asia's political and strategic map, largely dispensing with the complexity, detail, and tedium of protracted negotiations. A personal relationship with Kim would also minimize the need to consult with the states most directly threatened by North Korea.

However, Trump had few discernible "asks" of Kim. He instead offered unilateral concessions about future U.S. military exercises and indicated he would be willing to sign an end of war declaration. A video hinting at U.S. economic assistance resembled little more than a preliminary real estate prospectus. Most important, Trump barely mentioned denuclearization, or even how to define it. In essence, he signaled to Kim that relations with the United States would be largely cost free.

Trump offered the young leader personal validation that neither his grandfather nor his father were able to achieve with a serving U.S. president. At least in appearance, he was offering Kim Jong-un an alternative to near-total dependence on China. Kim very likely saw Trump's disparagement of U.S. military exercises on the peninsula as a signal that the U.S. was willing to reduce or eliminate its security commitments to South Korea and (prospectively) to Japan. He appeared to conclude that Trump had political powers inside the U.S. comparable to his own in the DPRK. Kim saw no need to delegate negotiating authority to any of his subordinates, rendering largely irrelevant any U.S. efforts to advance denuclearization. Kim and other North Korean officials also voiced strong objections



to the UNSC sanctions regime, which has since become much leakier.

Trump's policy overreach in Singapore collapsed during his second meeting with Kim, which took place in Hanoi the following February. Kim proposed a trade between the lifting of economic sanctions and a North Korean pledge to shutter its nuclear facilities at Yongbyon, which the US deemed ambiguous, unverifiable and therefore unacceptable. This resulted in an abrupt end to the meeting in Hanoi.

Kim viewed his shattered expectations for a major breakthrough with the U.S. as a personal humiliation. Notwithstanding a third meeting between the two leaders at the DMZ four months later, U.S.-North Korea relations have remained frozen ever since. Kim and Trump have regularly exchanged flattering personal letters, but the absence of detailed negotiations remains telling. Nuclear consultations among the United States, the Republic of Korea, and Japan have continued at a desultory pace. Any discussions between the U.S. and China have dwindled to near zero, reflecting the acute deterioration in Washington-Beijing relations.

By the fall of 2019, Kim Jong-un stated that North Korea was no longer obligated to uphold the missile testing moratorium that it had announced in 2018. Pyongyang undertook several tests of shorter range missiles able to reach regional targets and also tested rocket engines, quite possibly intended for use in the ICBM displayed in the October 2020 military parade. At least as important, it also continued production of fissile material, with annual weapons potential estimated in the upper single digits.

North Korea's policy stance thus remains unchanged: it insists on explicit recognition as the world's ninth nuclear armed state. It is unprepared to negotiate limits on its nuclear weapons potential, let alone forego any of the weapons in its current inventory, variously estimated at between 30 to 60 weapons, though some estimates range as high as 100. Without a comprehensive accounting and verification system, the actual number remains unknown.

Despite Trump's grandiose claim of "solving" the nuclear issue, conditions are more worrying than what he inherited from President Obama. Its

missile testing has not exceeded the peak levels of 2016 and 2017, but tests of lesser range systems resumed in 2019 and 2020. More ominously, tests of its newest systems could loom, possibly coinciding with the onset of a new administration in the U.S. These would directly violate a "red line" implied in Trump's statements, and that China appeared to share. Any resumption of testing and other escalatory actions early in the Biden administration would also represent a clear opportunity to test the possibilities for renewed coordination with Beijing.

## IMPLICATIONS FOR U.S.-CHINA RELATIONS

Despite the severe deterioration in bilateral relations, nuclear non-proliferation remains a vital issue where American and Chinese interests still largely align. As two of the five declared nuclear weapons states under the Non Proliferation Treaty, neither has an interest in consenting to the emergence of additional nuclear powers. The DPRK's immediate proximity to China gives this issue particular salience for Beijing: any threat of renewed military hostilities on the peninsula would immediately implicate both Washington and Beijing.

However, adversarial relations between the U.S. and China have made cooperation on the Korean nuclear issue much more difficult. This does not reflect Chinese affinity with or endorsement of North Korea's nuclear goals. Despite their interconnected histories, a long common border, and the North's extraordinary economic dependence on China, the Kim dynasty has long sought to avoid subordination to China, and on multiple occasions has openly defied Beijing.

China's damage limiting approach seeks normal relations with both Pyongyang and Seoul, hoping to prevent North Korea from undermining China's core economic and security objectives in Northeast Asia. A fully realized North Korean weapons capability would represent a strategic disaster for Beijing, especially if Japan and the ROK should then explore nuclear programs of their own. Some observers posit that China's longer-term goal is to displace the United States from its predominant security position in Northeast Asia, but North Korea's continued nuclear and missile advances would reinforce the U.S. role, not undermine it.

Other than pro forma exhortations for the US and North Korea to pursue a "dual freeze" proposal



(i.e., a halt in US-ROK military exercises in exchange for North Korea deferring further weapons development), China has never put forward larger ideas of its own. It has also made repeated efforts to coax the North to open its isolated, moribund economy. Despite the improvement in China's relations with North Korea during 2018 and 2019, these do not prefigure resumption of China's commitments under the 1961 treaty. Shared animosities toward the US have drawn China and North Korea together for tactical reasons, but they are not evidence of deeper strategic congruence.

Quite possibly, Trump envisaged his personal relationship with Kim Jong-un as a way to deny China a major role in Korean affairs. However, China's immediate proximity to the peninsula; its economic centrality to both Korean states; and its enduring strategic interests in Northeast Asia are indisputable facts. Rather than marginalizing China, Trump's overtures to Kim Jong-un had the opposite effect, enabling Kim to deal more openly with China without risking his relationship with the United States.

Immediately before the Singapore summit, Kim paid his first ever visit to China, with Kim demonstrating uncharacteristic if symbolic deference to Xi Jinping. This accommodation has continued during four subsequent meetings, including Xi Jinping's state visit to Pyongyang in June 2019. China's loan of a Boeing 747 aircraft for Kim's flight to Singapore reflected North Korea's continued dependence on Beijing. But it also signaled that Xi was prepared to facilitate the summit, provided that it did not undermine Chinese interests.

Beijing undoubtedly prefers the continuation of the North Korean regime, but it reveals little about steps it might undertake to help sustain its neighbor. Large unanswered questions persist in Beijing's North Korea policy, including China's assessment of the system's survivability; whether Beijing believes that the ultimate US policy objective is the end of the regime; the risks of disruptive internal change in the North; and the consequences of peninsular unification for Chinese interests, independent of how unification might occur. The future of the nuclear program hangs over all these questions.

However, China remains very reluctant to disclose how it might respond to a major change in political or military circumstances. In addition there is no

mutually acceptable formula among China, the ROK, and the U.S. encouraging Pyongyang to move toward less adversarial relations with all three states. These issues must be revisited by the next administration, lest a severe peninsular crisis break out, for which no one is prepared.

North Korea's leaders persist in the belief that their system's survival depends on remaining apart from all others. Pyongyang fears that opening doors to the outside world would undermine the Kim dynasty's internal control, and possibly trigger major instability. Pyongyang has announced plans for the 8<sup>th</sup> National Congress of the Korean Worker's Party in January 2021, where it will reaffirm its pursuit of an autonomous economic strategy. The timing of the meeting with the inauguration of the next US president seems no coincidence.

China (fearing the possible reverberations for its own security) remains unwilling to bring the full weight of its power to bear against its recalcitrant neighbor. It sees this as a risk-limiting strategy. Despite China's growing power and assertiveness elsewhere in Asia, passivity and risk aversion remains its default option with North Korea.

## THE ROAD AHEAD

With the election of Joe Biden, a return to a disciplined approach to North Korea seems very likely, with immediate implications for U.S.-China relations. Inhibiting North Korea's unconstrained pursuit of fully realized nuclear and missile capabilities must remain a core concern, including responses to any additional weapons testing. A reaffirmation and rebuilding of the U.S.-ROK alliance, including realistic approaches to operational control and burden sharing, will be essential. A parallel commitment to triangular political and security relations among the U.S., South Korea, and Japan must also be part of this process.

Specific security assurances to China on limiting U.S. forces to a "peninsula only" role will also require careful deliberation. At present, there are no meaningful discussions between the U.S. and China on stability and security in Korea. Beijing repeatedly characterizes the U.S.-South Korea alliance as "a vestige of the Cold War," arguing that its continuation perpetuates peninsular division and precludes a transformation of the regional security order.

Beijing argues that U.S. strategic intent on the peninsula is primarily directed against China rather than North Korea. In parallel fashion, many U.S. observers contend that China's preeminent policy goal is to weaken and ultimately invalidate the U.S.-ROK alliance, without addressing North Korea's malevolence towards the South and Japan and its possession of nuclear weapons. Some argue that North Korea remains a reserve strategic asset for Beijing, thereby preventing single minded U.S. attention on China.

These arguments fail to consider the implications of a fully realized North Korean nuclear weapons capability for the interests of both the U.S. and China. During his state visit to Pyongyang, Xi Jinping spoke about realization of "permanent peace in the region." But Kim Jong-un continues to insist that the North's "reliable and effective self-defense nuclear deterrence ...[guarantees] the security and future of our state...forever." Even tacit Chinese acquiescence to such a strategic future raises very worrisome concerns, and should be an issue of utmost concern in any renewed deliberations between Washington and Beijing.

The next administration must avoid a repeat of the blunders and mismanagement of North Korea policy

over the past four years. Any future US policy should neither be standalone nor improvisational, and a reaffirmation and strengthening of America's core alliances will be essential. But a parallel approach to China could prove equally crucial. Compared to all other states, Beijing has a greater ability to affect North Korea's future, and it also has at least a partial understanding of Pyongyang's strategies, vulnerabilities, and leadership calculations.

Any renewed approach to China will have to weigh the damage to U.S.-China relations over the past four years. A recommitment to cooperation on the singularly intractable North Korea issue would be an indicator of Beijing's readiness to collaborate on an issue of singular importance to both countries. Contrarily, a distanced or adversarial stance by Beijing should sober the U.S. about future strategic possibilities in Northeast Asia.

The immediate tasks for U.S. policy in Korea are to restore order and predictability in US-ROK relations; to reaffirm U.S. extended deterrence guarantees to South Korea and Japan; and then to assess whether Sino-American understandings about North Korea are realistic or feasible. There will be no easy escape from questions that have burdened Northeast Asia and the United States for decades,



# IMPROVING RISK REDUCTION AND CRISIS MANAGEMENT IN US-CHINA RELATIONS

RUSH DOSHI

and China cannot be excluded from this process.

## EXECUTIVE SUMMARY

The U.S.-China relationship has descended to its lowest point since normalization in 1979. In this climate, the militaries of the two countries nevertheless continue to operate in ever greater proximity in the maritime, aerial, cyber, and space domains.

Two decades ago, Beijing and Washington peacefully resolved a collision between two aircraft belonging to their respective countries in the South China Sea. But as mutual trust has eroded and working-level ties have frayed, the probability that a repeat incident could be similarly resolved is low, and the risk that it could instead escalate into a military clash is at its highest point in 50 years.

Since the end of the Cold War, the United States and China have invested in a series of rules, institutions, and communication mechanisms to manage the risk of conflict. Unfortunately, these have fallen short and rarely been used, in large part because of a lack of interest, initiative, and follow-through by Beijing. While China is still unlikely to fully participate in these efforts, there may be some reason for cautious optimism: Beijing is less worried that these mechanisms will reveal China's weaknesses as its military has modernized; Xi has indicated interest in risk reduction and crisis management; U.S.-China military interaction is increasingly global; and Xi may be more confident in his control over the People's Liberation Army (PLA) than his predecessors, and perhaps more comfortable allowing them to participate in U.S.-China efforts. Despite these promising signs, prospects for progress are admittedly still limited.

Even so, in the period ahead, the United States

and China will need to signal consistently their interest in these mechanisms and their willingness to sustain them even as political tensions rise. Both governments will need to expand rules and institutions designed for the maritime domain to include China's Coast Guard and its Maritime Militia, not just the Chinese Navy, and they will also need to make existing codes of conduct significantly more detailed. A similar approach will need to take place in space and cyber domains, where the United States and China have almost no crisis communications mechanisms or codes of conduct — and these efforts may eventually be extended to emerging technologies too. Finally, the United States and China need more interaction at the very highest levels of leadership in order to start and sustain these efforts and even at the most narrow operational levels in order to build “operational trust” and familiarity with standard operating procedures. While it may be difficult to address the causes of growing U.S.-China rivalry, these mechanisms might be able to bound the competition and manage its consequences.

## THE PROBLEM

The United States and China face two major problems with respect to risk reduction and crisis management: (1) the growing risk of a clash and inadvertent escalation between the militaries of each country; and (2) the absence of adequate rules, institutions, and communication mechanisms to manage such risks.

First, the two countries have clearly entered a period of intensifying strategic competition if not outright confrontation. As mutual trust erodes and the two countries operate in greater proximity in the maritime, aerial, cyber, and space domains, the risk that an unmanaged crisis or accident could escalate into military and cyber conflict is perhaps greater now than it has been at any point since

rapprochement. The causes of growing U.S.-China rivalry are multifaceted, and admittedly the two countries' differing interests in East Asia — whether in the Taiwan Strait or the South and East China Seas — are difficult to bridge. For that reason, a key focus for the bilateral relationship and for this memo is on how to manage the consequences rather than the fundamental causes of deteriorating ties.

This leads to a second major problem in the relationship: even as the risk of crisis escalation grows, the institutions to manage it are woefully inadequate, especially in comparison to the robust and institutionalized crisis management and arms control mechanisms that existed between the United States and the Soviet Union during the Cold War. In most cases, the mechanisms in place between the United States and China are substantially weaker than the U.S.-Soviet mechanisms they emulate. For example, the Military Maritime Consultative Agreement (MMCA) and U.S.-China 2014/2015 MOUs on aerial and naval incidents are not as binding, detailed, operational, or effective as the U.S.-Soviet Incidents at Sea Agreement. Moreover, the U.S. and China lack a conscious effort at the command level to reduce the risk of inadvertent war, which was the focus of the landmark U.S.-Soviet Agreement on the Prevention of Dangerous Military Activities. Finally, Washington and Beijing also lack anything resembling the robust U.S.-Soviet bilateral arms control process, and crisis communication mechanisms remain comparatively undeveloped.

Even after three decades of effort, U.S.-China mechanisms provide little utility. Three separate sets of annual talks have provided little substantive engagement. Crisis communication mechanisms are rarely used even in actual crises such as the 1999 Belgrade Bombing, the 2001 EP-3 incident, or in the dozens of near-misses in the South China Sea that have occurred in the intervening years. Indeed, China rarely makes use of its crisis communications lines with India, the Philippines, Japan, or Vietnam, to say nothing of the United States. Agreements on “rules of the road” for naval and aerial incidents are neither binding nor effective at reducing dangerous behavior and do not apply to China's Maritime Militia and Coast Guard. The United States and China lack a bilateral arms control process and have seen limited agreements in the cyber domain abrogated. In sum, there is

no framework to effectively manage escalation risks emanating from conventional challenges like intercepts or emerging challenges in new domains.

## OBJECTIVES

A key objective for the United States and China within this domain should be establishing rules, institutions, and communication mechanisms adequate to the task of managing risks and limiting escalation.

China has been the primary impediment to progress on risk reduction and crisis management, but there are some reasons for cautious optimism, particularly because some of the leading obstacles to forward momentum may be eroding as the U.S.-China relationship becomes less asymmetric and more contentious than in the past, producing a possible moment of opportunity. Beijing has indicated it will stop holding the entire military relationship hostage to the ebbs and flows of political ties. And while China still relies on dangerous intercepts to impose risk on U.S. operations near China's coast (a way of deterring U.S. close-in reconnaissance or freedom of navigation operations), the increasingly global rather than regional pattern of U.S.-China military interactions is creating symmetrical foundations for risk reduction. In short, the United States and China have equivalent interests outside of Asia in managing crisis risks. Other obstacles are also abating. Beijing's fear that engagement will reveal conventional inferiority has diminished now that its military is a peer U.S. competitor. The Party's reluctance to devolve crisis management authorities to the military may diminish now that Xi has better consolidated control over it than his predecessors. Finally, Beijing's concern that U.S.-China mechanisms would evoke unflattering Cold War comparisons is now moot given the relationship's adversarial turn.

## RECOMMENDATIONS

- **Consistent signaling and reciprocity:** The United States has often been inconsistent in its efforts to build a military relationship with China. At times, it has been overenthusiastic and provided access or information that is not reciprocated while at other times it has cut off exchanges, creating unmet expectations or enabling the relationship to be used as leverage.



Clear signaling, an insistence on reciprocity, and careful alignment of U.S. public statements and actions should be starting points for any military relationship. Both sides should commit that risk reduction and crisis management efforts will not be linked to other bilateral issues and will be sustained irrespective of political tensions.

- **Maritime rules of the road:** China's Coast Guard and Maritime Militia are not covered by existing U.S.-China agreements on incidents at sea. Accordingly, the United States and China should revise existing U.S.-China MOUs and attendant annexes to apply to China's Coast Guard and Maritime Militia and work to incorporate them into present U.S.-China maritime dialogues, including the MMCA. Moreover, China should indicate whether existing agreements like CUES and COLREGS also apply to its Coast Guard and Maritime Militia. Not only should these forces be covered by previous agreements, but any future agreements should apply to them, as well. Finally, both sides should work to make the MMCA and U.S.-China MOUs as detailed as the U.S.-Soviet Incidents at Sea Agreement they consciously emulate.
- **Space and cyber as priorities:** The U.S. and China appear to lack any mechanism covering space and infrequently discuss cyber issues, but these are precisely the domains to which a kinetic conflict will promptly escalate given their indispensable role in supporting military operations. To give these domains their due, the Joint Staff Dialogue could be refocused on them; alternatively, a mechanism similar to the MMCA could be created for these domains that would help produce a bilateral code of conduct. Similarly, agreements limiting peacetime interference in the other side's command and control networks (which the U.S. and Soviet Union negotiated in 1989) could be a part of this effort. And both sides could launch bilateral

hotlines to deescalate crises in space.

- **Emerging technologies:** During the Cold War, U.S.-Soviet agreements eventually expanded to cover newer categories as laser weapons and interference with command and control networks. Now, the United States and China need a similar set of agreements that might deal with escalation risks in new strategic and technological domains ranging from lethal autonomous weapons to bioweapons enabled by gene-editing technologies. Both sides could consider a new, high-level dialogue for emerging technologies or, alternatively, repurpose a portion of existing dialogues, such as the Joint Staff Dialogue launched in 2017, to address these issues.
- **Operational trust:** Dale Rielage defines operational trust as “the expectation, usually between militaries, that another service is safe, competent and reliable in conducting operations,” particularly in close proximity.<sup>1</sup> Working to facilitate operational trust through more routine engagement — particularly outside of Asia — may reduce risks of inadvertent crises within Asia and familiarize each side with the other's standard operating procedures.
- **Leader-level emphasis:** No effort will be successful without the express approval of President Xi Jinping. Accordingly, any agenda for risk reduction and crisis management is more likely to be meaningfully pursued on the Chinese side if it is incorporated with greater regularity into leader-level meetings or into whatever institutional mechanism succeeds the U.S.-China Diplomatic and Security Dialogue.

## REFERENCES

- 1 Dale C. Rielage, “An Imperative to Engage,” *Proceedings*, April 2015, <https://www.usni.>

## SECTION III: ECONOMICS, TECHNOLOGY, AND RULE OF LAW





# FORGING AN ALTERNATIVE ECONOMIC STRATEGY FOR DEALING WITH CHINA

DAVID DOLLAR

[org/magazines/proceedings/2015/april/imperative-engage](http://org/magazines/proceedings/2015/april/imperative-engage).

## EXECUTIVE SUMMARY

America's economic relations with China have deteriorated under the Trump administration. U.S. exports and imports are both down, primarily because of the tariffs that the U.S. has imposed. Investment in both directions is also down. The U.S. policy was aimed at increasing exports to China and changing various Chinese trade practices, but so far it has failed. The "managed trade" approach of specific export targets has not worked and should be scrapped in favor of a focus on structural issues in the Chinese economy: non-tariff barriers; restrictions on foreign investment in some sectors; poor protection of intellectual property rights; forced technology transfer; extensive role in the economy of state-owned enterprises; and subsidies to develop specific technologies. The impact of these policies is to limit the exports coming from American firms and workers, exports both to China and to third countries. Bringing China up to advanced country norms would open new trading opportunities and raise American incomes.

The key components of an alternative economic strategy for dealing with China are:

- (1) Negotiate down the U.S. tariffs on Chinese products in exchange for a "phase 2" agreement focused on the structural issues above; realistically, China will be willing to change some but not all of its policies;
- (2) Stop the talk about exchange rate and trade imbalances, which are distractions from the main issues;
- (3) Coordinate our China economic policies with

allies. This will involve dialogue with the EU as well as with Japan and South Korea to agree as much as possible on priorities for specific Chinese reforms. Ideally, the U.S. will rejoin TPP and push hard to include new members (South Korea, more ASEAN countries, and even the UK). At the moment, the U.S. risks being left out in the Asia-Pacific region as RCEP and TPP proceed without it.

(4) Negotiate with China over its role in the international economic institutions. For example, if China were to join the Paris Club, the United States could support a greater Chinese standing in the IMF. Similarly, the U.S. could trade a greater weight for China in the World Bank if it were to join the Development Assistance Committee and make its BRI loans more transparent and concessional, with competitive procurement for projects. The general point is that if the United States wants changes in Chinese behavior, it must be willing to anchor those changes in a role in the international institutions commensurate with ours.

(5) Rationalize our policy in the national security sphere. Slowing China's growth or killing Huawei are not realistic national security objectives. China is likely to catch up with the U.S. in terms of overall GDP within 15 to 20 years. Consequently, the U.S. is going to have to live with a large China that has a very different system from our own. Clearly, America needs to protect technologies with national security implications through export and investment controls. But if the parts of the economy affected are defined too widely, then important dynamism is cut off. Most of the economy should be open to trade, investment, joint research, and student exchanges. The U.S. has enormous strengths. If there is a level playing field, American firms and workers can be expected to do very well and to benefit from trade and investment with China.

## THE PROBLEM

The main problem that the United States has with China is a set of trade and investment practices that are outside the norms of advanced economies. China likes to think of itself as a developing country, based on its per capita GDP, but it is the second largest economy in the world and the largest trading nation, and the U.S. would like to see it move quickly to advanced country standards. The specific policies in question are: extensive non-tariff barriers, such as arbitrary and changeable standards; restrictions on foreign investment in some sectors; poor protection of intellectual property rights; forced technology transfer through various coercive means; extensive role in the economy of state-owned enterprises that have favorable access to land and credit; and subsidies to develop specific technologies. These policies limit the exports coming from American firms and workers, including exports both to China and to third countries. Bringing China up to advanced country norms would open new trading opportunities and raise American incomes.

Aside from these practices that directly affect the United States, China is also out of step on global norms for lending to poor countries, which will have important indirect effects on the U.S. economy and foreign policy. China's Belt and Road Initiative has been lending about \$50 billion per year to developing countries, primarily to construct transport and power infrastructure. The initiative has the potential to be beneficial, as developing countries need this infrastructure. However, the Chinese loans lack transparency, so it is hard to know which projects are financed and on what terms and whether the overall amount for a particular country is leading to unsustainable debt. What is clear from available information is that the loans are mostly commercial. As a result of the COVID-19 pandemic and recession, many countries, especially in Africa, are falling into debt distress. China did join the G20 in calling for a debt moratorium for the poorest countries this year, but it is not a member of the Paris Club of official creditors, so providing further debt relief is going to be complicated and perhaps insufficient.

In the mid-2000s China was also out of step in that it had an undervalued exchange rate and a large overall trade surplus, the broadest measure of which is the current account. But this problem was corrected during the Obama administration;

China's currency has appreciated 35% since 2007, on a trade-weighted basis, and its current account surplus has fallen from above 10% of GDP to less than 1%. This macroeconomic success takes one issue off the table and demonstrates that it is possible, through dialogue and incentives, to bring China up to global norms.

Within the category of IPR protection and forced tech transfer, a special concern is theft of technologies that have military applications. Any IPR theft from American firms makes us poorer, but theft of military technologies also undermines our security. Hence, special policies are needed to protect national security.

A final problem in the economic relationship is that Trump administration policy has completely lacked realism, and the examples are endless. The administration imposed a 25% tariff on most imports from China, a tax paid by American consumers and firms, in order to get China to negotiate. This succeeded in bringing China to the table, but the U.S. side over-estimated its leverage. U.S. trade is simply not that important to China anymore (it conducts more trade with ASEAN than with the U.S.). So, China was not willing to make significant structural reforms. It did agree to purchase more from the U.S., but the specific targets in the phase 1 deal also proved to be unrealistic. As of mid-2020, China was only buying about half of what would be required to meet the targets. This is partly because of the COVID-19 pandemic, but the experience shows the failure of managed trade with China. The U.S. policy also showed a lack of understanding of how global value chains work. Faced with the U.S. tariffs, some final assembly shifted to countries like Indonesia and Vietnam. But China's exports of machinery and components to those countries increased, so its overall exports did not decrease. The U.S., in turn, imported more from Southeast Asia. As a result, American consumers paid more but trade patterns did not change in any fundamental way. The China tariffs also did not account for the fact that U.S. firms use imported parts and components to make their production more competitive. Even before the virus hit, Trump's China tariffs had cost the U.S. a net loss of 175,000 manufacturing jobs. A final example of the lack of realism came in the summer of 2019 when President Trump designated China as a "currency manipulator," an accusation that



was simply not true. As the Trump administration comes to an end, the U.S. is left with a confused and unrealistic economic policy towards China.

## OBJECTIVES

*China should move as quickly as possible to developed-country norms for trade and investment.* Specific features of this evolution could include stronger penalties for IPR violations; redress mechanisms for firms that feel subject to forced technology transfer; discipline of state enterprises; and changes in laws and policies to make R&D subsidies WTO compatible. This should be codified in various ways. Initially, this could be a bilateral agreement, similar to what was envisaged for phase 2 of a U.S.-China agreement. But changes in policies will have more force if they are included in larger agreements, ideally with Asian and/or European partners, and eventually in reformed WTO rules.

*China should integrate more into global economic institutions.* China is a member of the IMF, World Bank, and WTO, but not part of the Paris Club. However, its weight in the IMF and World Bank (which are shareholding institutions) is far below what any reasonable assessment of its role in the world economy would dictate. The U.S. in recent years has resisted increasing the weight of China and other developing countries in these institutions. But recognizing their growing influence is necessary if they are expected to follow global rules and norms. The Paris Club may need to be renamed and relocated, but it will be important to invite China and other emerging creditors into the club. The objective here is to bring Chinese development lending into line with global practices and to have China at the table when coordinated debt relief is necessary (as probably will happen with many poor countries hit by the pandemic and global recession).

*The U.S. should sharpen and strengthen national security protections.* The U.S. has the tools to restrict exports and inward investment for products that have obvious national security implications. The trick is to distinguish genuine concerns from bogus ones; for example, a tariff is being imposed on washing machines on national security grounds. The WTO provides wide latitude for countries to define their national security needs, but America

invites abuse of the system when it abuses the system itself. What Hank Paulson has called, “small yards with high fences,” should be the goal. In other words, define a small number of national security technologies to face serious restrictions, but otherwise allow trade, investment, joint research, exchange of students and researchers — all of the foundations of an open innovation regime.

*The U.S. should undo the mistakes of the Trump administration with as little damage as possible to the U.S. economy.* One of the challenges of dealing economically with China over the next few years will be that the current policy is confused and unrealistic. Many changes need to be made: eliminating the tariffs, which have hurt American firms and consumers; moving away from managed trade; encouraging China to play a larger role in global economic institutions, not a smaller one; protecting genuine national security concerns while removing the crude protectionism implemented in the name of national security. Yet it is not a good idea to make all these changes on day one. The Trump administration alone is not responsible for the poor state of U.S.-China economic relations. China bears responsibility as well for dragging its feet for years on needed reforms. The diplomatic challenge will be to negotiate the removal of U.S. protectionism in return for structural reform.

## RECOMMENDATIONS

Negotiate away the import tariffs aimed at China in exchange for a phase 2 agreement that addresses the structural concerns. The U.S. will have to be realistic; China is not going to completely change overnight, and the U.S. has overestimated its leverage. But there are reformers in China who would like to make significant changes to non-tariff barriers, investment restrictions, IPR protection, state enterprises, and subsidies, because they believe these measures are necessary for China’s sustained growth. Significant advances are certainly possible.

Recognize that managed trade has failed and that purchase targets were unrealistic and will not be met. But send a strong message at the presidential level that the U.S. will be closely monitoring actual export flows. Given China’s rapid growth and a more open economy, American exports should be increasing rapidly (in contrast to the decline of the last few years). Policymakers could consider an

indicative range for expected growth of U.S. exports, but they should definitely discard the product-by-product targets.

Stop the talk about trade balance and the exchange rate. The level of the exchange rate is fine. The bilateral trade balance is not important. China does not have a large overall surplus. The U.S. current account deficit has also decreased significantly; if there are worries about it, then the solution lies in macroeconomic tools, not trade policy. (In particular, the U.S. would have to reduce consumption and increase savings, which is not really a political winner.)

Coordinate American economic policies on China with allies. This will involve dialogue with the EU as well as with Japan and South Korea to agree as much as possible on priorities for specific Chinese reforms. Ideally, the U.S. will rejoin TPP and push hard to include new members (South Korea, big ASEAN countries, and even the UK). The main reason for the next administration to rejoin TPP is to preserve an open global trading system centered on the U.S. The direct effect of TPP membership on the American economy will be minor, but it is important for our allies. In a truly ideal world TTIP would proceed simultaneously, and the two mega-agreements would set similar standards and policies. China would have to join this trade agreement or risk being left out. At the moment, the U.S. risks being left out in the Asia-Pacific region as RCEP and TPP proceed without it. Ambitious Asia-Pacific agreements could be the foundation for an updated WTO agreement.

Negotiate with China over its role in the international economic institutions. For example, if China were to join the Paris Club, the United States could argue for greater Chinese standing in the IMF (relocating and renaming the Paris Club should not be a big

issue). Similarly, the U.S. could trade a greater weight for China in the World Bank if it were to join the Development Assistance Committee and make its BRI loans more transparent and concessional, with competitive procurement for projects. The U.S. joining AIIB could be another incentive for China to do more through multilateral fora than bilaterally. The general point is that if the United States wants changes in Chinese behavior, it must be willing to anchor those changes in a role in the international institutions commensurate with ours.

Finally, in the national security sphere, the United States needs to rationalize its policy. Slowing China's growth or killing Huawei are not realistic national security objectives. Huawei has been set back by the policies targeting it, but it will redouble its efforts and survive with less technology input from the U.S. China is likely to continue to grow at least moderately well. It does not have to do particularly well to catch up with the U.S. in terms of overall GDP, since it has four times as many people. Consequently, the United States is going to have to live with a large China that has a very different system from our own. Clearly, America needs to protect technologies with national security implications through export and investment controls. But if the parts of the economy affected are defined too widely, then important dynamism is cut off. The notion that offshore manufacturing production can be brought back to the U.S. through trade protectionism is naïve. The Trump tariffs had no impact in this direction; if anything, they encouraged more investment in China, not less, because multinational firms are there primarily to serve the domestic market.

Most of the economy should be open to trade, investment, joint research, and student exchanges. The U.S. has enormous strengths in its labor force,



# CRAFTING A MULTILATERAL TECHNOLOGY AND CYBERSECURITY POLICY

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universities, IPR protection, deep capital markets, and flow of immigrants. If there is a level playing field, American firms and workers can be expected to do very well and to benefit from trade and investment with China.

## EXECUTIVE SUMMARY

Geo-technological changes are driving an array of economic, national security, and human rights concerns in U.S.-China relations. Calibrating technological competition and integration will be one of the foremost foreign policy challenges for the next administration, calling for a multifaceted U.S. strategy that prioritizes cooperation with allies and partners. The Trump administration's technology approach has relied disproportionately on unilateral measures instead of building coalitions of countries willing to adopt and enforce common rules and practices. U.S. policy should seek to protect American intellectual property and strategic technologies, sustain and strengthen the innovation ecosystem that makes those technologies possible and uphold American values of human rights, democracy, and the rule of law.

The task for a realistic foreign policy is to advance American interests and values through multilateral frameworks that recognize the extent to which these objectives are broadly shared. To that end, the next administration should pursue a robust policy agenda in the following categories:

- Establish a National Data Security and Privacy Framework
- Launch a Multilateral Digital Trade Initiative
- Impose Meaningful Penalties for Malicious Cyber Activity
- Revitalize International Law and Institutions Addressing New Technologies

- Empower a Dedicated Body for Internal and External Technology Policy Coordination

## THE PROBLEM

In the years coinciding with China's dramatic rise in wealth and power, the world has witnessed a series of geo-technological changes. These changes include major advances in technological innovation owing to a range of factors such as an increase in global interconnectedness and the transnational flow of data and technology, increases in the availability of massive datasets, improvements in computing power, more robust and flexible machine-learning algorithms, and the availability of open source-code libraries and technical frameworks that allow software developers to leverage the work of others for new use cases.<sup>1</sup> In contrast to earlier periods, much of this technological innovation has been driven by the civilian sector, yet many of these advances involve inherently dual-use, "strategic" technologies that are important for national defense. This dynamic has contributed to a blurring of the distinction between economic and national security concerns, confronting policymakers with an innovation-security conundrum: How can strategically sensitive emerging technologies be protected without undermining the economic ecosystem that gives rise to their development?<sup>2</sup> One aspect of the conundrum is the worry that data privacy and national security are increasingly interconnected. Data (and data networks) can be exploited in ways that threaten security, but they also form the lifeblood of technological innovation on which both economic growth and national security depend.<sup>3</sup>

In tandem with these developments, there has been a long-term shift away from U.S. technological supremacy toward a more multipolar world in which no country is technologically self-sufficient and the global economy is physically and digitally integrated

and interdependent. In addition, a relative decline in the significance of traditional military power and geopolitical competition has made economic and technological strength a more salient feature of competition among nation-states for political influence.<sup>4</sup> As a paradigmatic case of this interdependence and competition, the economies of China and the United States have gone from largely complementary — with China supplying low-cost goods to American consumers and the United States providing capital to drive China’s export-led growth — to increasingly competitive, with both countries seeking to secure their future prosperity through cutting-edge technologies and innovative capacity. This raises the stakes of longstanding, fundamental disagreements between the United States and China over the ground rules of economic competition, with each side viewing their equities in that competition as vital interests.

The Chinese practices of principal concern for U.S. policymakers were summarized in the U.S. Trade Representative’s 2018 Section 301 report and the White House’s 2020 summary of the “United States Strategic Approach to the People’s Republic of China.” These include concerns that the PRC “(1) requires or pressures United States companies to transfer their technology to Chinese entities; (2) places substantial restrictions on United States companies’ ability to license their technology on market terms; (3) directs and unfairly facilitates acquisition of United States companies and assets by domestic firms to obtain cutting edge technologies; and (4) conducts and supports unauthorized cyber intrusions into United States companies’ networks to access sensitive information and trade secrets.”<sup>5</sup> Broadly framed, China has not fully lived up to its WTO commitments and other promises to respect U.S. intellectual property rights or to pursue technological competition on fair market terms.<sup>6</sup> A noteworthy example is the U.S. complaint that China has failed to abide by its 2015 pledge not to “conduct or knowingly support cyber-enabled theft of intellectual property, including trade secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors.”<sup>7</sup>

Since at least 2016, an array of issues blending considerations of national security, human rights, and democratic integrity have been added to longstanding economic concerns. These include

Chinese disinformation campaigns,<sup>8</sup> the prospect of Chinese interference in U.S. domestic politics,<sup>9</sup> and the export of Chinese censorship and surveillance practices along with the technologies that enable those practices.<sup>10</sup> These concerns are linked by the growing sense outside China that under Xi Jinping’s authoritarian policies, the role of the state in China’s economy and society has become more far-reaching and coercive; that digital integration with China exposes sensitive U.S. data and technology to actual and potential exploitation by the Chinese government; and that the PRC is pursuing a strategy of technological advancement at least partially at odds with U.S. interests and values.

These complex challenges call for a multifaceted U.S. strategy that recognizes the need for cooperation with allies and partners. On this score, the Trump administration has fallen short, despite its deployment of a wide range of policy tools, including export controls, investment screenings, and presidential emergency authorities. Some of these tools, such as immigration restrictions targeted at preventing “non-traditional collectors” in STEM disciplines, may fail to align means with ends.<sup>11</sup> For others, such as the new Department of Defense “defending forward” cyber strategy targeting persistent network-based threats,<sup>12</sup> a lack of accessible information may limit the public’s ability to confidently evaluate the policy. In other areas, U.S. strategy appears incoherent. Take, for example, the approach of indicting-without-prosecuting Chinese hackers for cybertheft on U.S. networks: judging by its publicly stated aims (most notably, deterrence), that strategy appears to be a spectacular failure.<sup>13</sup>

Much of the Trump administration’s technology strategy has relied too heavily on unilateral measures instead of building coalitions of countries willing to adopt and enforce common rules and practices. To date, the bilateral tariff war with China has damaged the U.S. economy without resolving structural issues relating to Chinese technology acquisition practices and industrial policies.<sup>14</sup> On cybersecurity, the Trump administration has focused disproportionate attention on specific Chinese companies such as Huawei and ByteDance but neglected the importance of creating a multilateral data protection framework that raises standards across the board for all entities.



The use of export controls has increased in relation to specific entities — most prominently, Huawei and its affiliates — but the Commerce Department has been slow in fulfilling its legislative mandate to broaden the scope of export controls involving “emerging and foundational technologies.” This hesitation is due in part to concerns that new controls will disadvantage U.S. firms, particularly if they are not closely coordinated with partner countries. Executive orders aimed at banning TikTok and WeChat have met with skepticism in allied capitals, where regulators appear unlikely to follow suit.<sup>15</sup> Finally, recent statements of U.S. policy have failed to adequately account for the benefits of technological integration with China, compounded by a failure to appreciate the extent to which U.S. allies are wary of disentanglement with China or a global bifurcation into dueling technological ecosystems.

## OBJECTIVES

The objectives of a multilateral U.S. technology and cybersecurity policy are straightforward:

- Strengthen and defend American national security and economic prosperity
- Protect U.S. intellectual property and strategic technologies
- Sustain and strengthen the innovation ecosystem that makes those technologies possible
- Mitigate the risks of espionage, unlawful data exploitation, and sabotage or destruction on U.S. networks or through global supply chains
- Counter foreign disinformation campaigns and censorship on internet platforms that operate in the U.S. market
- Uphold American values of human rights, democracy, and the rule of law
- Prevent a global splintering into rival technological and information systems that would undermine these goals

## RECOMMENDATIONS

In an interconnected world in which technological power and capabilities are distributed, none of

the aforementioned objectives can be achieved unilaterally. And unilateral policy cannot realistically unwind globalization or interconnectedness. The task for a realistic foreign policy is to advance American interests and values through multilateral frameworks that recognize the extent to which these interests are broadly shared. To that end, the next administration should consider the following policy options:<sup>16</sup>

### **Establish a national data security and privacy framework:**

The next administration should work with Congress to enact legislation establishing a federal data protection framework that builds on the catalyzing functions of the California Consumer Privacy Act and the EU General Data Protection Regulation to set “highest common denominator” standards for data brokers operating in the U.S. market, regardless of national origin, while sustaining broadly free flows of data across national borders.<sup>17</sup> The legislation should include clear standards for the collection, processing, and sharing of personal information,<sup>18</sup> and it should be enforceable through a combination of federal regulatory powers and private rights of action.<sup>19</sup> Such legislation would not eliminate differences between the United States and its European allies on data governance, but it could help to narrow the gap and is important for U.S. interests in its own right.<sup>20</sup> At the same time, the U.S. should rationalize its cybersecurity liability regime. Following the recommendations of the Cyberspace Solarium Commission, the administration should work with Congress to pass a law “establishing that final goods assemblers of software, hardware, and firmware are liable for damages from incidents that exploit known and unpatched vulnerabilities.”<sup>21</sup> Software vendors should be responsible for developing and distributing patches in a timely manner, and companies should be encouraged to disclose vulnerabilities and implement the basic steps needed to ensure they are regularly updating their systems. These duties of care could be accompanied by requirements for Internet-of-Things producers to certify the security of systems built into their products and to clarify cyber risks for consumers over the life cycle of their products.<sup>22</sup>

### **Launch a multilateral digital trade initiative:**

Improving domestic data governance should be viewed as predicate to a broader global strategy. In tandem with legislative reform at home, the

United States should seek to find common ground on digital trade with countries that have strong commitments to data security and interoperability, inspired by Japan's proposal for "data free flow with trust."<sup>23</sup> Over the past four years, Washington has lost ground in setting the terms of debate on cross-border data flows. An enforceable digital trade agreement among a club of like-minded nations could benefit American workers and the innovation base while creating long-term incentives for countries such as China to improve their domestic governance regimes and cut back on state-sponsored theft of foreign IP. The digital trade chapter of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) largely coheres with provisions in the U.S.-Mexico-Canada Agreement<sup>24</sup> and the U.S.-Japan Digital Trade Agreement.<sup>25</sup> Short of joining CPTPP, the next administration could expand upon its digital trade chapter with more stringent and comprehensive rules to establish a standalone digital trade arrangement.

**Impose meaningful penalties for malicious cyber activity:** Chinese state-linked hackers have not been appreciably deterred by the recent spate of Justice Department indictments for cybertheft on U.S. networks where there is no realistic chance of extraditing or prosecuting the defendants.<sup>26</sup> Various public reports suggest the U.S. government may be expanding its "defend forward" strategy aimed at disrupting malicious cyber activities at their source, including activities below the threshold of armed conflict.<sup>27</sup> Although clear signaling is needed to ensure these actions do not spark escalation, the U.S. should expand such efforts to impose meaningful costs for specific, attributable incidents of cybertheft.<sup>28</sup> As a next step, Washington should work to organize a coalition of like-minded nations to enforce norms against commercial cybertheft. This could be done through discrete, targeted multilateral sanctions against entities that engage in and benefit from operations for which attribution can be accomplished publicly and jointly with partner governments.<sup>29</sup> Incentives could be offered for demonstrable changes in behavior. For example, existing tariffs could be eased in exchange for progress on IP theft and other practices. The U.S. and its partners could also consider arrangements that acknowledge (without morally sanctioning) China's existential concerns about the free flow of information threatening China's domestic social

order. Such an arrangement might include, for example, a commitment to forgoing the government-sponsored provision of software tools that enable Chinese citizens to circumvent the Great Firewall *if and to the extent* that the PRC abandons state-sponsored IP theft and campaigns of disinformation and censorship in the U.S. market.<sup>30</sup>

**Revitalize international law and institutions addressing new technologies:** Recognizing the importance of cooperation on cybersecurity and emerging technologies, the U.S. should recommit to multilateral efforts such as the United Nations Group of Governmental Experts on developments in the field of information and communications technologies in the context of international security, which address norms, confidence-building measures, and the question of how international law applies to cyberspace and lethal autonomous weapons systems.<sup>31</sup> The next administration should make clear that it recognizes common interests with China and among all countries in the integrity and stability of the global financial system; in not being misled into armed conflict by third-party malefactors; in counter-proliferation measures to prevent cyber weapons or autonomous weapons systems from getting into the hands of malicious non-state actors; in better understanding how other countries approach legal-policy questions such as the definitions of "armed conflict" or "critical infrastructure" or "human control" over autonomous systems; and in cooperating to combat transnational cybercrime, among other objectives.<sup>32</sup> At the same time, the U.S. should spur the launch of a new multi-stakeholder initiative aimed at ensuring the scientific independence of international standard-setting bodies for 5G and other technologies, monitoring and publicizing efforts by governments and their proxies to manipulate technical standard-setting processes for political ends.<sup>33</sup> Similarly, the U.S. could coordinate the expansion of NATO's efforts on countering disinformation to like-minded nations in the Indo-Pacific and other regions.<sup>34</sup>

**Empower a dedicated body for internal and external technology policy coordination:** The next administration should consider establishing an interagency, CFIUS-like coordinating group to examine the practical implications of prospective technology policies such as export controls, entity listings, supply chain risk standards, immigration policies, subsidies, and more. Whether designed

as a joint committee with a lead agency (perhaps housed in the Commerce Department) or as an expansion and elevation of the White House Office of Science and Technology Policy (with enhanced oversight power) or within the National Security Council, the group would seek to ensure that federal policies are as narrowly tailored as possible to protect sensitive technologies without cutting off the lifeblood of their development: data, investment, and human capital.<sup>35</sup> Such an entity should have the flexibility to coordinate innovation policy proposals among allies and partners by proposing economic incentives for countries with varying threat perceptions to join together in adopting narrowly scoped technology protections while spurring intra-group cooperation through targeted bilateral and multilateral pooling of data, funding for innovation, and reduction of licensing and regulatory barriers to cooperation among allies in sensitive technologies.<sup>36</sup> The coordinating group could advise on multilateral principles for supply chain security, building on inclusive statements such as the May 2019 Prague Proposals<sup>37</sup> and the EU Toolbox on 5G Security.<sup>38</sup> It could guide joint funding for research and development on potential software-based solutions to 5G (and eventually 6G) cybersecurity.<sup>39</sup> And it could advise on how to craft sanctions and articulate clear diplomatic signals for entities that enable human rights abuses through the use of digital tools for surveillance and repression, especially in Xinjiang.<sup>40</sup> In carrying out these functions, the coordinating group would benefit from consulting a range of perspectives, including technical and subject-matter experts outside the federal government. Private-sector experts could be engaged in accordance with the Federal Advisory Committee Act to help decision-makers “game out” the downstream consequences of mooted policies and to calibrate strategies that account for the competing values and interests at stake.

## REFERENCES

- 1 Greg Allen, “Understanding AI Technology,” (Washington, DC: Department of Defense Joint Artificial Intelligence Center, April 2020), <https://www.ai.mil/docs/Understanding%20AI%20Technology.pdf>.
- 2 Robert D. Williams, “In the Balance: The Future of America’s National Security and Innovation Ecosystem,” *Lawfare*, November 30, 2018, <https://www.lawfareblog.com/balance-future-americas-national-security-and-innovation-ecosystem>; Robert D. Williams, “The Innovation-Security Conundrum in U.S.-China Relations,” *Lawfare*, July 24, 2018, <https://www.lawfareblog.com/innovation-security-conundrum-us-china-relations>.
- 3 Robert D. Williams, “Reflections on TikTok and Data Privacy as National Security,” *Lawfare*, November 15, 2019, <https://www.lawfareblog.com/reflections-tiktok-and-data-privacy-national-security>.
- 4 Harvey Brooks et al., *Mastering a New Role: Shaping Technology Policy for National Economic Performance* (Washington: National Academy Press, 1993), 28-60, <https://www.nap.edu/read/2103/chapter/4>.
- 5 “United States Strategic Approach to the People’s Republic of China,” The White House, May 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/05/U.S.-Strategic-Approach-to-The-Peoples-Republic-of-China-Report-5.20.20.pdf>.
- 6 Bob Davis and Lingling Wei, *Superpower Showdown: How the Battle Between Trump and Xi Threatens a New Cold War* (New York: Harper Business, 2020).
- 7 “Fact Sheet: President Xi Jinping’s State Visit to the United States,” The White House, September 25, 2015, <https://obamawhitehouse.archives.gov/the-press-office/2015/09/25/fact-sheet-president-xi-jinpings-state-visit-united-states>; Robert D. Williams, “The ‘China, Inc.+’ Challenge to Cyberspace Norms,” (Stanford, CA: Hoover Institution, February 2018), [https://www.hoover.org/sites/default/files/research/docs/williams\\_webreadypdf1.pdf](https://www.hoover.org/sites/default/files/research/docs/williams_webreadypdf1.pdf).
- 8 Kate Conger, “Twitter Removes Chinese Disinformation Campaign,” *The New York Times*, June 11, 2020, <https://www.nytimes.com/2020/06/11/technology/twitter-chinese-misinformation.html>.
- 9 Rush Doshi and Robert D. Williams, “Is China Interfering in American Politics?,” *Lawfare*, October 1, 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/10/02/is-china-interfering-in-american-politics/>; David E. Sanger and Julian E. Barnes, “U.S. Warns

- Russia, China and Iran Are Trying to Interfere in the Election. Democrats Say It's Far Worse.," *The New York Times*, July 24, 2020, <https://www.nytimes.com/2020/07/24/us/politics/election-interference-russia-china-iran.html/>.
- 10 Alina Polyakova and Chris Meserole, "Exporting digital authoritarianism: The Russian and Chinese models," (Washington, DC: The Brookings Institution, August 2019), <https://www.brookings.edu/research/exporting-digital-authoritarianism/>; Sheena Chestnut Greitens, "Dealing with Demand for China's Global Surveillance Exports," (Washington, DC: The Brookings Institution, April 2020), [https://www.brookings.edu/wp-content/uploads/2020/04/FP\\_20200428\\_china\\_surveillance\\_greitens\\_v3.pdf](https://www.brookings.edu/wp-content/uploads/2020/04/FP_20200428_china_surveillance_greitens_v3.pdf).
  - 11 Christopher Wray, "Responding Effectively to the Chinese Economic Espionage Threat," (remarks, Washington, DC, February 6, 2020), <https://www.fbi.gov/news/speeches/responding-effectively-to-the-chinese-economic-espionage-threat>.
  - 12 "Summary: Department of Defense Cyber Strategy," U.S. Department of Defense, 2018, [https://media.defense.gov/2018/Sep/18/2002041658/-1/-1/1/CYBER\\_STRATEGY\\_SUMMARY\\_FINAL.PDF](https://media.defense.gov/2018/Sep/18/2002041658/-1/-1/1/CYBER_STRATEGY_SUMMARY_FINAL.PDF).
  - 13 Jack Goldsmith and Robert D. Williams, "The Failure of the United States' Chinese-Hacking Indictment Strategy," *Lawfare*, December 28, 2018, <https://www.lawfareblog.com/failure-united-states-chinese-hacking-indictment-strategy>; Robert D. Williams, "America's Hopelessly Anemic Response to One of the Largest Personal-Data Breaches Ever," *The Atlantic*, February 12, 2020, <https://www.theatlantic.com/ideas/archive/2020/02/whats-behind-the-indictment-of-the-equifax-hackers/606466/>.
  - 14 Ryan Hass and Abraham Denmark, "More pain than gain: How the US-China trade war hurt America," The Brookings Institution, August 7, 2020, <https://www.brookings.edu/blog/order-from-chaos/2020/08/07/more-pain-than-gain-how-the-us-china-trade-war-hurt-america/>.
  - 15 Vincent Manancourt and Laura Kayali, "TikTok finds safe haven in Europe," *Politico*, August 6, 2020, <https://www.politico.com/news/2020/08/06/tiktok-finds-safe-haven-in-europe-392274>.
  - 16 Aspects of these recommendations are drawn from the author's October 2020 working paper published by the University of Pennsylvania as part of its Project on the Future of U.S.-China Relations. See Robert D. Williams, "Beyond Huawei and TikTok: Untangling U.S. Concerns over Chinese Tech Companies and Digital Security," (Philadelphia, PA: University of Pennsylvania, October 2020), <https://web.sas.upenn.edu/future-of-us-china-relations/technology-2/>.
  - 17 Anupam Chander, Margot E. Kaminski, and William McGeeveran, "Catalyzing Privacy Law" (April 24, 2020), *Minnesota Law Review*, Forthcoming, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3433922](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3433922).
  - 18 Jennifer Daskal and Samm Sacks, "The Furor Over TikTok Is About Something Much Bigger," *Slate*, November 8, 2019, <https://slate.com/technology/2019/11/tiktok-bytedance-china-geopolitical-threat.html>.
  - 19 In addition to supporting broad-based data protection legislation, the next administration should work with Congress to reform the Foreign Intelligence Surveillance Act (FISA) and consider adopting the recommendations of the Justice Department's Inspector General to improve public confidence in the FISA process. For examples of policy proposals along these lines, see Bob Bauer and Jack Goldsmith, "The FBI Needs to Be Reformed," *The Atlantic*, December 16, 2019, <https://www.theatlantic.com/ideas/archive/2019/12/fisa-process-broken/603688/>; Margaret Taylor, "The Senate Proposes Five Amendments to FISA Reform," *Lawfare*, May 12, 2020, <https://www.lawfareblog.com/senate-proposes-five-amendments-fisa-reform>; Elliot Setzer, "Justice Department Inspector General Finds Broader Pattern of Errors in FISA Applications," *Lawfare*, March 31, 2020, <https://www.lawfareblog.com/justice-department-inspector-general-finds-broader-pattern-errors-fisa-applications>.



- 20 Joshua P. Meltzer, “The Court of Justice of the European Union in Schrems II: The impact of GDPR on data flows and national security,” *VoxEU*, August 5, 2020, <https://voxeu.org/article/impact-gdpr-data-flows-and-national-security>.
- 21 “Report of the United States Cyberspace Solarium Commission,” (Washington, DC: U.S. Cyberspace Solarium Commission, March 2020), at 76, <https://www.solarium.gov/report>.
- 22 Robert D. Williams, “Securing 5G Networks: Challenges and Recommendations,” Council on Foreign Relations, July 15, 2019, <https://www.cfr.org/report/securing-5g-networks>.
- 23 Nigel Cory, Robert D. Atkinson, and Daniel Castro, “Principles and Policies for ‘Data Free Flow With Trust’,” Information Technology & Innovation Foundation, May 27, 2019, <https://itif.org/publications/2019/05/27/principles-and-policies-data-free-flow-trust>.
- 24 “Comparison of Selected Digital Trade Provisions in the United States-Mexico-Canada Agreement (USMCA) and the Trans-Pacific Partnership (TPP),” The Software Alliance, April 11, 2019, <https://www.bsa.org/files/policy-filings/04112019tppvusmcacomparison.pdf>.
- 25 “Agreement Between the United States of America and Japan Concerning Digital Trade,” January 1, 2020, [https://ustr.gov/sites/default/files/files/agreements/japan/Agreement\\_between\\_the\\_United\\_States\\_and\\_Japan\\_concerning\\_Digital\\_Trade.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Agreement_between_the_United_States_and_Japan_concerning_Digital_Trade.pdf).
- 26 Goldsmith and Williams, “The Failure of the United States’ Chinese-Hacking Indictment Strategy.”
- 27 Erica D. Borghard and Mark Montgomery, “Defend Forward as a Whole-of-Nation Effort,” *Lawfare*, March 11, 2020, <https://www.lawfareblog.com/defend-forward-whole-nation-effort>; Jeffrey A. Rosen, “Remarks by Deputy Attorney General Jeffrey A. Rosen at an Announcement of Charges and Arrests in Computer Intrusion Campaigns Related to China,” (remarks, Washington, DC, September 16, 2020, <https://www.justice.gov/opa/speech/remarks-deputy-attorney-general-jeffrey-rosen-announcement-charges-and-arrests-computer> (“[T]he Department of Justice and the FBI have been working with seven private sector partners, including Microsoft Corporation, Google, Facebook, and Verizon Media, to identify and neutralize the computer infrastructure that APT-41 uses to conduct its crimes: its virtual private servers, malware, malicious domains, and other tools. We have done this through a combination of public and private actions, including technical measures to block this threat actor from accessing victims’ computer systems, issuing a public safety announcement outlining their tactics, techniques, and procedures (to aid network defenders), and by taking control of, or otherwise disabling, their accounts pursuant to court orders or terms of service violations.”).
- 28 Ben Buchanan and Robert D. Williams, “A Deepening U.S.-China Cybersecurity Dilemma,” *Lawfare*, October 24, 2018, <https://www.lawfareblog.com/deepening-us-china-cybersecurity-dilemma>.
- 29 Lorand Laskai, “A New Old Threat: Countering the Return of Chinese Industrial Cyber Espionage,” Council on Foreign Relations, December 6, 2018, <https://www.cfr.org/report/threat-chinese-espionage>.
- 30 Jack Goldsmith, “The Failure of Internet Freedom,” Columbia University Knight First Amendment Institute, June 13, 2018, <https://knightcolumbia.org/content/failure-internet-freedom> (“Network interventions to promote freedom and democracy are not on the same moral plane as network interventions to disrupt or undermine democracy. But regardless of the morality of the situation, it is fanciful to think that the digitally dependent United States can continue its aggressive cyber operations in other nations if it wants to limit its own exposure to the same. Unless the United States can raise its cyber defenses or improve its cyber deterrence — a dim prospect at the moment — it will need to consider the possibility of a cooperative arrangement in which it pledges to forgo threatening actions in foreign networks in exchange for relief

from analogous adversary operations in its networks.”).

- 31 Nele Achten, “New U.N. Debate on Cybersecurity in the Context of International Security,” *Lawfare*, September 30, 2019, <https://www.lawfareblog.com/new-un-debate-cybersecurity-context-international-security>; Christian Ruhl, Duncan Hollis, Wyatt Hoffman, and Tim Maurer, “Cyberspace and Geopolitics: Assessing Global Cybersecurity Norm Processes at a Crossroads,” Carnegie Endowment for International Peace, February 26, 2020, <https://carnegieendowment.org/2020/02/26/cyberspace-and-geopolitics-assessing-global-cybersecurity-norm-processes-at-crossroads-pub-81110>.
- 32 Buchanan and Williams, “A Deepening U.S.-China Cybersecurity Dilemma.”
- 33 Jack Kamensky, “China’s Participation in International Standards Setting: Benefits and Concerns for U.S. Industry,” *China Business Review*, February 7, 2020, <https://www.chinabusinessreview.com/chinas-participation-in-international-standards-setting-benefits-and-concerns-for-us-industry/>.
- 34 “NATO’s approach to countering disinformation: a focus on COVID-19,” North Atlantic Treaty Organization, July 17, 2020, <https://www.nato.int/cps/en/natohq/177273.htm>. Recognizing the constitutional implications of speech regulation, such efforts should focus primarily on transparency and education around disinformation rather than government interventions to curate online speech.
- 35 Robert D. Williams, “In the Balance: The Future of America’s National Security and Innovation Ecosystem.”
- 36 Daniel Kliman, Ben FitzGerald, Kristine Lee, and Joshua Fitt, *Forging an Alliance Innovation Base*, (Washington, DC: Center for a New American Security, March 2020), <https://s3.amazonaws.com/files.cnas.org/documents/CNAS-Report-Alliance-Innovation-Base-Final.pdf?mtime=20200329174909>.
- 37 “Prague 5G Security Conference announced series of recommendations: The Prague Proposals,” Government of the Czech Republic, March 3, 2019, <https://www.vlada.cz/en/media-centrum/aktualne/prague-5g-security-conference-announced-series-of-recommendations-the-prague-proposals-173422/>.
- 38 “Secure 5G Networks: Questions and Answers on the EU Toolbox,” European Commission, January 29, 2020, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_127](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_127).
- 39 Dwight Weingarten, “Open RAN Bill Included in Senate NDAA, Sen. Warner Pushes for More Funding,” *MeriTalk*, June 30, 2020, <https://www.meritalk.com/articles/open-ran-bill-included-in-senate-ndaa-sen-warner-pushes->

# ADDRESSING THE DATA SECURITY RISKS OF US-CHINA TECHNOLOGY ENTANGLEMENT

## SAMM SACKS

[for-more-funding/](#).

40 “Xinjiang Supply Chain Business Advisory,” U.S. Department of State, July 1, 2020, <https://www.state.gov/xinjiang-supply-chain-business-advisory/>.

### EXECUTIVE SUMMARY

U.S.-China technology interdependence creates a suite of challenges for cross border data flows, data privacy, and data security. These challenges extend beyond the traditional risks of cyber espionage and protecting intellectual property (IP) to daunting new problems in managing the vast quantities of data created by digital technologies that underpin the global economy. The right way to address these issues, however, requires a broader approach than narrowly focusing on them within the U.S.-China technology conflict. Instead, it is time for the United States to propose a holistic and comprehensive vision for internet governance.

The value of data is realized when it is flowing, but the right safeguards must be in place. Rather than create new sovereign borders around data or one-off bans on Chinese companies, U.S. policymakers must put forward a U.S. vision of internet governance to create a more privacy protective, secure, and open internet in its own right, regardless of China’s actions. Anne-Marie Slaughter has also argued for an open international order, but she writes that problems arise when we are “too connected, not connected enough, or connected in the wrong ways to the wrong people or things.”<sup>1</sup> The challenge is to create a system in which the United States connects and disconnects in the right places. Below are the main pillars of what such system should look like:

- Pass a comprehensive federal privacy law with strong enforcement to manage how all

companies collect, retain, and share data.

- Create a multilateral approach focused on allowing certain kinds of commercial data to flow, creating incentives for countries whose data regimes meet agreed upon thresholds, yet without blocking data flows to those who do not.
- Develop a targeted way to evaluate the risks posed by access to different kinds of data in various transactions, because not all data has the same levels of sensitivity, and it is important to distinguish between national security and privacy risks.
- Create policy that works in coordination with the development of technical solutions (e.g., encryption, federated learning, etc) to make security possible in low trust environments, recognizing that the world is interconnected, and it will not be possible to fully disconnect from networks utilizing Chinese equipment.

Now is the time to recapture U.S. global leadership in setting the rules for governing emerging technologies fueled by data. Inaction will mean ceding leadership to Europe, China, and other governments as these rules are in incipient stages and the digital economy reshapes the world.

### THE PROBLEM

The distinction between data privacy and national security is blurring in a technology standoff between the U.S. and China. Data has become the great power competition of our time, driven by who creates it, who owns it, with whom its shared, and who writes the rules. There is a growing bipartisan consensus that the U.S.-China rivalry will define this century, with a race over technology as the battleground, and that the way to win is for the United States to erect more walls to protect our crown jewels from Beijing.

In the most recent and visible manifestation of this data conflict, the Trump administration invoked the International Emergency Economic Powers Act (IEEPA) to ban “transactions” between U.S. entities and the parent companies of TikTok and Wechat on August 6.<sup>2</sup> Roughly a week later, he directed the Committee of Foreign Investment in the United States (CFIUS) to compel ByteDance to divest itself of TikTok.<sup>3</sup> From the perspective of the national security community, the risk is less about Beijing using data on individual TikTok users for coercion or blackmail and more about the potential use of that data, if integrated with other datasets, by Beijing’s security apparatus to perform link analysis or train machine learning systems in ways that could more precisely target and manipulate Americans.

A flurry of proposed legislation also seeks to address these risks by requiring that apps disclose their country of origin<sup>4</sup> or stopping U.S. citizen data from flowing to countries deemed adversaries.<sup>5</sup>

The list of Chinese companies facing greater U.S. government scrutiny over data security and China is growing. In January, the U.S. Department of the Interior (Dol) issued an order to ground its entire drone program because of concerns that data could be sent to China since the majority of the Dol’s fleet of drones are either made by the Chinese drone maker DJI or with components from other Chinese suppliers.<sup>6</sup> In 2019, CFIUS ordered the Chinese gaming company Beijing Kunlun Tech to divest its ownership of the gay dating app Grindr because of concerns that Beijing could combine data on personal relationships from Grindr with what it is presumed to have obtained from the Office of Personnel Management data breach of over 21 million U.S. national security personnel records.<sup>7</sup>

The risks cut two directions: not only security concerns that U.S. citizen data could be accessed by the Chinese government but also ethical concerns over the way in which U.S. firms operating inside of China handle Chinese citizen data. Apple has faced criticism for storing encryption keys in China for iCloud user accounts, potentially making it vulnerable to access demands under China’s legal system.<sup>8</sup> Nearly two decades ago, Yahoo became the posterchild for a worst-case scenario when the company turned over email content to Chinese authorities that resulted in a ten year jail sentence for a dissident.<sup>9</sup>

Taken together, these different controversies reveal

a tangle of issues impacting civil liberties, national security, and U.S.-China technology competition. The complexity is compounded by the fact that they are occurring at a moment when we are shoveling more data to technology companies in the virtual world of the COVID lockdown, while U.S. social media platforms like Facebook and Twitter are shaping public information in ways that impact election security and public health.

Trying to protect data by constructing walls around it will not make data any more secure, nor will it help the U.S. to compete more effectively with China. This is a 20th century approach to solve a 21st century problem. The power that comes from data is not zero sum, because its value is realized when it is flowing rather than being locked inside the borders of states. Data requires an entirely new way of conceptualizing power — one that recognizes the need for data to flow but also creates the proper safeguards since openness can be exploited by government surveillance and corporate profit. This is the dilemma of an open data world.

## OBJECTIVES

**Data should flow freely around the world to preserve cross border digital trade, not restricted based on geography.**<sup>10</sup> In the next five years when half of the global economic output will be created digitally,<sup>11</sup> there is much good that will come from ensuring that data is combined and shared across borders. A Deloitte report for the European Commission found that data flows would generate an additional 4% of gross domestic product growth by 2020.<sup>12</sup> Numerous economic models show that data flows are the lifeblood of the modern economy, underpinning international trade by sending consumer data across borders and allowing smaller businesses in far flung regions of the world to reach vastly bigger markets over the internet.

To understand why this is the case, it is important to think about what will happen in a world in which countries do not allow data to cross borders. It would be a world in which countries do not share data needed to decode how immune systems respond to COVID-19 to develop treatments and a vaccine or analyze how thousands of genes fight cancer.<sup>13</sup> Where information systems are more vulnerable to hackers. Where repressive governments around the world have easier pathways to surveil and crack down



on dissidents when they demand data be stored locally in easy reach of domestic police. Where the data collected from the sensors on aircraft flying around the world does not get sent back to a central location to be combined and analyzed for safety.<sup>14</sup> Where a consumer appliance company cannot weave together information from its research and development center in Japan with parts sourced from South Korea and China, sent to be manufactured in Taiwan, and distributed to Singapore and Brazil.<sup>15</sup>

The United States must step up to lead a new international order based on interconnection and turn the tide against the rising trend of countries seeking to retain this vital new currency within their borders. The problem is that openness also can be exploited, posing legitimate risks from a privacy and national security perspective.

**We must create the right safeguards to account for national security and privacy risks that accompany an interconnected world.** The Justice Department warned that Google's planned undersea cable linking the U.S. with Hong Kong would expose data flowing through those networks to spying by the Chinese government. What was meant to be a data hub linking the U.S. across Asia could allow data to be siphoned off to China's intelligence services. Huawei's dominance in telecommunications infrastructure could allow the Chinese government to intercept communications crossing those networks or disrupt or shut off connectivity given that everything from water to transportation systems will rely on software in the future. Open data flows are not just exploited by governments, either. In her book *The Age of Surveillance Capitalism*, Shoshana Zuboff argued that companies vacuuming up data for profit threaten democratic freedoms. She said in an interview that "If we are treated as a mass of 'users', to be herded and coaxed, then this promise becomes meaningless. I am a distinctive human. I have an indelible crucible of power within me. I should decide if my face becomes data, my home, my car, my voice becomes data. It should be my choice."<sup>16</sup>

Anne-Marie Slaughter has also argued for an open international order, but she writes that problems arise when we are "too connected, not connected enough, or connected in the wrong ways to the wrong people or things."<sup>17</sup> There are sometimes legitimate reasons to close off, but the

goal is to avoid launching a race to bottom with countries hoarding their data inside their borders or undermining innovation with data as a force for good. It is critical to be selective about the kind of guardrails and where they belong.

**We want to be in a strong position to compete effectively with China.** U.S. actions to respond to data security risks posed by the Chinese government are not occurring in a vacuum. The policy approach of the United States should be tailored to account for the fact that technology competition with China will play out not only in the United States and China but also in other places, from India to Europe. How the U.S. government responds to Chinese companies operating in the United States will have ramifications for whether other countries are willing to accept an American vision of data governance.

Moreover, the ability of U.S. firms to maintain a high rate of innovation depends on access to global markets, talent, and large and diverse international datasets. An increasing obstacle to the ability of U.S. companies to operate internationally — beyond China — is rising data sovereignty elsewhere, from Europe to India to Vietnam. If U.S. firms cannot transmit data out of the countries in which they operate overseas, they lose access to the value of creating international datasets. This directly impacts economic growth and AI innovation because of the ways large, diverse datasets are core to building AI applications that work across a variety of geographies, languages, cultures, and demographics.

**The U.S. must recapture global leadership in setting the rules for digital technologies.** Inaction on federal privacy law and the creation of a comprehensive approach to data security and privacy will mean ceding leadership to Europe, China, and other governments at a moment when the rules for governing emerging technologies are in early stages.

The path we are on now will strengthen China's leadership in global technology governance. By compelling ByteDance to sell TikTok to a U.S. company, the U.S. government has legitimized China's own model, which requires foreign cloud service providers to take a minority share in a partnership with a Chinese company that will run their services in China. Our actions have set the stage for others around the world to do the

same. Already, Chinese think tanks and scholars are promoting this approach as the solution for creating a global cloud governance model that allows for data sovereignty. The U.S. needs to step up to offer an alternative vision for data governance to preserve an open and secure global internet.

## RECOMMENDATIONS

Looking back at different junctures in history, there are short periods of time in which the rules that are written create an order for the forthcoming several decades. In the aftermath of World War II, the institutions and rules ushered in the integration of trade, capital, and labor that underpin globalization as we know it today. We are now at one of these inflection points, but this time what is at stake is our own data and whether it will be a force for empowerment or a resource to exploit. If we can get this right, the U.S. has a chance to regain its lost leadership to create a more privacy protective, secure, and open internet.

The challenge is not just how the U.S. should most effectively compete with China, but part of a much bigger set of questions about how to secure data in an interconnected world and protect civil liberties and national security while also enabling data to fuel economic and technological development as it crisscrosses the world. Some policy solutions are specific to China, and some are much broader.

### **1. Pass a comprehensive federal privacy law that comes with strong enforcement mechanisms.**

The U.S. needs to develop rules not limited to Chinese companies operating in America, but also to govern how all companies collect, retain, and share their data. Instead of playing a game of whack-a-mole against a rotating cast of Chinese tech companies, the U.S. would be wise to spend more time developing legislation and standards for how all companies, regardless of what country they come from, protect online privacy and secure data. No company should have access to and then retain sensitive data in the first place that could then be transmitted to a government that could employ it to do harm or be hacked by state actors. With such criteria in place, the next TikTok or app in question

could be reviewed against a clear set of criteria in order to use U.S. data.

If policy makers do not adopt a federal privacy law with meaningful enforcement, U.S. citizen data held by all unregulated private companies — not just Chinese companies — will be more vulnerable to breaches by state hackers, as well. For example, Equifax's many security issues are well documented, such as the company's failure to patch known vulnerabilities that ultimately left exposed the data of 145 million Americans. But the hack was also conducted by a Chinese government entity with sophisticated hacking capabilities and access to considerable state resources. Setting minimum standards for what data can be collected and retained by all companies will help protect U.S. personal data, regardless of whether the risk is exacerbated by a state-sponsored hacker, a data seller, or a private company transferring the data to China.

### **2. Create a multilateral approach focused on commercial data flows, creating incentives for countries whose data regimes meet agreed upon thresholds, yet without blocking data flows to those who do not.**

A number of recent initiatives<sup>18</sup> are advancing proposals for a kind of democratic technology alliance as a counterweight to China. There is no question that a multilateral approach is needed to facilitate cross border data transfers underpinning digital trade while also increasing pressure on Beijing to make reforms. Such a multilateral approach, however, will only be effective if the following considerations are taken into account.

First, these coalitions or agreements should not be limited to democracies since the future of the digital economy is likely to be shaped in places from Brazil to countries across Southeast Asia where the digital economy is surging.<sup>19</sup>

Second, one of the first orders of business will be to address the digital chasm between Europe and the United States. The transatlantic divide is among the greatest obstacles not just to preserving free data flows around the world, but also to our ability to work constructively with European partners as we compete with China. In July, the Court of Justice of the European Union invalidated the EU-US Privacy Shield, the established mechanism to

transfer personal data from the EU to the U.S. (the case is known as Schrems II).<sup>20</sup> The ruling found insufficient protections in U.S. surveillance law, making clear the seriousness of EU concerns over U.S. government access to data. We must reach a broader agreement with Europe on best practices and norms regarding government access to data. These issues further underscore the importance of the U.S. getting its own house in order on data governance before we can even begin to collaborate in a forum with other democracies.

Finally, a multilateral approach should be based on creating a system of incentives rather than excluding countries like China from participation. Prime Minister Shinzo Abe's initiative to create a framework for the "free flow of data with trust" among likeminded governments is based on the idea of cutting off data flows to China and others. Instead, the U.S. could lead the way in setting up a certification system that would extend certain benefits to countries whose data regimes and companies meet certain clear criteria for data protection. The OECD privacy guidelines, for example, could serve as a reference in creating a baseline for commercial data flows.<sup>21</sup>

### **3. Develop a targeted way to evaluate the national security risks of different kinds of data involved in various transactions, because not all data has the same levels of sensitivity.**

Some kinds of data are more sensitive alone or in combination and need to stay within the physical borders of the U.S. — some kinds of financial, location, children's, and health and genomic data, and data related to the military, for example. There are cases where walls need to be erected around data while keeping other kinds of data flowing. As part of assessing different security risks associated with access to different kinds of data, national security and privacy risks must be distinguished, as the line between the two has become blurred.

There are sometimes legitimate reasons to keep some kinds of data stored on local servers inside sovereign borders, either in United States or elsewhere. There are ways to store data that avoid launching a race to bottom with countries hoarding their data inside their borders. Being selective about the kind of guardrails and where they belong is critical. There are two examples in the United States of legitimate reasons to keep our data inside

the physical border: 1) The Defense Department has deemed that some kinds of national security data should remain on local servers; and 2) After the financial crisis of 2008, financial regulators determined that certain financial data must be kept in the United States to be easily accessible for auditors to ensure America does not confront similar circumstances again.

The mere fact that a Chinese company handles U.S. citizen data in and of itself may not necessarily warrant putting sovereign walls around the company in the form of banning transactions or blacklisting that specific company. The risks to U.S. national security should be evaluated based on an investigation to determine (a) what kind of U.S. citizen data is being accessed (for example, metadata, images, geographic data, or critical infrastructure data), (b) how that data is being used and what data protection measures have been implemented to protect the rights and interests of U.S. consumers, and (c) with whom that data is being shared and through what mechanisms. If, based on the outcomes of such an evaluation, the U.S. government cannot verify that the interests and rights of U.S. consumers will be protected, then that specific company should be prohibited from storing and sharing U.S. personal data.

### **4. Find technical solutions to incorporate security into low trust environments.**

Policies that work in coordination with the development of technical solutions to create security in low trust environments must be created, recognizing that our interconnected world does not make it possible to fully disconnect from networks made up of Chinese equipment. Former Deputy Director of National Intelligence Sue Gordon told *The New York Times* that even in the best of circumstances, the reality is that American data will flow over Chinese networks, so we have to figure out how to create security in so-called dirty networks.<sup>22</sup> There is a role for encryption, where the data is scrambled when it is stored or as it is transmitted. There is also a role for other techniques like federated learning to keep data anonymous even as companies use it train their artificial intelligence systems to get smarter. Specific sectors provide other examples like the use of a shallow sequencing in biotechnology, for example, where only part of a genome sequence is

used in order to employ the mountains of human genetic data needed to develop cures for diseases. These kinds of technical solutions must go hand-in-hand with policy solutions, especially when it comes to sharing certain kinds of sensitive data like health or children's data.

## CONCLUSIONS

Now is the time to recapture U.S. global leadership in setting the rules for governing emerging technologies and data privacy when these rules are in early stages. The United States has an opportunity to set the standards for protecting the flow of data that has underpinned economic growth and the free flow of information around the world by ensuring that the right safeguards are implemented. Doing so will allow America to reap the benefits of an open data flow world while minimizing any potential harm to both national security and privacy.

The U.S. government needs a more effective strategy to protect U.S. personal data than one-off bans on companies or the destinations of their data. The U.S. needs to address legitimate national security risks where they exist and also as one part of a broader U.S. initiative on comprehensive data privacy and higher standards for cybersecurity for all companies (whether American or foreign). These efforts should not name China as a bad actor, but, instead, they should set a high bar for all companies to meet in managing their data and build incentives for countries to sign on. Failure to establish a compelling vision for U.S. internet governance will only allow more space around the world for Beijing's vision for the internet to flourish.

## REFERENCES

- 1 Anne-Marie Slaughter, "How to Succeed in a Networked World: A Grand Strategy for the Digital Age," *Foreign Affairs* 95 no. 6 (November/December 2016), 76-89.
- 2 Donald Trump, "Executive Order 13942, of August 6, 2020, Addressing the Threat Posed by TikTok," Washington: White House. <https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/> and "Executive Order 13943, of August 6, 2020, Addressing the Threat Posed by WeChat," Washington: White House. <https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-posed-wechat/>.
- 3 Donald Trump, "Order Regarding the Acquisition of Musical.ly by ByteDance Ltd," Washington: White House. <https://www.whitehouse.gov/presidential-actions/order-regarding-acquisition-musical-ly-bytedance-ltd/>.
- 4 Justine Coleman, "Senators Introduce Bipartisan Bill to Mandate Digital Apps Disclose Country of Origin," *The Hill*, September 23, 2020, <https://thehill.com/homenews/senate/517823-senators-introduce-bipartisan-bill-that-would-mandate-digital-apps-to>.
- 5 "Senator Hawley Introduces Bill to Address National Security Concerns Raised by Big Tech's Partnerships with Beijing," Office of Senator Josh Hawley, November 18, 2019, <https://www.hawley.senate.gov/senator-hawley-introduces-bill-address-national-security-concerns-raised-big-techs-partnerships>.
- 6 "Secretary Bernhardt Signs Order Grounding Interior's Drone Fleet for Non-Emergency Operations," U.S. Department of the Interior, January 29, 2020, <https://www.doi.gov/pressreleases/secretary-bernhardt-signs-order-grounding-interiors-drone-fleet-non-emergency>.
- 7 Evan Perez, "FBI Arrests Chinese National Connected to Malware Used in OPM Data Breach," CNN, August 24, 2017, <https://www.cnn.com/2017/08/24/politics/fbi-arrests-chinese-national-in-opm-data-breach/index.html>.
- 8 Stephen Nellis and Cate Cadell. "Apple Moves to Store iCloud Keys in China, Raising Human Rights Fears," Reuters, February 24, 2018, <https://www.reuters.com/article/us-china-apple-icloud-insight-idUSKCN1G8060>.
- 9 <https://www.nytimes.com/2012/09/01/world/asia/wang-xiaoning-chinese-dissident-in-yahoo-case-freed.html>.
- 10 Robert Knake, *Weaponizing Digital Trade*, Council on Foreign Relations, Special Report No. 88 (September 2020), [https://cdn.cfr.org/sites/default/files/report\\_pdf/weaponizing-digital-trade\\_csr\\_combined\\_final.pdf](https://cdn.cfr.org/sites/default/files/report_pdf/weaponizing-digital-trade_csr_combined_final.pdf).



- 11 Josh Kallmer, “Dear World Leaders: Tear Down Your Digital Walls,” German Marshall Fund, December 12, 2017, 3. <https://www.gmfus.org/publications/dear-world-leaders-tear-down-your-digital-walls>.
- 12 Joshua P. Meltzer and Peter Lovelock, “Regulating for a digital economy: Understanding the importance of cross-border data flows in Asia,” (Washington, D.C., The Brookings Institution, March 20, 2018), <https://www.brookings.edu/research/regulating-for-a-digital-economy-understanding-the-importance-of-cross-border-data-flows-in-asia/> and “Measuring the economic impact of cloud computing in Europe,” January 10, 2017, <https://ec.europa.eu/digital-single-market/en/news/measuring-economic-impact-cloud-computing-europe>.
- 13 “Data Science,” Fred Hutch Cancer Research Center, <https://www.fredhutch.org/en/research/research-areas/data-science.html>.
- 14 Kallmer 4.
- 15 Ibid.
- 16 Joanna Kavenna, “Shoshana Zuboff: ‘Surveillance Capitalism Is an Assault on Human Autonomy,’” *The Guardian*, October 4, 2019, <https://www.theguardian.com/books/2019/oct/04/shoshana-zuboff-surveillance-capitalism-assault-human-autonomy-digital-privacy>.
- 17 Anne-Marie Slaughter, “How to Succeed in a Networked World: A Grand Strategy for the Digital Age,” *Foreign Affairs* 95 no. 6 (November/December 2016), 76-89.
- 18 Knake, “Weaponizing Digital Trade.” See also Jared Cohen and Richard Fontaine, “Uniting the Techno Democracies,” *Foreign Affairs* 99 no. 6, (November/December 2020), <https://www.foreignaffairs.com/articles/united-states/2020-10-13/uniting-techno-democracies> and “Common Code: An Alliance Framework for Democratic Technology Policy,” Center for a New American Security, forthcoming.
- 19 “E-Economy SEA report 2019: Powering Southeast Asia’s \$100 billion Internet economy,” PRNewswire, October 3, 2019, <https://www.prnewswire.com/news-releases/e-economy-sea-report-2019-powering-southeast-asias-100-billion-internet-economy-300930442.html>.
- 20 Ryan Blaney, “One Cross-Border Mechanism Invalid, Another Upheld: Thoughts after the CJEU’s Schrems II Decision,” *National Law Review*, July 21, 2020, <https://www.natlawreview.com/article/one-cross-border-mechanism-invalid-another-upheld-thoughts-after-cjeu-s-schrems-ii>. See also Jennifer Daskal, “What Comes Next: The Aftermath of European Court’s Blow to Transatlantic Data Transfers,” *Just Security*, July 17, 2020, <https://www.justsecurity.org/71485/what-comes-next-the-aftermath-of-european-courts-blow-to-transatlantic-data-transfers/>.
- 21 “The OECD Privacy Framework,” Organisation for Economic Co-operation and Development, 2013, <https://www.oecd.org/sti/ieconomy/>

# REVITALIZING LAW AND GOVERNANCE COLLABORATION WITH CHINA

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[oecd\\_privacy\\_framework.pdf](#).

- 22 David Sanger, and Julian Barnes, “Is TikTok More of a Parenting Problem Than a Security Threat?” *The New York Times*, August 07, 2020, <https://www.nytimes.com/2020/08/07/us/politics/tiktok-security-threat.html>.

## EXECUTIVE SUMMARY

Strengthening official U.S.-China legal cooperation to support China’s efforts to establish rule of law and good governance, which has atrophied under the Trump administration, serves U.S. interests in protecting national security, developing economy and trade, and furthering rule of law and human rights both in China and globally. U.S. official legal engagement with China delivered concrete results over the years in multiple areas that further U.S. interests, including greater substantive and procedural predictability for U.S. businesses and the Chinese people. Rule of law dialogues also provided platforms to address human rights concerns in the more technical language of law and regulation and the political space for complementary private American initiatives with Chinese counterparts. While continuing to firmly address China’s violations of U.S., international and its own law, the next administration should inventory, evaluate, and support pertinent U.S.-China legal cooperation programs at both the senior and staff levels. The goal of these programs should be to support China’s ongoing efforts to modernize laws and legal institutions in order to better address its own, bilateral, and international challenges and to establish a level playing field in both countries for businesses. The U.S. government should strengthen its expertise on the evolving

Chinese legal system to more effectively address disputes, ensure that bilateral agreements are enforceable under Chinese law, and cooperate on updating and setting global standards.

## THE PROBLEM

The United States has a substantial interest in promoting good governance in China through increased legal protections and procedural regularity to help stabilize China domestically, facilitate its economic development, support a more transparent and law-based business environment, and contribute to more rules-conscious behavior by Chinese state and private actors globally.<sup>1</sup> Better governance benefits both the Chinese people and U.S. companies, organizations, and individuals operating in or dealing with China. Yet, constructive U.S.-China legal cooperation and exchange has atrophied in recent years as the result of disinterest from the Trump Administration amid a narrative that U.S. engagement with China has failed and a growing perception that China’s authoritarian political system affords no realistic prospect for developing rule of law.

Given the importance of China to the American economy and to solving serious global security and governance issues, the U.S. has no option but to work with China. The United States should cooperate, rather than merely deliver ultimatums, on specific legal topics of direct impact in the bilateral relationship and more generally to assist China’s legal modernization and improve the capacity of and implementation by its governance institutions. To do so effectively, the U.S. and China need to better understand the domestic policy concerns and priorities of each other and how those are reflected in and implemented through each country’s legal systems. Past U.S.-China rule of law collaborations have in fact had a positive impact on China’s law and governance, which is more complex

and sophisticated than is widely appreciated. While the Chinese Communist Party (CCP) is asserting more comprehensive leadership over all aspects of Chinese life, including law and the legal system,<sup>2</sup> China's leaders still view the U.S. and other foreign experience as a source of ideas and mechanisms to inform<sup>3</sup> the modernization of its governance capacity and increasingly mature legal system.<sup>4</sup>

To be sure, the party-state at times flouts international law<sup>5</sup> and its World Trade Organization (WTO) commitments,<sup>6</sup> ignores its own legal procedures and laws,<sup>7</sup> adopts illiberal laws,<sup>8</sup> and deploys law as an instrument of repression<sup>9</sup> in pursuing its interests. The CCP's resort to extra-legal means to deal with perceived enemies in so-called "sensitive cases"<sup>10</sup> creates uncertainty over the reliability of the party-state's legal commitments both at home and abroad.

Nonetheless, China's legal system is largely devoted to managing millions of ordinary civil, commercial, criminal, and administrative matters every day. U.S.-China engagement has enriched the development of that "normal" legal system<sup>11</sup> and helped foster a culture of law among the Chinese public.<sup>12</sup> Such cooperation promoted more professional and accessible courts<sup>13</sup> and specialized intellectual property tribunals<sup>14</sup> in which foreign plaintiffs are winning a majority of their patent infringement cases.<sup>15</sup> Court reform has produced an increase in administrative litigation against the government, bankruptcy filings, intellectual property cases and other lawsuits, reaching nearly 32 million in 2019.

While the Xi Jinping administration has tightened the reins on NGO activities amidst a shrinking space for policy debate, social activism, rights lawyering, and investigative reporting, it also passed China's first Charity Law, which removes the requirement for a government sponsor for many NGOs and eases fundraising restrictions. In a still challenging environment,<sup>16</sup> Chinese NGOs — which numbered nearly 867,000 at the end of 2019, up 76% since the end of 2012<sup>17</sup> — are innovating new activism<sup>18</sup> and hybrid fundraising methods.<sup>19</sup> Environmental, LGBTQ, and other groups seek out targets of opportunity, as witnessed during China's COVID-19 epidemic,<sup>20</sup> even sharing their successful strategies with NGOs abroad.<sup>21</sup> Environmental NGOs are afforded more space than others to collaborate with foreign NGOs like the U.S. Environmental Law

Institute on legal exchanges and capacity building.<sup>22</sup> National law now authorizes them to bring public interest environmental lawsuits, and a prominent local government recently codified support for such efforts with a special fund to help reduce NGO litigation costs.<sup>23</sup>

The U.S. has shared concepts and mechanisms with Chinese officials, lawyers, NGOs, and other advocates concerning China's access to government information statute and its use,<sup>24</sup> advocacy for same-sex marriage in the national legislative process,<sup>25</sup> using protective orders in domestic violence cases,<sup>26</sup> and successfully<sup>27</sup> proving gender discrimination in employment.<sup>28</sup> Criminal law and procedure reforms, while largely driven as are other reforms by domestic pressures,<sup>29</sup> have been influenced by U.S. and international advocacy and exchanges.<sup>30</sup> Improvements have included returning death penalty decision-making authority to the top court, which drove a significant drop in executions;<sup>31</sup> using the suspended death penalty in all but the most serious cases; and reducing the number of capital offenses in the Criminal Law.<sup>32</sup> More recent reforms make trials central to the criminal process, encourage witnesses to testify in court, and make unlawfully obtained evidence (like forced confessions) inadmissible at trial.<sup>33</sup>

Legal exchange and cooperation have been part of the official U.S.-China relationship from its earliest days and have achieved concrete results. Numerous federal agencies have regularly exchanged information and held discussions over the years regarding the laws and procedures of both countries to better understand each other's systems, resolve disputes, and promote significant legislative and procedural advancements. U.S. Department of Commerce programs date back to 1979, when the U.S. Patent and Trademark Office hosted its first Chinese delegation and explained the American patent system to officials working on China's first laws governing intellectual property (IP).<sup>34</sup> U.S.-China IP law exchanges helped promote the establishment of specialized IP courts, introduced the practice of *amicus* briefs in IP proceedings, and supported China's development of a form of case precedent to enhance uniformity of court judgments.<sup>35</sup> All of these developments were informed by U.S. law and practice and are contributing to a procedurally and substantively

fairer system of IP law in China.<sup>36</sup> Following years of advocacy, and spurred by imposed tariffs and a dispute filed in the WTO, China eliminated in March 2019 the most onerous provisions on foreign company technology transfers<sup>37</sup> and is taking a number of steps to better protect trade secrets.<sup>38</sup>

Commerce legal interaction has taken place through government-to-government dialogues like the Commercial Law Working Group under the Joint Commission on Commerce and Trade,<sup>39</sup> the 27<sup>th</sup> session of which took place in November 2016.<sup>40</sup> Commerce collaborations with its Chinese counterpart and other agencies have sought to promote a legal framework for businesses to operate through transparent and clear rules that are administered in a predictable and fair manner,<sup>41</sup> including private sector representatives on occasion under the U.S.-China Legal Exchange.<sup>42</sup> Such dialogues achieved suspension of restrictive regulations on several occasions<sup>43</sup> and furthered a variety of legal reforms. As the United States Trade Representative (USTR) pressed China over many years to meet its WTO transparency commitments, including to provide a reasonable period of time for public comment before implementing trade-related measures,<sup>44</sup> Commerce and the private sector shared with Chinese counterparts the U.S. experience with participatory rulemaking and hearings. China gradually instituted notice-and-comment rulemaking and lawmaking procedures to enable public input into draft laws<sup>45</sup> and regulations<sup>46</sup> that are published online. U.S. agencies, trade associations, companies and scholars have utilized these comment channels, which are now codified in binding legislation.<sup>47</sup>

The U.S. Department of Justice joined with Commerce in 2016<sup>48</sup> to hold the first high-level U.S.-China Judicial Dialogue, which brought officials and judges from both countries to discuss case management, alternative dispute resolution, precedent, and evidence in civil and commercial cases.<sup>49</sup> Justice also employs the U.S. Embassy Beijing-based Resident Legal Advisor, who works with U.S. and Chinese officials on criminal justice sector reform initiatives in China, while facilitating bilateral cooperation on issues like money laundering, drug trafficking, and terrorist financing.<sup>50</sup> Ongoing Environmental Protection Agency engagement<sup>51</sup> has impacted substantive air, water, and soil pollution, hazardous waste

and other environmental legislation in China,<sup>52</sup> as well as China's development and codification of governance mechanisms including environmental information disclosure, public participation in environmental decision-making and public interest lawsuits.<sup>53</sup> The U.S. Department of Labor conducted dialogues with Chinese counterparts on specific issues including worker rights, workplace safety, collective bargaining, and labor law enforcement until 2016.

Official US-China legal cooperation has also provided a conducive bilateral political environment within which American lawyers, legal scholars, companies, and NGOs have interacted effectively with Chinese counterparts. Unofficial endeavors complement and supplement U.S. government engagement on legal and governance issues. Some, like the U.S.-Asia Partnerships for Environmental Law at the University of Vermont<sup>54</sup> and other rule of law initiatives carried out by universities, law schools, the American Bar Association,<sup>55</sup> and NGOs like the Asia Foundation, have been supported in part with U.S. government funding.<sup>56</sup> Many private sector projects frequently involved experienced U.S. federal, state, and local officials and judges with relevant expertise. In one example, former U.S. government lawyers shared their experience<sup>57</sup> with Chinese officials piloting a new government lawyer system to improve legal awareness and compliance within government agencies and CCP organizations.<sup>58</sup>

Private initiatives have included criminal law and procedure projects often involving collaboration with and sometimes among Chinese police, procurators, judges, lawyers, academics, and social workers,<sup>59</sup> assisting development of a more active and professional defense bar,<sup>60</sup> juvenile justice, and ensuring that every criminal defendant has legal representation,<sup>61</sup> as well as advancing mandatory reporting and child protection systems<sup>62</sup> under China's 2015 Domestic Violence Law.<sup>63</sup> Private U.S.-China legal cooperation has also helped promote government,<sup>64</sup> judicial,<sup>65</sup> and charitable transparency;<sup>66</sup> legal reasoning<sup>67</sup> and case guidance<sup>68</sup> programs with Chinese courts; the development and enforcement of disability<sup>69</sup> and mental health<sup>70</sup> law in China; clinical legal education and the development of activist legal centers in Chinese law schools;<sup>71</sup> and rights protection trainings for Chinese officials, judges,



and lawyers,<sup>72</sup> a profession now including over 473,000 practitioners.<sup>73</sup>

Restrictions imposed by China in 2017<sup>74</sup> that severely restrict the ability of foreign NGOs to operate in China curtailed the channels for and subject matter of private legal cooperation, other than through U.S. universities, business associations, and in areas such as the environment<sup>75</sup> that the party-state deems less sensitive. Moreover, the increasingly antagonistic actions against and rhetoric concerning China adopted by the Trump administration<sup>76</sup> combined with disapprobation of China's crackdown on civic and labor activists, religious leaders, lawyers, journalists, and ethnic and religious minorities, most blatantly in Xinjiang and Tibet, made federal officials more reluctant to participate in privately sponsored legal projects with China.

## OBJECTIVES

**China should evolve into a stable, transparent, rules-based, and accountable partner.** This can include working with the U.S. on issues of mutual concern and on global challenges including combating climate change, strengthening global health collaboration, and establishing rules-based frameworks to address emerging issues like cybersecurity, data flows, AI and autonomous weapons, climate change, technical standards (including for technology and sustainable infrastructure projects globally), outer space,<sup>77</sup> and timely sharing of epidemic information. China should also afford due process in its criminal justice system, eliminating extra-judicial detention without access to lawyers of one's choice,<sup>78</sup> as evidenced most alarmingly in the mass incarceration of possibly millions of ethnic Uighurs in Xinjiang under the pretext of anti-terrorism. Arbitrary detention is also deployed against foreigners,<sup>79</sup> including U.S. citizens,<sup>80</sup> raising concerns about business and other travel to China.<sup>81</sup>

**China should provide a level playing field for U.S. business competitiveness, including U.S. job-supporting exports to China of U.S. commodities and services.** Top priorities for U.S. companies continue to include fairness in competing with both state-owned and private companies, business and product licensing, IP protection and enforcement, data flows and cybersecurity policies, relaxing

remaining market access restrictions, influence in technical standards setting,<sup>82</sup> and enhanced overall transparency, predictability, and fairness of China's regulatory environment.<sup>83</sup> Improved U.S.-China relations may help alleviate, although not resolve entirely, some of these impediments.<sup>84</sup>

**Official U.S.-China law and governance dialogues and programs should be revived.** These engagements will help achieve U.S. interests and provide a more enabling bilateral political environment for complementary private American rule of law and governance efforts. Rule of law dialogues also provide platforms to address sensitive human rights concerns in the more technical language of law and regulation. Renewed legal cooperation might even facilitate an eventual relaxation of current foreign (and domestic) NGO restrictions, permitting China's vibrant but beleaguered civil society to develop more fully.

## RECOMMENDATIONS

**Inventory, evaluate, and restart federal government-led legal cooperation programs that have demonstrated positive impact over time.** At the same time, it will be important to avoid over-committing to dialogues that may permit Chinese counterparts to "buy time" without agreeing to desired concessions.<sup>85</sup> High-level dialogues among leaders from both sides, used judiciously, help establish the political cover for effective collaboration and convey important messages about bilateral legal issues. Both formal and informal staff interactions should be encouraged. Built on shared professional experiences and needs, these engagements are the true lifeblood of a successful partnership among U.S. and Chinese officials on which mutual understanding can be built. Proactively use such engagements to open space for, and help fund where appropriate, private sector law and governance programs with Chinese counterparts.

**Seek China's "buy-in" to ensure productive cooperation.** Dialogues must include matters the Chinese side cares about, not just what the U.S. wants China to do. They should also involve relevant Chinese decisionmakers and may require the participation of relevant high-level CCP representatives.<sup>86</sup>

**Restart the Bilateral Investment Treaty (BIT)**

**negotiations.** A mutually beneficial and high-standard U.S.-China BIT is desired generally by the U.S. business community to set the “rules-of-the-road” for reciprocal investment.<sup>87</sup> Negotiations would afford another platform for engaging China in areas of continued law-related disagreement bilaterally and internationally, including market access, fair competition, national security screening, subsidies and preferential treatment of state-owned enterprises, standards, and transparency.<sup>88</sup>

**Join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and encourage China to do so.** Mutual accession efforts, building on Chinese Premier Li Keqiang’s May 2020 remarks indicating that China “has a positive and open attitude” toward joining the CPTPP,<sup>89</sup> would afford another opportunity to engage with China on thorny legal issues regarding state-owned enterprises, data flows, labor obligations, and subsidies, as well as bring benefits to both countries.

**Develop and utilize expertise on Chinese law and how the legal and regulatory systems work.** Better understanding will facilitate more effective resolution of bilateral disagreements and help ensure that bilateral agreements are enforceable under Chinese law. Misunderstanding concerning the binding force of various Chinese documents,<sup>90</sup> for example, has led the USTR to chastise China for failing to publish “as required by WTO” certain opinions and notices mischaracterized as “binding legal measures”<sup>91</sup> and has not acknowledged in its reporting to Congress that China did codify an agreed 30-day comment period for both lawmaking (2015)<sup>92</sup> and government rulemaking (2018).<sup>93</sup> Deeper understanding of Chinese law could help U.S. authorities avoid adopting policies<sup>94</sup> and targeting<sup>95</sup> issues<sup>96</sup> that are based on misapprehension, for example, China’s application of national security laws to companies,<sup>97</sup> and its evolving social credit system.<sup>98</sup>

**Approach bilateral legal cooperation with a constructive attitude.** The U.S. knows from its own experience the complexity and difficulty of getting law “right” and implementing it well. Chinese counterparts are open to learning from foreign experience, both positive and negative, as they seek to improve and supplement the country’s

legal system and institutions. Moreover, China has been quite innovative in some areas. It was the first country<sup>99</sup> to establish Internet courts,<sup>100</sup> innovating related technology-enabled experiments such as blockchain-authenticated evidence<sup>101</sup> and garnering experience that should be of interest to U.S. courts conducting online adjudication for the first time in the COVID-19 era.<sup>102</sup> China’s courts frequently broadcast trials online<sup>103</sup> and boast the largest open and searchable database of over 100 million court decisions.<sup>104</sup> The U.S. might learn from China on these<sup>105</sup> and other matters in the course of cooperating on China’s legal modernization.

**Improve rule of law principles and practices at home.** The U.S. will more effectively elicit cooperation and desired change in China by strengthening rule of law at home, including government transparency, accountability and due process, equal rights and treatment for all, and law enforcement based on clear principles and evidence rather than nationality<sup>106</sup> or imprecise definitions of national security,<sup>107</sup> and by employing negotiation and sound legal tools such as anti-dumping investigations and bringing WTO cases in response to illegal Chinese behaviors. The U.S. should lead by example to also abide by international law and treaty obligations, as it asks China to do.

## CONCLUSIONS

U.S.-China legal and governance cooperation has not been, and should not be, premised on a belief that the U.S. can change China or its one-party state led by the CCP. America should confront China on its unacceptable behaviors, working with other like-minded countries when possible, and be clear-eyed about where interests do diverge on issues of law, governance, and human rights. However, U.S. legal engagement with China has positively impacted law, procedure, and enforcement in service of the “normal” legal system that provides effective governance to the majority of the Chinese people on a daily basis and is gradually improving the business environment for U.S. companies to compete more effectively and help sustain jobs at home.<sup>108</sup> Moreover, better mutual understanding of the respective legal regimes — basic principles and implementing experience and practices — of each country can help strengthen the foundations of the overall bilateral relationship.

## REFERENCES

- 1 Paul Gewirtz, “The U.S.-China Rule of Law Initiative,” *William and Mary Bill of Rights Journal* 11 no. 603 (2003), <https://scholarship.law.wm.edu/wmborj/vol11/iss2/5>.
- 2 Jamie P. Horsley, “Party Leadership and Rule of Law in the Xi Jinping Era.” (Washington, D.C., The Brookings Institution, September 30, 2019), [www.brookings.edu/research/party-leadership-and-rule-of-law-in-the-xi-jinping-era/](http://www.brookings.edu/research/party-leadership-and-rule-of-law-in-the-xi-jinping-era/).
- 3 “中国制度面对面⑤：治国安邦倚重器 — 中国特色社会主义法治体系如何保证公平正义? [Face to face with the Chinese system ⑤: Relying on important tools to govern the country and stability — How does the socialist legal system with Chinese characteristics ensure fairness and justice?]” *People’s Daily*, August 5, 2020, <http://www.12371.cn/2020/08/05/ART1596583199443353.shtml>.
- 4 Hualing Fu, “Touching the Proverbial Elephant: The Multiple Shades of Chinese Law,” *China perspectives*, 2019, <https://journals.openedition.org/chinaperspectives/8629>.
- 5 Helen Davidson, “Hong Kong Security Law ‘May Break International Laws’,” *The Guardian*, September 4, 2020, <https://www.theguardian.com/world/2020/sep/04/hong-kong-security-law-may-break-international-laws-china-human-rights-un>; Jane Perlez, “Tribunal Rejects Beijing’s Claims in South China Sea,” *The New York Times*, July 12, 2016, <https://www.nytimes.com/2016/07/13/world/asia/south-china-sea-hague-ruling-philippines.html>.
- 6 “2018 Report to Congress On China’s WTO Compliance,” United States Trade Representative, February 2019, <https://ustr.gov/sites/default/files/2018-USTR-Report-to-Congress-on-China%27s-WTO-Compliance.pdf>.
- 7 Chi Yin and Jerome A. Cohen, “The Misuse of China’s Mental Hospitals,” *The Diplomat*, August 13, 2020, <https://thediplomat.com/2020/08/the-misuse-of-chinas-mental-hospitals/>.
- 8 Edward Wong, “Clampdown in China Restricts 7,000 Foreign Organizations,” *The New York Times*, April 28, 2016, <https://www.nytimes.com/2016/04/29/world/asia/china-foreign-ngo-law.html>.
- 9 Lindsay Maizland, “China’s Repression of Uighurs in Xinjiang,” *Council on Foreign Relations*, June 30, 2020, <https://www.cfr.org/background/chinas-repression-uighurs-xinjiang>; “New Law Aims to Justify Xinjiang Camps,” *China Digital Times*, October 10, 2018, <https://chinadigitaltimes.net/2018/10/china-establishes-legal-basis-for-xinjiang-camps-amid-rising-u-s-concerns/>.
- 10 Austin Ramzy, “Chinese Human Rights Lawyer Released From Prison,” *The New York Times*, April 5, 2020, <https://www.nytimes.com/2020/04/05/world/asia/china-human-rights-lawyer.html>.
- 11 Hualing Fu, “Editorial - Duality and China’s Struggle for Legal Autonomy,” *French Centre for Research on Contemporary China*, <https://www.cefc.com.hk/article/editorial-duality-and-chinas-struggle-for-legal-autonomy/>.
- 12 Li Fan, “It’s True That Democracy in China Is in Retreat, But Don’t Give up on It Now,” *ChinaFile*, July 2, 2020, <https://www.chinafile.com/reporting-opinion/viewpoint/its-true-democracy-china-retreat-dont-give-it-now>.
- 13 “China’s New Judicial Reforms on Case Law & Other Guidance,” *Supreme People’s Court Monitor*, June 22, 2019, <https://supremepeoplescourtmonitor.com/2019/06/22/chinas-new-judicial-reforms-on-case-law-other-guidance/>.
- 14 Mark Cohen, “A Federal Circuit with Chinese Characteristics? — The Launch of China’s New National Appellate IP Court 中国特色的联邦巡回上诉法院?” *China IPR*, January 10, 2019, <https://chinaipr.com/2019/01/04/a-federal-circuit-with-chinese-characteristics-the-launch-of-chinas-new-national-appellate-ip-court-%E4%B8%AD%E5%9B%BD%E7%89%B9%E8-%89%B2%E7%9A%84%E8%81%94%E9%82%A6%E5%B7%A1/>.
- 15 “Xi Jinping Is Trying to Remake the Chinese Economy,” *The Economist*, October 15, 2020, <https://www.economist.com/>

- [briefing/2020/08/15/xi-jinping-is-trying-to-remake-the-chinese-economy.](#)
- 16 Shawn Shieh, “Civil Society Protects Workers in China During the Pandemic,” Rights CoLab, May 13, 2020, <https://rightscolab.org/civil-society-protects-workers-in-china-during-the-pandemic/>.
- 17 “社会服务业统计季报 [Quarterly Report on Social Services Statistics],” Ministry of Civil Affairs of the People’s Republic of China, Winter 2012, <http://files2.mca.gov.cn/cws/201301/20130128174655179.htm>.
- 18 Christopher Marquis et al., “The Emergence of Subversive Charities in China,” *Stanford Social Innovation Review*, Winter 2016, [https://ssir.org/articles/entry/the\\_emergence\\_of\\_subversive\\_charities\\_in\\_china](https://ssir.org/articles/entry/the_emergence_of_subversive_charities_in_china).
- 19 Shawn Shih-hung Shieh, “Is China the Future for Hybrid CSO Funding Models?” OpenGlobalRights, May 11, 2020, <https://www.openglobalrights.org/is-china-the-future-for-hybrid-cso-funding-models/?lang=English>.
- 20 Vivian Wang and Javier C. Hernández, “Coronavirus Crisis Awakens a Sleeping Giant: China’s Youth,” *The New York Times*, March 28, 2020, <https://www.nytimes.com/2020/03/28/world/asia/coronavirus-china-youth.html>.
- 21 Phoebe Zhang, “Wuhan Volunteers Reach across the World to Share Coronavirus Lessons,” *South China Morning Post*, May 29, 2020, <https://www.scmp.com/news/china/society/article/3086684/wuhan-volunteers-reach-out-across-world-advise-care-groups>; and “China-US non-governmental cooperation in response to COVID-19: Current conditions, challenges and prospects,” Center for China and Globalization, July 2020, <http://www.ccg.org.cn/wp-content/uploads/2020/07/%E3%80%90CCG-Report%E3%80%91China-US-non-governmental-cooperation-in-response-to-COVID-19-Current-conditions-challenges-and-prospects.pdf>.
- 22 Zhuoshi Liu, “Helping NGOs Use Environmental Law to Combat Pollution: ELI Launches Environmental Public Interest Litigation Capacity-Building Project in China,” Environmental Law Institute, July 9, 2018, <https://www.eli.org/vibrant-environment-blog/helping-ngos-use-environmental-law-combat-pollution-eli-launches-environmental-public-interest>.
- 23 Li You, “New Policy in Shenzhen Empowers Environmental Nonprofits,” *Sixth Tone*, September 30, 2020, <https://www.sixthtone.com/news/1006246/new-policy-in-shenzhen-empowers-environmental-nonprofits>.
- 24 “Discussing China’s Regulations on Open Government,” Department of Justice, April 23, 2014, <https://www.justice.gov/oip/blog/discussing-china-s-regulations-open-government>.
- 25 Yuyang Liu, “Could Same-Sex Marriage Advocacy in China Be Poised for a Breakthrough?” *ChinaFile*, September 17, 2020, <https://www.chinafile.com/reporting-opinion/viewpoint/could-same-sex-marriage-advocacy-china-be-poised-breakthrough>.
- 26 Su Lin Han, “China Has a New Domestic Violence Law. So Why Are Victims Still Often Unsafe?” *ChinaFile*, June 5, 2017, <https://www.chinafile.com/reporting-opinion/viewpoint/china-has-new-domestic-violence-law-so-why-are-victims-still-often>.
- 27 “A Chinese Trans Woman Wins a Surprising Legal Victory,” *The Economist*, August 1, 2020, <https://www.economist.com/china/2020/08/01/a-chinese-trans-woman-wins-a-surprising-legal-victory>.
- 28 “Tsai Center Holds Gender Discrimination and Sexual Harassment Litigation Workshops in China,” Yale Law School, October 4, 2019, <https://law.yale.edu/yls-today/news/tsai-center-holds-gender-discrimination-and-sexual-harassment-litigation-workshops-china>.
- 29 Susan Trevaskes, “Death Penalty Reform,” *The China Story*, April 30, 2018, <https://www.thechinastory.org/yearbooks/yearbook-2017/forum-those-less-fortunate/death-penalty-reform/>.



- 30 Michelle Miao, "International Anti-Death Penalty Advocacy and China's Recent Capital Punishment Reform," *International Affairs Forum*, August 2015, <https://www.ia-forum.org/Content/ViewInternalDocument.cfm?ContentID=8399>.
- 31 "Dui Hua Estimates 4,000 Executions in China, Welcomes Open Dialogue," Dui Hua Foundation, December 12, 2011, <https://sna.etapestry.com/prod/viewEmailAsPage.do?databaseId=DuiHuaFoundation&jobRef=2967.0.31681565&key>.
- 32 Jeremy Daum, "It's a Crime, I Tell Ya: Major Changes in China's Criminal Law," *China Law Translate*, September 27, 2015, <https://www.chinalawtranslate.com/en/its-a-crime-i-tell-ya-major-changes-in-chinas-criminal-law-ammendment-9/>.
- 33 Trevaskes, "Death Penalty Reform."
- 34 Kelly Welsh, "Remarks of Dept. of Commerce General Counsel at Beijing American Center," (speech, Beijing American Center, January 13, 2015), <https://china.usembassy-china.org.cn/remarks-dept-commerce-general-counsel-beijing-american-center/>.
- 35 "First-Ever 'U.S.-China Judicial Dialogue' Supports an Exchange of Views on Judicial Reform," Department of Justice, August 19, 2016, <https://www.justice.gov/archives/opa/blog/first-ever-us-china-judicial-dialogue-supports-exchange-views-judicial-reform>.
- 36 Max Goldberg, "Enclave of Ingenuity: The Plan and Promise of the Beijing Intellectual Property Court," *Student Work*, May 19, 2017, [http://elischolar.library.yale.edu/ceas\\_student\\_work/4](http://elischolar.library.yale.edu/ceas_student_work/4).
- 37 "The TIER Is Revised," *China IPR*, March 18, 2019, <https://chinaipr.com/2019/03/18/the-tier-is-revised/>.
- 38 "SAMR Releases Draft Trade Secret Rules for Public Comment," *China IPR*, September 12, 2020, <https://chinaipr.com/2020/09/12/samr-releases-draft-trade-secret-rules-for-public-comment/>; "The Changing Legislative Landscape of Trade Secret Protection in China," *China IPR*, April 27, 2020, <https://chinaipr.com/2019/04/27/the-changing-legislative-landscape-of-trade-secret-protection-in-china/>.
- 39 "General Counsel Kelly Welsh Travels to Beijing and Wuhan, China," Department of Commerce, January 28, 2015, <https://ogc.commerce.gov/news/blog/2015/01/general-counsel-kelly-welsh-travels-beijing-and-wuhan-china>.
- 40 "U.S. Fact Sheet for the 27th U.S.-China Joint Commission on Commerce and Trade," United States Trade Representative, November 2016, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2016/november/us-fact-sheet-27th-us-china-joint>.
- 41 Kelly Welsh, "Remarks of Dept. of Commerce General Counsel."
- 42 "Commerce leads exchange on bankruptcy to address excess capacity in China," Department of Commerce, January 3, 2017, <https://ogc.commerce.gov/news/blog/2017/01/commerce-leads-exchange-bankruptcy-address-excess-capacity-china>.
- 43 "The U.S.-China Joint Commission on Commerce and Trade (JCCT) Fact Sheet," Department of Commerce, December 11, 2007, [https://2001-2009.commerce.gov/NewsRoom/PressReleases\\_FactSheets/PROD01\\_004907.html](https://2001-2009.commerce.gov/NewsRoom/PressReleases_FactSheets/PROD01_004907.html).
- 44 "2018 Report to Congress On China's WTO Compliance."
- 45 "法律草案征求意见 [Comment on draft law]," National People's Congress, <http://www.npc.gov.cn/flcaw/>.
- 46 "公开征求意见系统 [Public Comment System]," Ministry of Justice of the People's Republic of China, <http://zqyj.chinalaw.gov.cn/index>.
- 47 Jamie Horsley, "Open Government Developments in China: Implications for US Businesses," *China Business Review*, July 1, 2019, <https://www.chinabusinessreview.com/open-government-developments-in-china-implications-for-us-businesses/>.

- 48 “First-Ever ‘U.S.-China Judicial Dialogue.’”
- 49 “Commerce, Justice to lead first U.S.-China Judicial Dialogue: In Support of Economic Growth and Reform,” Department of Commerce, July 19, 2016, <https://ogc.commerce.gov/news/blog/2016/07/commerce-justice-lead-first-us-china-judicial-dialogue-support-economic-growth-and>.
- 50 “Attorney Advisor (International) / Resident Legal Advisor, China,” Department of Justice, <https://www.justice.gov/legal-careers/job/attorney-advisor-international-resident-legal-advisor-china>. See also “A Personal History of U.S.-China Law Enforcement Cooperation,” Columbia Law School, October 12, 2015, <https://www.law.columbia.edu/news/archive/personal-history-us-china-law-enforcement-cooperation>.
- 51 David LaRoss, “Despite EPA Rollbacks, Trump Seeks Stricter Chinese Environment Laws,” InsideEPA.com, August 6, 2019, <https://insideepa.com/share/220894>.
- 52 “China Declares War on Pollution,” *The Environmental Forum* 32 no. 5 (September-October 2015), 36-47.
- 53 Wanlin Wang and Dimitri De Boer, “China’s Prosecutors Are Litigating Government Agencies for Being Soft on Pollution,” China Dialogue, February 22, 2019, <https://chinadialogue.net/en/pollution/11095-china-s-prosecutors-are-litigating-government-agencies-for-being-soft-on-pollution/>.
- 54 “The China Project,” Vermont Law School, <https://www.vermontlaw.edu/blog/natural-resources/environmental-policy-china-project>.
- 55 “China Background,” American Bar Association, [https://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/asia/china/background/](https://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/china/background/).
- 56 “China Justice Under Rule of Law in Society,” United States Agency for International Development, March 21, 2014, <https://www.usaid.gov/asia-regional/fact-sheets/china-justice-under-rule-law-society>.
- 57 Michael Cardozo, “United States: Proskauer’s Michael Cardozo Visits With Chinese Government Lawyers,” Mondaq, February 14, 2017, <https://www.mondaq.com/unitedstates/Law-Department-Performance/568322/Proskauer39s-Michael-Cardozo-Visits-With-Chinese-Government-Lawyers>.
- 58 “More Lawyers Sought as Government Advisers,” *China Daily*, June 23, 2014, [http://www.china.org.cn/china/2014-06/23/content\\_32742039.htm](http://www.china.org.cn/china/2014-06/23/content_32742039.htm).
- 59 “Jeremy Daum Holds Events on Juvenile Diversion,” Yale Law School, March 21, 2014, <https://law.yale.edu/yls-today/news/jeremy-daum-holds-events-juvenile-diversion>.
- 60 “Duty Lawyers in China,” U.S.-Asia Law Institute, <https://usali.org/events/on-duty-lawyers-in-china>.
- 61 “Notice on Expanding the Scope of Pilot Projects on Having Defense Counsel in All Criminal Cases,” *China Law Translate*, January 22, 2019, <https://www.chinalawtranslate.com/en/notice-on-expanding-the-scope-of-pilot-projects-on-having-defense-counsel-in-all-criminal-cases/>.
- 62 Jeremy Daum, “Mandatory Reporting Overview,” *China Law Translate*, June 5, 2020, <https://www.chinalawtranslate.com/en/mandatory-reporting-overview/>.
- 63 “Domestic Violence Law 2015,” *China Law Translate*, December 27, 2015, <https://www.chinalawtranslate.com/en/Domestic-Violence-Law-2015/>.
- 64 “China to Promote Nationwide Standardization of Transparency in Primary-Level Government Affairs,” Xinhua, December 18, 2019, [http://www.xinhuanet.com/english/2019-12/18/c\\_138641069.htm](http://www.xinhuanet.com/english/2019-12/18/c_138641069.htm).
- 65 Mila Versteeg, “Making Chinese Court Filings Public? Some Not-So-Foreign American Insights,” *Harvard Law Review*, March 10, 2020, <https://harvardlawreview.org/2020/03/making-chinese-court-filings-public-some-not-so-foreign-american-insights/>.
- 66 “How China Is Using Tech to Make Charities Transparent,” *Forkast*, January 28, 2020,

- <https://forkast.news/tech-is-making-chinese-charities-more-transparent/>.
- 67 “Paul Tsai China Center Holds Judicial Reform Workshops,” Yale Law School, May 31, 2016, <https://law.yale.edu/yls-today/news/paul-tsai-china-center-holds-judicial-reform-workshops>.
  - 68 “China Guiding Cases Project,” Stanford Law School, <https://cgc.law.stanford.edu/>.
  - 69 “Alford receives the Li Buyun Law Prize,” *Harvard Law Today*, March 5, 2019, <https://today.law.harvard.edu/alford-receives-the-li-buyun-law-prize/>.
  - 70 Jeremy Daum, “Still Crazy After All These Years?” *China Law Translate*, May 20, 2013, <https://www.chinalawtranslate.com/en/still-crazy-after-all-these-years/>.
  - 71 Pamela Phan, “Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice,” *Yale Human Rights and Development Journal* 8 no. 1 (2005), <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1049&context=yhrdlj>.
  - 72 “China,” International Bridges to Justice, <https://www.ibj.org/programs/country-programs/china/>.
  - 73 “2019 年度律师、基层法律服务工作统计分析 [Statistical Analysis of Lawyers and Grassroots Legal Services in 2019],” Ministry of Justice of the People’s Republic of China, June 22, 2020, [http://www.moj.gov.cn/Department/content/2020-06/22/613\\_3251398.html](http://www.moj.gov.cn/Department/content/2020-06/22/613_3251398.html).
  - 74 “Fact Sheet on China’s Foreign NGO Law,” *ChinaFile*, November 1, 2017, <https://www.chinafile.com/ngo/latest/fact-sheet-chinas-foreign-ngo-law>.
  - 75 Zhuoshi Liu, “Helping NGOs Use Environmental Law.”
  - 76 Michael Pompeo, “Communist China and the Free World’s Future,” (speech, Richard Nixon Presidential Library and Museum, Yorba Linda, CA, July 23, 2020), <https://www.state.gov/communist-china-and-the-free-worlds-future/>.
  - 77 Elliot Ji, Michael Cerny, and Raphael Piliero, “What Does China Think About NASA’s Artemis Accords?” *The Diplomat*, September 17, 2020, <https://thediplomat.com/2020/09/what-does-china-think-about-nasas-artemis-accords/>.
  - 78 Jerome A. Cohen, “The Many Forms of Arbitrary Detention in China,” Jerome Cohen, December 11, 2019, <http://www.jeromecohen.net/jerrys-blog/2019/12/11/the-many-forms-of-arbitrary-detention-in-china>.
  - 79 John Garrick, “China Has a New Way to Exert Political Pressure: Weaponising Its Courts against Foreigners,” *The Conversation*, June 29, 2020, <https://theconversation.com/china-has-a-new-way-to-exert-political-pressure-weaponising-its-courts-against-foreigners-141195>.
  - 80 Amy Qin, “China Detains 2 Americans Amid Growing Scrutiny of Foreigners,” *The New York Times*, October 17, 2019, <https://www.nytimes.com/2019/10/17/world/asia/china-detains-us-english-teachers.html>.
  - 81 Cohen, “The Many Forms of Arbitrary Detention in China.”
  - 82 “2020 US-China Business Council Member Survey,” US-China Business Council, 2020, [https://www.uschina.org/sites/default/files/uscbsc\\_member\\_survey\\_2020.pdf](https://www.uschina.org/sites/default/files/uscbsc_member_survey_2020.pdf).
  - 83 “2020 Business Climate Survey Released,” American Chamber of Commerce in China, March 10, 2020, <https://www.amchamchina.org/about/press-center/amcham-statement/2020-business-climate-survey-released>.
  - 84 Ibid.
  - 85 “Collaboration or Confrontation: Beyond the False Dichotomy in US-China IP Relations,” *China IPR*, July 17, 2019, <https://chinaipr.com/2019/07/17/collaboration-or-confrontation-beyond-the-false-dichotomy-in-us-china-ip-relations/>.
  - 86 “First-Ever ‘U.S.-China Judicial Dialogue.’”

- 87 “Bilateral Investment Treaty (BIT),” US-China Business Council, <https://www.uschina.org/advocacy/bilateral-investment-treaty>.
- 88 Nargiza Salidjanova, “Policy Considerations for Negotiating a U.S.-China Bilateral Investment Treaty,” U.S.-China Economic and Security Review Commission, August 1, 2016, <https://www.uscc.gov/research/policy-considerations-negotiating-us-china-bilateral-investment-treaty>.
- 89 “Premier Li Keqiang Meets the Press: Full Transcript of Questions and Answers,” *China Daily*, May 29, 2020, [http://english.www.gov.cn/premier/news/202005/29/content\\_WS5ed058d2c6d0b3f0e9498f21.html](http://english.www.gov.cn/premier/news/202005/29/content_WS5ed058d2c6d0b3f0e9498f21.html).
- 90 Jamie P. Horsley, “A primer on how Chinese law might enforce a US-China trade deal,” (Washington, D.C., The Brookings Institution, May 15, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/05/15/a-primer-on-how-chinese-law-might-enforce-a-us-china-trade-deal/>.
- 91 “2019 Report to Congress On China’s WTO Compliance,” United States Trade Representative, March 2020, 164, [https://ustr.gov/sites/default/files/2019\\_Report\\_on\\_China%E2%80%99s\\_WTO\\_Compliance.pdf](https://ustr.gov/sites/default/files/2019_Report_on_China%E2%80%99s_WTO_Compliance.pdf).
- 92 “Legislation Law (2015 Revised Edition),” China Law Translate, March 16, 2015, <https://www.chinalawtranslate.com/2015lawlaw/?lang=en>.
- 93 Jamie P. Horsley, “China Implements More Participatory Rulemaking Under Communist Party,” *The Regulatory Review*, March 15, 2018, <https://www.theregreview.org/2018/03/15/horsley-china-implements-participatory-rulemaking/>.
- 94 U.S. Congress, House, Hong Kong Human Rights and Democracy Act of 2019, HR 3289, 116th Cong., 1st sess., introduced in House June 13, 2019, <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 95 “2019 Report to Congress On China’s WTO Compliance.”
- 96 William P. Barr, “Remarks on China Policy at the Gerald R. Ford Presidential Museum,” (speech, Gerald R. Ford Presidential Museum, Grand Rapids, MI, July 16, 2020), <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-china-policy-gerald-r-ford-presidential>.
- 97 *Dangerous Partners: Big Tech and Beijing: Testimony before the Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism*, 116th Cong. 2 (2020) (statement of Samm Sacks, Yale Law School Senior Fellow), <https://www.judiciary.senate.gov/imo/media/doc/Sacks%20Testimony.pdf>.
- 98 Jamie Horsley, “China’s Orwellian Social Credit Score Isn’t Real,” *Foreign Policy*, November 16, 2018, <https://foreignpolicy.com/2018/11/16/chinas-orwellian-social-credit-score-isnt-real/>.
- 99 Yin Cao, “World’s First Internet Court Goes Online in Hangzhou,” *China Daily*, August 18, 2017, [https://www.chinadaily.com.cn/china/2017-08/18/content\\_30770108.htm](https://www.chinadaily.com.cn/china/2017-08/18/content_30770108.htm).
- 100 “China: Supreme Court Issues Rules on Internet Courts, Allowing for Blockchain Evidence,” *Global Legal Monitor*, September 21, 2018, <https://www.loc.gov/law/foreign-news/article/china-supreme-court-issues-rules-on-internet-courts-allowing-for-blockchain-evidence/#:~:text=In%20August%202017%2C%20China%20opened.a%20traditional%20offline%20hearing%20takes>.
- 101 Jason Tashea, “China’s All-Virtual Specialty Internet Courts Look Set to Expand into Other Areas of the Law,” *ABA Journal*, November 1, 2019, <https://www.abajournal.com/magazine/article/china-all-virtual-specialty-internet-courts>.
- 102 “Court Trial Goes Online in China amid Virus Outbreak,” *Xinhua*, February 4, 2020, [http://www.xinhuanet.com/english/2020-02/04/c\\_138755155.htm](http://www.xinhuanet.com/english/2020-02/04/c_138755155.htm).
- 103 “You Can Watch Trials in Chinese Courts on the Internet Now,” *China Justice Observer*, May 20, 2018, <https://www.chinajusticeobserver.com/a/you-can-watch-trials-in-chinese-courts-on-the-internet-now>.



- 104 “中国裁判文书网 [China Judgments Online],” The Supreme People’s Court of the People’s Republic of China, <https://wenshu.court.gov.cn/>.
- 105 Versteeg, “Making Chinese Court Filings Public?”
- 106 Margaret K. Lewis, “Criminalizing China,” *Journal of Criminal Law and Criminology* 111, no. 1 (2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3600580](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3600580).
- 107 Samm Sacks, “Data Security and U.S.-China Tech Entanglement,” *Lawfare*, April 2, 2020, <https://www.lawfareblog.com/data-security-and-us-china-tech-entanglement>.
- 108 “US-China Trade Agenda,” US-China Business Council, <https://www.uschina.org/reports/us-china-trade-agenda>; see also “How Trade with China Benefits the United States,” US-China Business Council, <https://www.uschina.org/how-trade-china-benefits-united-states>.

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