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**ANALYSIS OF THE EUROPEAN UNION-CHINA ASYMMETRIES
IN FIVE DIMENSIONS**

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Realiza un análisis riguroso y completo del estado de la cuestión, y con carácter preliminar explicita la metodología empleada y los acrónimos utilizados.

Cada uno de los capítulos contiene unas conclusiones parciales a modo de recapitulación, a los que se suma un apartado final específico de Conclusiones, en el que se explican pormenorizadamente los resultados obtenidos.

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2. "EUROPEAN UNION-CHINA: TWO ASYMMETRICAL WELTANSCHAUUNGS ABOUT HUMAN RIGHTS. REMARKS ON THE UNITED STATES CONCEPT OF HUMAN RIGHTS". Revista TSN, nº7, enero-junio 2019 ISSN: 2530-8521, https://transatlanticstudiesnetwork.uma.es/wp-content/uploads/2020/05/garcia_weil.pdf

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En Málaga, a veintitrés de marzo de 2021.



Fdo. Juan Jesús Bravo Caro

This thesis is dedicated to my parents

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I wish to thank Fernando Cejudo Lozano for inviting me to embark in this adventure.

LIST OF ACRONYMS

AD	Anti-Dumping
AI	Artificial Intelligence
AIIB	Asian Infrastructure Investment Bank
ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europa Meeting
BAT	(Baidu, Alibaba and Tencent, collectively called BAT)
BBC	British Broadcasting Corporation
BCS	Blue Card Scheme
BIT	Bilateral Investment Treaty
BRI	Belt and Road Initiative, i.e. the New Silk Road, or OBOR (One Belt One Road)
BRICS	Brasil, Russia, India, China, South Africa
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment
CBMM-China	Capacity Building for Migration Management in China Project
CEAIE	China Education Association for International Exchange
CCP	Chinese Communist Party
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination

CESCR	Committee on Economic, Social and Cultural Rights
CFI	Court of First Instance (of the European Union)
CGD	Center for Global Development
CIIS	China Institute for International Studies
COSCO	China Ocean Shipping (Group) Company
CPC	Communist Party of China
CRC	Convention on Children's Rights
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Court of Human Rights
ECIPE	European Centre For International Political Economy
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EEC	European Economic Community
EEU	Eurasian Economic Union
EIDR	European Instrument for Democracy and Human Rights
ETNC	European Think-tank Network on China
eWTP	Electronic World Trade Platform
EEU	Eurasian Economic Union
EU	European Union
Eurogendforce	European Gendarmerie Force
Fintech	Financial technology

FONOPS	Freedom of Navigation Operations
Frontex	European Border and Coast Guard Agency
GAO	(United States) Government Accountability Office
GDP	Gross Domestic Product
GHG	Greenhouse gas
GPCL	General Principles of Civil Law
G-77	Group of 77 developing countries
HED	High Level Economic and Trade Dialogue
HP	Hard power
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ILC	International Law Commission (of the United Nations)
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
IoT	Internet of Things

IP	Industrial Property
IPR	Industrial Property Rights
IR	International Relations
ISSC	International Social Science Council
JISP	United Nations Convention on Jurisdictional Immunities of States and Their Property (JISP Convention)
LTP	Lewis Turning Point
MES	Market Economy Status
MIIT	Ministry of Industry and Information Technology
MOFCOM	Ministry of Trade of the PRC
NBS	National Bureau of Statistics
NDB	New Development Bank
NHRAP	National Human Rights Action Plan
NME	Non Market Economy
NPC	National People's Congress
NSA	Non-State Actors
NWP	National Whole Power
OBOR	One Belt One Road, i.e. the BRI
OECD	Organization for Economic Cooperation and Development
PRC	People's Republic of China
PSD2	Revised Directive on Payment Services (PSD2)
R&D	Research and Development

REDI	Revista Española de Derecho Internacional
REO	Rare Earth Oxides
RMB	Renminbi (人民币), PRC monetary unit
RP	Responsible Protection
RtoP	Responsibility to Protect
R2P	Responsibility to Protect
SCO	Shanghai Cooperation Organization
SDG	Sustainable Development Goals
SDR	Special Drawing Right
SOE	State-owned enterprise
SP	Soft Power
SRF	Silk Road Fund
S&T	Science and Technology
TEU	Treaty on European Union
TFR	Total Fertility Rate
The Joint Communication	The High Representative's and European Commission's Joint Communication "Elements for a new EU Strategy on China"
TPP	Trans-Pacific Partnership
TRACECA	International Transport Corridor Europe-the Caucasus-Asia
TTIP	Transatlantic Trade and Investment Partnership
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea

UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States
USA	United States of America
USSR	Union of Soviet Socialist Republics
VCLT	Vienna Convention on the law of the treaties
VIS	(EU's) Visa Information System
VR	Virtual Reality
WB	World Bank
WCED	World Commission on Environment and Development
WHO	World Health Organization
WTO	World Trade Organization

“只要功夫深铁杵磨成针”（中国谚语）

“If you work at it hard enough,
you can grind an iron bar into a needle”

Perseverance leads to success

(Chinese proverb)

Adieu, dit le renard. Voici mon secret. Il est très simple : [...] L’essentiel est
invisible pour les yeux.

– L’essentiel est invisible pour les yeux, répéta le petit prince, afin de se souvenir.

(Le petit prince, Antoine de Saint-Exupéry)

– Goodbye, said the fox. And now here is my secret, a very simple secret: [...] what is essential is invisible to the eye.

– What is essential is invisible to the eye, the little prince repeated, so that he would be sure to remember.

(The little prince, Antoine de Saint-Exupéry)

INTRODUCTION

This thesis is an innovative work on the asymmetries of the EU-China relations. We break away from the Eurocentric and Sinocentric conceptions typical to this kind of analysis, with the aim to reach a central position; this attitude eases a more accurate approach to the reality. China, from the point of view of Europeans, is enigmatic. The Chinese, in turn, might find European idiosyncrasy is cryptic. Hence, divergences, disagreements and asymmetries are guaranteed.

Our motivations to undertake this work are twofold: on one side, because we finalized a Specialist Course on European Law, in the Universidad de Málaga (Spain); on the other side, because we have spent several years in China completing the studies in two Universities (in Beijing and in Shanghai) about China's language, history, geography and, in general, its culture.

The general objective of this thesis is to ascertain if the EU-China relations are asymmetrical. Moreover, we have two specific objectives: the first one is, if the said relations are asymmetrical, to determine the cause for such asymmetries. The second specific objective is to ascertain what is the main trend regarding the asymmetries: will they increase or decrease?

Our general hypothesis is that the EU-China relations are asymmetrical. Our first specific hypothesis is that the causes for such asymmetries are diverse, essentially historical and cultural. Our second specific hypothesis is that for the time being and even in the short and medium term the asymmetries will still grow.

There are several experts in Public International Law as well as in International Relations who maintain that for the study of international relations, the assistance of auxiliary sciences is needed. However, there are not many works developing such approach with the use of the said auxiliary sciences from both sides. Europe and China have very different cultural backgrounds; hence without delving in the conceptualities of the issue, there will be little chances to deepen in the object of the thesis.

In this thesis we use auxiliary sciences as, for example, to analyze international treaties which, regardless the date when they were signed, are legal documents. This way, we will avoid conceptual gaps in a case like this, when two

civilizations are so different. Hence, through the knowledge of legal and metalegal aspects, we will approach an accurate analysis of international relations.

In respect of the literature review, we have examined works dealing with the general outlines of our thesis. There is a mainstream in Public International Law admitting that the study of this realm of law is impossible without the aid of History. Therefore, in Chapter I we analyze the historical aspect of the EU-China relations. In this regard, Aguilar Navarro maintains that International Law cannot be understood without a historical approach and social perspective.¹ Paloma García Picazo concurs with the said approach.² This is a crucial view in favor of our thesis. However, we consider that, beyond the historical and the social views of International Law, there are also other aspects affecting it, regarding Economy (Chapter III deepens into the economics of these bilateral relations). We also delve into geographical and demographical issues, with the aid of these auxiliary sciences. Furthermore, other aspects are less tangible and can be included, in general terms, in the concept of culture or idiosyncrasy.

Regarding our thesis, we will also need to ascertain whether, within the academic community of International Law, there is any recognition about the History of China. According to Antonio Remiro Brotóns, Rosa Riquelme Cortado, Javier Díez Hochleitner, E. Orihuela Calatayud and Luis Pérez-Prat Durbán, China, during the Ming Dynasty (XIV-XVII centuries), created an empire.³ From our point of view, it also built its own civilization, as stated by Paloma García Picazo. Furthermore, it is the only existing civilization standing for more than 4.700 years.⁴ Paloma García Picazo submits that international relations have to be analyzed through Chinese culture and civilization.⁵ All the above-mentioned aspects create an appropriate analytical and theoretical framework for the development of our work.

¹ RODRÍGUEZ CARRIÓN, A., *Lecciones de Derecho Internacional Público*, Madrid, Tecnos, 2012, p. 27.

² GARCÍA PICAZO, P., “Module II: Geopolitical situation, China on the international scene; Chinese civilization as a harmonizing factor in world politics - Political culture, thought and society-” in *II Professional expert in Chinese culture and society*, academic year 2008-2009, National University of Distance Education, n.d.; ad usum privatum, pp. 163-210, p. 192. Unofficial translation. Original data: GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica, China en la escena internacional; la civilización china como factor armonizador de la política mundial –Cultura política, pensamiento y sociedad-” , in *II Experto profesional en cultura y sociedad china, curso académico 2008-2009*, Universidad Nacional de Educación a Distancia, n.d.; ad usum privatum, pp. 163-210, p. 192.

³ REMIRO BROTONS, A., RIQUELME CORTADO, R., DÍEZ HOCHLEITNER, J., ORIHUELA CALATAYUD, E., PÉREZ-PRAT DURBÁN, L., *General Course on International Law* (Unofficial translation. Original text: *Derecho Internacional Curso general*), Valencia, Tirant lo Blanch, 2010, p. 45.

⁴ GARCÍA PICAZO, P., op. cit., “Módulo II: Situación Geopolítica,...”, p. 165.

⁵ Id., p. 175.

According to the said statements, we will have to evaluate the relations between Europe and China along History, as this way we will be able to ascertain the current relations as well as the prospects between both sides. According to Paloma García Picazo, in the XIX and XX centuries, the phenomenon called *dilatatio europea* took place. As a result, the territories controlled by Europe increased from being in 1800 the half of the world, to just before World War I, when 4/5 of the world was under European domination.⁶ However, regarding our work, we would like to go a step beyond, because this is the context in which happened one of the key issues affecting the relations between Europe and China: the century of humiliation. Several authors consider that the century of humiliation is relevant for understanding why the current notion of sovereignty in China is so divergent from the European one.

Montserrat Pintado Lobato, quoting Qin Yaqing, states that he admits the adequacy of the concept of international society as a means to apprehend international relations, but he also criticises it for being stereotyped, static and Eurocentric.⁷ Furthermore, Qin maintains that “European international society is taken as the international society model [sic], other societies are perceived as non-modern ones.”⁸ In this context, Alejandro Rodríguez Carrión states that any historical approach to International Law has to be Eurocentric, as the concept of International Law was developed by European States.⁹ This is a rather determinist conception of the Eurocentric view of International Law, which cannot be avoided. However, the perspective of the current situation regarding international relations has changed. There is a rising stream in favor of non-Western States contributing to the theory of international relations.

One of the essential asymmetries regarding the international relations between the EU and China is about sovereignty. Yongjin Zhang, quoted by Mart Veliste, maintains that now that the world is post-Westphalian, China is in favor of Westphalia, i.e. in a nutshell, in favor of the status quo.¹⁰ Wang Hongying

⁶ Id., p. 169.

⁷ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad. China y Estados Unidos en una sociedad internacional en transformación*, Doctoral thesis, Universidad del País Vasco, 2017, p. 142, available at <http://www.revista-redi.es/es/articulos/hacia-una-teoria-china-de-las-relaciones-internacionales-evolucion-proyectos-teoricos-y-pertinencia-practica/>, last visited on 12/12/2020.

⁸ QIN Y., “International Society as a Process: Institutions, Identities, and China’s Peaceful Rise”, *The Chinese Journal of International Politics*, Vol. 3, n° 2, 2010, pp. 129-153, esp. p. 134.

⁹ RODRÍGUEZ CARRIÓN, A., op. cit., pp. 29-30.

¹⁰ VELISTE, Mart, “Understanding China’s Rise: Stigma Management During Xi Jinping Years (2012-2017)”, MA Thesis, University of Tartu, Faculty of Social Sciences Johan Skytte Institute of Political Studies, MA, Tartu 2018, p. 23, available at

explains that such situation is due to the century of humiliation.¹¹ Sovereignty, hence, is an issue to be analyzed in our work.

Balazs Ujvari maintains that the cultural background plays an essential role in the EU-China relations, affecting bilateral negotiations. The key question is the conceptual gap.¹² Zhongqi Pan, regarding this issue, concurs with this vision of conceptual gap, specifically regarding sovereignty. He considers that the EU's notion of sovereignty is expansive, while the China's one is restrictive.¹³ A clear example of this divergence might be reflected in the differences between the Responsibility to Protect, supported by the West, and China's Responsible Protection, which is more restrictive. Zhongqi Pan links this aspect with the century of humiliation.¹⁴

Professor Jia, quoted by Julian Ku concurs with this view on the importance of sovereignty in China's notion of international law, while it respects the UN Charter.¹⁵ Julian Ku also quotes Professor Delisle regarding the differences between the respective notions of sovereignty and human rights.¹⁶

Another opinion on the conceptual gap on sovereignty is the one by Gustaaf Geeraerts who considers that the mere essence of the EU, with a flexible concept of sovereignty, differs radically from the Chinese one.¹⁷

http://dspace.ut.ee/bitstream/handle/10062/59101/veliste_mart_ma_2018.pdf, last visited on 25/02/2017.

¹¹ WANG, H., "Understanding the intangible in international relations – The cultural dimension of China's integration with the international community", in ZHENG, Y. (ed.), *China and International Relations - The Chinese View and the Contribution of Wang Gungwu*, London, Routledge, 2010, p. 211.

¹² UJVARI, B., "Introduction", in UJVARI, B. (ed.), *EU-China co-operation in global governance: going beyond the conceptual gap*, Egmont Paper 92, Brussels, Egmont – The Royal Institute for International Relations, April 2017, pp. 2-4, available at <http://www.egmontinstitute.be/content/uploads/2017/04/ep92.pdf?type=pdf>, last visited on 26/02/2017.

¹³ PAN, Z., "Guanxi, Weiqi and Chinese Strategic Thinking", *Chin. Polit. Sci. Rev.* 2016, no. 1, pp. 303–321, p. 313, DOI 10.1007/s41111-016-0015-1, Received: 4 March 2016/Accepted: 11 March 2016/Published online: 22 March 2016, Fudan University and Springer Science+Business Media Singapore 2016, available at <https://link--springer--com.uma.debiblio.com/content/pdf/10.1007%2Fs41111-016-0015-1.pdf>, last visited on 14/03/2017.

¹⁴ PAN, Z., "Managing the conceptual gap on sovereignty in China–EU relations", *Asia Eur J*, Vol. 8, pp. 227–243, p. 229, available at <https://link--springer--com.uma.debiblio.com/content/pdf/10.1007%2Fs10308-010-0263-x.pdf>, last visited on 14/03/2017.

¹⁵ KU, J., "China and Sovereignty under International Law", *Opinio Juris*, Monday, April 8, 2013, available at <http://opiniojuris.org/2013/04/08/china-and-sovereignty-under-international-law/>, last visited on 26/02/2017.

¹⁶ Ibid.

¹⁷ GEERAERTS, G., "The EU and China: Modest signs of convergence?", *Security Policy Brief*, Egmont, December 2018, no. 101, pp. 1-2, available at <http://www.egmontinstitute.be/content/uploads/2018/12/SPB101.pdf?type=pdf>, last visited on 27/06/2019.

We submit that the EU and China have different Weltanschauungs, which cause asymmetries. (According to the Merriam-Webster Dictionary ¹⁸, Weltanschauung is a German word, which first known use dates back to 1868, etymologically from Welt (world) and Anschauung (view). Its meaning is “a comprehensive conception or apprehension of the world especially from a specific standpoint”. In a nutshell, it means worldview). Zhou Hong analyses this issue and its historical causes, i.e. mostly the century of humiliation.¹⁹ Paloma García Picazo concurs with this opinion.²⁰ Montserrat Pintado Lobato, quoting Y. Zhang, submits that “[i]n the case of China, for example, its process of socialisation into the Western international society was traumatic, with strong homogenisation forces. Even if it successfully integrated, achieving the outcome, the process was so traumatic that is still recurrent in Chinese rhetoric.”²¹ In our thesis we will try to ascertain how far this factor affects the EU-China relations.

There is a recent trend in China’s international relations, as several scholars consider that China is not any longer an international order-taker, but an international order-shaper. Caterina García-Segura,²² Manuel Montobbio²³, William A. Callahan²⁴, Montserrat Pintado Lobato²⁵ or Zhimin Chen²⁶ among

¹⁸ Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/Weltanschauung>, last visited on 06/05/2021.

¹⁹ ZHOU, H., “Symmetry and Asymmetry in China-EU Partnerships”, *Institute of European Studies of Chinese Academy of Social Sciences* [sic], available at http://ies.cass.cn/english/chinare/cer/201205/t20120515_2464149.shtml, last visited on 02/04/2018.

²⁰ GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica...”, p. 192.

²¹ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad. China y Estados Unidos en una sociedad internacional en transformación*, Doctoral thesis, Universidad del País Vasco, 2017, p. 266, available at <http://www.revista-redi.es/es/articulos/hacia-una-teoria-china-de-las-relaciones-internacionales-evolucion-proyectos-teoricos-y-pertinencia-practica/>, last visited on 12/12/2020. ZHANG Y., “China’s Entry into International Society: Beyond the Standard of ‘Civilization’”, *Review of International Studies*, Vol. 17, nº 1, 1991, p. 6.

²² GARCÍA-SEGURA, C., “Westfalia, Worldfalia, Eastfalia. El impacto de las transformaciones de la estructura de poder interestatal en el orden internacional”, *REDI* Vol. 69 2 2017, pp. 45-70, p. 65, DOI: <http://dx.doi.org/10.17103/redi.69.2.2017.1.02>, available at <http://www.revista-redi.es/es/articulos/westfalia-worldfalia-eastfalia-el-impacto-de-las-transformaciones-de-la-estructura-de-poder-interestatal-en-el-orden-internacional/>, last visited on 18/03/2017.

²³ MONTOBBIO, M., “El ascenso global de China y la reconfiguración de la Teoría de las Relaciones Internacionales”, *Real Instituto Elcano*, 4/4/2017, pp. 10-11, available at <http://www.realinstitutoelcano.org/wps/wcm/connect/6595ea49-ccde-498e-9d1b-dac1638984fd/Montobbio-Ascenso-global-China-reconfiguracion-Teoria-Relaciones-Internacionales.pdf?MOD=AJPERES&CACHEID=6595ea49-ccde-498e-9d1b-dac1638984fd>, last visited on 8/03/2017.

²⁴ CALLAHAN, W. A., “Chinese Visions of World Order: Post-hegemonic or a New Hegemony?”, *International Studies Review*, 2008, no. 10, pp. 749–761, p. 749. Quoted by DEL ARENAL, C., *Ethnocentrism and international relations theory: a critical vision* (Unofficial translation. Original text: *Etnocentrismo y teoría de las relaciones internacionales: una visión crítica*), Madrid, Tecnos, 2014, pp. 169-170.

²⁵ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 121. Pintado Lobato submits that China’s rich and vast History offers a relevant horizon regarding the exploration of alternative world orders, outside the common European or western History.

²⁶ CHEN, Z., “China, the European Union and the Fragile World Order”, *Journal of Common Market Studies*, Volume 54, 2016, Number 4, pp. 775–792, available at <http://onlinelibrary.wiley.com/doi/10.1111/jcms.12383/abstract>, last visited on 14/05/2019.

others, are of the same opinion. Celestino del Arenal, quoting Leire Moure, maintains that Chinese civilization is essential for China's notion of international relations. He considers, concurring with Callahan, that China's surge will play a role in international relations, weakening the preponderant ethnocentrism.²⁷ Montserrat Pintado Lobato submits that, regarding Tianxia (天下), states' element is submitted to the global element, what shows that Chinese thinking underpins on the concept of civilization. This is an original perception of the Chinese understanding of governance. It had its practical expression in the tribute system, in which China had a central position and each other states' situation depended on their degree of civilization.²⁸ Yongyin Zhang, quoted by Montserrat Pintado Lobato, maintains that, regarding imperial China, Confucianism also held this *civilizational* idea of the world. Moreover, Yongyin Zhang considers that the said system was determined by the fact that "[t]he Chinese assumption of cultural superiority was further reinforced by its contact with barbarians along its borders."²⁹ Actually, this statement is caused by the Chinese system of concentric circles, also analysed by Pintado Lobato, which conforms the criteria according to which the neighbouring communities are classified; in fact, barbarians, placed along the borders, hold the farthest circles.

Leire Moure, who quotes Qin Yaqing, states that in recent years Chinese scholars have reached a consensus about two issues: first, Western theories are not sufficient to analyze worldwide international relations; second, they do not consider the cultural aspect of international relations. In this regard, Wang Gungwu, concurring with Francis Fukuyama³⁰ maintains this opinion, stating that this is due to Western cultural preponderance³¹ However, perhaps, as China adopted certain Western cultural aspects, it created its own adaptative cultural style. This issue has prompted several questions. Hence we delve into it in our work.

²⁷ DEL ARENAL, op. cit., p. 169-170.

²⁸ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 129.

²⁹ ZHANG Y., "System, empire and state in Chinese international relations", *Review of International Studies*, Vol. 27, nº 5, 2001, p. 55.

³⁰ FUKUYAMA, F., "The End of History?", *The National Interest*, Summer 1989, p. 1, available at https://www.embl.de/aboutus/science_society/discussion/discussion_2006/ref1-22june06.pdf, last visited on 18/02/2017.

³¹ Quoted by WANG, H., op. cit., p. 203.

Leire Moure also quotes Zhao Tingyang, who constructed the theory of Tianxia (天下)³². This theory criticizes the Western theories, as their unit of analysis is the State. It considers that the analytical parameter should be the whole world.³³ Zhao Tingyang submits that there should be a single political body ruling the whole world, according to a global political philosophy.³⁴

Apparently, in these bilateral relations, there is a duality: there are flowing trading relations, but there is no cultural understanding. Wang Hongying states that the international community hasn't accepted China.³⁵ The said author considers that one of the factors causing misunderstandings between both sides is the divergence in values. One of the examples is that the West attaches great importance to individual freedom, as individualism is essential for Western culture, unlike in China, and Asia in general, where the community is a paramount value.³⁶ According to Wang Hongying, who follows the theories of Li Rong, China's main contribution to international relations is Tianxia (天下) and it will be its own reference hereinafter.³⁷ According to William A. Callahan, Tianxia (天下) represents the Chinese Weltanschauung.³⁸ Given the fact that issue is essential to the theory of Chinese IR, we deepen into it along the thesis.

Wang Hongying submits that China has shown the world that it is more liable than the West, because it was not so badly affected by the 2008 crisis as the West.³⁹

Regarding human rights, its concept is not monolithic. The analysis by Paloma García Picazo about the Universal Declaration of Human Rights explains that worldwide there are two confronted views: civil-political rights on one side, and socio-economic ones on the other side.⁴⁰ Hence, the universal character of the

³² Pleco Chinese Dictionary. Copyright © 2001-2019 Pleco Software Incorporated. Literally, 天下 means "everywhere under heaven", but the figured common meaning is "the whole world".

³³ MOURE, L., "International order in transition and International Relations: Theoretical approaches to the hegemonic decline of the United States and the rise of China as a global power", *Cursos de Derecho Internacional y RI.indb*, 30/06/14, 11:12, pp. 367-449, pp. 417-418.

³⁴ ZHAO, T., "A Political World Philosophy in terms of All-under-heaven (Tian-xia)", *Diogenes*, Vol. 56, 2009, no. 5, pp. 5-18, p. 5, available at <http://www.aisixiang.com/download%2Fdiogenes%20tianxia.pdf>, last visited on 21/06/2019.

³⁵ Quoted by WANG, H., op. cit., p. 211.

³⁶ Id., pp. 211-212.

³⁷ Id., p. 215.

³⁸ CALLAHAN, W. A., op. cit., "Chinese Visions of World Order...", p. 750.

³⁹ WANG, H., op. cit., p. 216.

⁴⁰ GARCÍA PICAZO, P., *La investigación del medio internacional. Fundamentos teóricos y conceptuales, métodos y técnicas*. Madrid, Tecnos, 2012, pp.139-140.

Declaration is affected.⁴¹ We will analyze whether Weltanschauungs also play a decisive role in this realm.

Regarding the opportunity and actuality of this thesis, the EU's second-biggest trading partner is China, just behind the United States; the EU is China's biggest trading partner. Hence, it is obvious that our thesis is appropriate and highly topical. Napoleon Bonaparte said "China is a sleeping giant. Let her sleep, for when she wakes she will move the world."⁴² And this is, indeed, what has been happening since the 80's of the XX century, i.e. for the last forty years. In such a short period of time (in historical terms) China, from being a poor country, has managed to become a leading world power. And the fact is that China is still growing. Meanwhile, the European Union is trying to recover from what probably has been its worst economic crisis ever. These circumstances have worsened even more the trade imbalance against the EU. Hence, the asymmetries don't decrease, but they even increase.

In our work we use the inductive methodology. The starting point for our analytic method is the reality of the European Union-China relations. The study of the legal instruments concerning the said relations has also been a key element for our analysis. The appraisal of the texts written by experts on the topic has also led us on the way to our study. Finally, we have developed the conclusions that we have attained after the said reasoning process.

In order to test our hypothesis, we used several means. Regarding the conceptual foundations of the issue, we have analyzed and compared several works of Public International Law. The study of certain authors of History has helped us to deepen in the precedents of the European Union-China relations. For the rest of our study, the examination of articles on Public International Law, International Relations and History among other fields has been essential. And, in order to update the thesis and improve its discursive facet, the results of the discussion boards in which we have taken part, with our provided papers have played a decisive role. With a view to prove the hypothesis, we go from the conceptual macrostructures to the particular microstructures. The priority objective of this thesis is to ascertain the conceptual foundations of the issue, and

⁴¹ China signed the International Covenant on Civil and Political Rights on 5 Oct 1998 but, as expressed above, it has not ratified it yet. See footnotes 4, 5 and 6 of the UN Treaty Collection site. "CHAPTER IV HUMAN RIGHTS 4. International Covenant on Civil and Political Rights, New York, 16 December 1966", available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en, last visited on 15/07/2019.

⁴² ARARAL, E., The effective diplomacy of reassurance, China Daily, updated: 2017-10-25 07:35, available at http://www.chinadaily.com.cn/opinion/2017-10/25/content_33677579.htm, last visited on 21/09/2019.

thereafter to develop them. Regarding further means to expose our findings, on one side we have used comparative charts, which are very enlightening, as they ease the understanding of certain matters, which are better understood this way than only in a text. On the other side, e. g. in the economic field, graphics allow a clearer exposition of economic issues.

One of the major novelties of this thesis is that all the different aspects have been examined through the view of European and Chinese authors, instruments of Public International Law and regulations from both the EU and China. Furthermore, the comparative analysis between both sides, specifically Comparative Law, has been a key component of our work.

The thesis is structured in five chapters, according to five dimensions: Chapter I, Historical Dimension; Chapter II, Legal Dimension; Chapter III, Economic Dimension; Chapter IV, International Relations Dimension; Chapter V, Human Dimension.

We have chosen the above-mentioned five dimensions that represent the chapters in which our thesis is structured because they are the ones which allow us to analyze the asymmetries in the EU-China relations. Furthermore, these five areas project a global understanding of the said international relations. Finally, all the five areas are interconnected.

History represents the chronological aspect, essential to any international relation and the key framework to analyze the evolution of the subject of thesis. Moreover, Chinese leaders often refer to the century of humiliation; hence we consider that we should analyze this aspect. But it is also the suitable theoretical framework for the study of positive precedents of trade between these two parties, which are the Silk Road and the Manila Galleon.

Other historical points are the Unequal treaties, as well as the 1864 Spanish-Chinese Friendship, Trade and Navigation Treaty; moreover, this aspect is also connected to the next Chapter, i.e. the legal dimension, given that this is a legal issue. Law is the essence which regulates links between international players, but it is also the environment of one of the main asymmetries between the EU and China: their contrasting views on sovereignty. Commerce and trade are one of the main reasons why parties are internationally active, but they are also the domain at which happen probably the most conspicuous asymmetries between Europe and the Asian giant: the imbalance in trade as well as issues such as the trade status of

China in the WTO or the protection of Industrial Property. In the last part of the economic dimension we have invoked History again in order to compare several eras of trade. International relations are the special field to compare the respective developments regarding soft and hard power, which in turn are linked to sovereignty. Both sides in these international relations have launched their transcontinental transportation networks, with diverging results. The precedents of the current trade are the above-mentioned Silk Road and the Manila Galleon. Moreover, the above-mentioned transportation networks could also affect a legal issue, i.e. sovereignty. Last but not least, human dimension is also intertwined with the rest of dimensions. For instance, we have analyzed the Chinese migration in Europe with a historical perspective. Human rights logically are to be analyzed from a legal point of view. Obviously, migrations have economic causes and effects, and the LTP is a demographic but also an economic issue.

Given the said theoretical framework, it is evident that the choice of topics for the analysis is adequate, because they expose the asymmetries between both sides, yield a global view and are intertwined.

In Chapter I, under the title of the historical dimension, we go through the precedents of the said international relations, i.e. the century of humiliation, between 1839 and 1949, which started with the Opium Wars and their consequence, the Unequal Treaties. The reason to analyze this part is to ascertain how far those events marked the current situation of the EU-China relations. Reputed scholars maintain this position.

There are two crucial precedents of the EU-China relations: the Silk Road and the Manila Galleon. We would like to determine whether the said two cases were precedents of globalization. The 1864 Spanish-Chinese Friendship, Trade and Navigation Treaty is also examined in our work, because it is a relevant case of an international legal document regarding both Europe and China. Linked to the said treaty is the case of the *culíes* (coolies, i. e., Chinese traders made slaves in the Spanish American colonies), which is analyzed as well.

We also analyze other relevant periods as the economic opening reform policy, in Chinese 改革开放 (*gaige kaifang*) and China's access to the WTO. The supposed relevance of this period is the role it played in the modernization of China and how far they were essential for the current asymmetry in favor of China regarding the EU.

In the Legal Dimension (Chapter II) we analyze the legal foundations of the asymmetry in international relations, regarding aspects such as the sovereignty of the States.

One of the cornerstones of international relations is sovereignty. To ascertain the differences between both sides in this regard is another of the essential issues of our thesis. There is a case in which the EU and China seem to diverge: the R2P (Responsibility to Protect), which is supported by most of the EU member States; and the RP (Responsible Protection), supported by China, among others. We will determine how far the said two institutions differ.

Chapter III deals with the Economic Dimension of the above-mentioned relations. Actually, this is the kernel of the EU-China relations. The analysis of trade balance/imbalance is a must in trade relations, as well as a differentiated trade in goods and services.

Finally, within the Economy Dimension we make a comparative analysis of five economic episodes: the Silk Road, the Manila Galleon, the reform and open up to the outside world policy (改革开放), the new Silk Road (the OBOR) and the Chinese e-commerce. A dissection of all of them in different elements is necessary, so that we obtain an accurate result.

In the International Relations' Dimension (Chapter IV) we analyze the ways in which China approaches Europe. This question is affected by the cohesion of the EU which is also related to the concept of sovereignty by the EU and its member States. Also in this chapter we study the new Eurasian corridors: BRI (previously known as OBOR) and TRACECA, and establish whether both projects are asymmetrical and how far the BRI affects the cohesion of China and the EU.

That China is a world player is a matter of fact. Hence, we will ascertain how far its strength is affecting the international relations theory, and whether China is making contributions to it. The core of the issue is, according to an ample consensus of the Chinese academic community, to determine two aspects: the first is to ascertain whether Western theories on international relations suit the whole international community. The second is how far the cultural facet is incorporated to the theory of international relations. Actually, both questions are intimately linked, as the first question would be about sufficiency, while the second question is about inclusiveness.

The last Chapter is the Human Dimension (Chapter V). There are two essential questions in this chapter: the first one analyzes the two different Weltanschauungs about rights, in order to establish how different they are. The

second one is about the asymmetries in migrations. As a matter of principle, the differences in migrations between both sides are huge. Therefore, we will analyze the reasons for such overwhelming asymmetries.

I. HISTORICAL DIMENSION

I.1 EU-China relations: historical precedents

I.1.1 Previous considerations

There are several aspects which should be regarded before deepening in the thesis.

Historical perspective (along with the sociological and economical approach, among others) is essential for the purpose of this work. In this regard, the vision of Alejandro Rodríguez Carrión is enlightening.⁴³

As we develop along our work, we go a step beyond what the above-mentioned opinion expresses because, in order to comprehend asymmetries permeating the international relations between so different entities as the European Union and China, the said view is not enough. The suitable method has to be the analysis of their respective weltanschauungs. Only this way will we have a chance to understand these international relations.

The subject of our thesis is the asymmetry in the relations between the EU and China. The first examples of this asymmetry were the Unequal Treaties. The said treaties were triggered by the Opium Wars. It is crucial to analyze the cause-effect relation between the said wars and those treaties. Furthermore, the consequence of the treaties, are also worth studying. Since then, other aspects as the leadership by Deng Xiaoping are also paramount to understand nowadays relations between both sides.

According to the Elcano Royal Institute, the momentum of China's surge is unprecedented; its huge power causes asymmetrical bilateral relations in favor of China.⁴⁴

In general terms, the same could be said about the EU-China relations: they are clearly asymmetrical in favour of the Asian giant.

Zhou Hong refers to an event, which we analyze in the initial part of our historical analysis. A British envoy paid a visit to the Chinese emperor, but refused to follow the Chinese protocol, according to which he should kowtow to the emperor. Later on, the British attacked the gate of the empire using gunboats.

⁴³ RODRÍGUEZ CARRIÓN, A., *op. cit.*, pp. 15-16.

⁴⁴ ESTEBAN, M. (coordinator), "Informe Elcano – Relaciones España-China", *ELCANO Royal Institute*, Informe 24, November 2018, p. 11, available at <http://www.realinstitutoelcano.org/wps/wcm/connect/70d1270b-1f68-44e2-8533-b273036d2d0d/Informe-Elcano-24-Relaciones-Espana-China.pdf?MOD=AJPERES&CACHEID=70d1270b-1f68-44e2-8533-b273036d2d0d>, last visited on 26/06/2019.

Zhou Hong defines such events as “A classical anecdote of asymmetry in the Sino-European relations”. Hence, asymmetry is a common occurrence in the EU-China relations. However the said author considers that, for a century, “this lesson prompted the Chinese to a self-strengthening and age-long resistance”. The “century of humiliation” consisted of the mortification inflicted by foreign powers between 1839 and 1949, which started with the Opium Wars and their consequence, the Unequal Treaties; it ended with the Maoist Revolution.⁴⁵ But the recovered equality does not mean there is no asymmetry.

However, it can also be considered that the century of humiliation did not last a century, but a century and a half, because the humiliation did not end till the transfer of sovereignty over Hong Kong (1997) and Macau (1999).⁴⁶

Paloma García Picazo considers that understanding the role of China in the contemporary world is difficult, if not impossible, without taking into consideration the historical facts.⁴⁷

History is relevant for the consciousness of all states; for China it is essential. Mart Veliste supports this idea.⁴⁸ Moreover, according to Mart Veliste:

“Furthermore, it is evident that the historic experience has made China acutely conscious [sic] about its sovereignty. Perhaps the strongest statements comes [sic] from Xi Jinping’s latest address: ‘We stand firm in safeguarding China’s sovereignty and territorial integrity, and will never allow the historical tragedy of national division to repeat itself. We will never allow anyone, any organization, or any political party, at any time or in any form, to separate any part of Chinese territory from China!’”⁴⁹

Yang Hai is of the same opinion:

“[...] owing in part to the ‘Century of Humiliation’, China in general adopts a sovereignty-bound approach and stresses the principle of non-interference.”⁵⁰

Julian Ku agrees with the said view linking international law and history. History is essential for comprehending Chinese vision of international law. Julian

⁴⁵ ZHOU, H., op. cit., n. d.

⁴⁶ KU, C., “Abolition for China’s Unequal Treaties and the Search for Regional Stability in Asia, 1919-1943”, Texas A&M University School of Law, Texas A&M Law Scholarship, p. 67, available at <http://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1412&context=facscholar>, last visited on 22/03/2017.

⁴⁷ GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica,...”, p. 192.

⁴⁸ VELISTE, M., op. cit., p. 49.

⁴⁹ Id., p. 62.

⁵⁰ HAI, Y., “The EU and China: Mismatched Partners on Development”, in UJVARI, U. (ed.), *EU-China co-operation in global governance: going beyond the conceptual gap*, Egmont Paper 92, Brussels, Egmont – The Royal Institute for International Relations, April 2017, p. 6, available at <http://www.egmontinstitute.be/content/uploads/2017/04/ep92.pdf?type=pdf>, last visited on 26/02/2017.

Ku sustains sovereignty, the main foundation of China's international law, is by large determined by the national humiliation China suffered mostly since the first Opium War (1839) until the Chinese Communist Revolution succeeded (1949).⁵¹

Finally, Zihang Liu also links China's History and the Chinese notion of State sovereignty.⁵²

The object of this thesis is the asymmetry in the international relations between the European Union and the People's Republic of China. However, none of the said parties are long-standing international players. The European Union was created on November 1st 1993. Its predecessors were the European Coal and Steel Community (which in 1950 began to unite European countries economically and politically) and its successors the European Communities and the European Economic Community.⁵³ The most important difference between the European Union and its predecessors is that the EU has legal personality.⁵⁴ But, as stated in the article 24 of the Treaty on the EU, its legislative and acting capability is limited to the ones of the Member states. There are at least two strata in the EU-China relations: one stratus is the proper EU-China relations and the other one is multiple, consisting in the relations between the Member states and China.

Regarding China, the predecessors of the People's Republic of China were the Imperial China, being its last dynasty the Qing one, which was overthrown in 1912 by the Republic of China, which in 1949 was ousted by the People's Republic of China. However, the PRC did not access the United Nations till 1971. Nowadays, the PRC is generally recognized as China.

According to Antonio Remiro Brotóns, Rosa Riquelme Cortado, Javier Díez Hochleitner, E. Orihuela Calatayud and Luis Pérez-Prat Durbán, China, under the Ming Dynasty (1368-1644), was the *Center* of an empire –the most developed and mightiest in the middle of the XVI century- around which were a constellation of vassal states.⁵⁵

⁵¹ KU, J., "What Does China Mean When It Celebrates the 'International Rule of Law'?", *Opinio Juris*, available at <http://opiniojuris.org/2014/10/29/china-mean-celebrates-international-rule-law/>, last visited on 08/02/2017.

⁵² LIU, Z., "How the Chinese view International Law", *International Policy Digest, World News*, 29/08/2016, available at <https://intpolicydigest.org/2016/08/29/how-the-chinese-view-international-law/>, last visited on 27/03/2017.

⁵³ The History of the European Union, available at https://europa.eu/european-union/about-eu/history_en, last visited on 22/03/2017.

⁵⁴ Consolidated Version of the Treaty on European Union, 26.10.2012, Official Journal of the European Union, C 326/13, Article 46, p. 38, available at https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF, last visited on 11/06/2018, "24. Declaration concerning the legal personality of the European Union, The Conference confirms that the fact that [sic] the European Union has a legal personality will not in any way authorize the Union to legislate or to act beyond the competences conferred upon it by the Member states in the Treaties."

⁵⁵ REMIRO BROTONS, A. et al. op. cit., p. 45.

Despite such a long standing culture as the Chinese one (and Asia in general), it was not acquainted by most of Westerners, even not by several Western intellectuals.⁵⁶

There are scholars who believe that China was not a victim of colonialism,⁵⁷ but anyhow it was subject to what Paloma García-Picazo calls *dilatatio europea*, hence it was submitted by a different kind of historical phenomenon: imperialism. Anyhow, both of them reflect the absolute power held by Western countries during a long period. Edward Said, quoted by Paloma García Picazo, defines imperialism as follows: practice, the theory and the attitudes of a metropolitan center dominating a distant territory.⁵⁸

According to Paloma García Picazo, in 1800 Europe and its colonial possessions covered 55% of the world; in 1914 it extended to over 80%.⁵⁹

China was never occupied during a long period of time by one Western power, while in India it happened that way, and so did it in many other parts of the world. It is relevant to point out that Japan invaded Manchuria, and that was the first case ever that a non-Western country made an act of imperialism. Furthermore, several of China's cities were occupied, both by Western powers, as well as by Japan, either completely (as Hong Kong (香港⁶⁰ xiang gang), with the

⁵⁶ HEGEL, G. W. F., *Philosophy of History*, 1820.

Quoted by MISHRA, P., *De las ruinas de los imperios (From the ruins of Empire)*, Galaxia Gutenberg, S.L., Barcelona, 2014, ISBN: 978-84-16072-45-3, p. 9.

Original text: HEGEL, G.W.F., *Vorlesungen über die Philosophie der Geschichte, Erster Abschnitt: China* (Unofficial translation: Dissertations about the Philosophy of History, First Part: China), available at http://geschichte.abcpil.de/html/erster_abschnitt_china.html, last visited on 09/09/2019.

RAMONEDA, J., Foreword of MISHRA, P., op cit., p. 13.

⁵⁷ RODRÍGUEZ CARRIÓN, A., op. cit., p. 39.

⁵⁸ GARCÍA PICAZO, P., "Módulo II: Situación Geopolítica...", p. 179.

⁵⁹ GARCÍA PICAZO, P., "Módulo II: Situación Geopolítica...", p. 181.

⁶⁰ Chinese phonetic transcription has no meaning, only sound; characters embody the meaning. Therefore, digraphia is indispensable. In this thesis we have used Chinese names in their Western version and they are followed by the original written in Chinese characters (as long as they appear in the source or we have found them) and their phonetic version (if it differs from the Western version), both in brackets, and the translation if necessary. This way, we try to improve accuracy. Furthermore, with the said adaptation to the Chinese writing system, Chinese readers will feel at ease with our work. This system is named digraphia. The following articles explain the foundations of Chinese digraphia:

DE FRANCIS, J., "Digraphia", *Word*, Vol 35, 1984, núm. 1, pp. 59-66, available at <https://doi.org/10.1080/00437956.1984.11435748>, last visited on 16/08/2018.

SU, P., "Digraphia: a strategy for Chinese characters for the twenty-first century", *International Journal of the Sociology of Language*, Vol. 150, 2001, pp. 109-124. The grounds in favor of digraphia maintained by Su Peicheng are the following ones (note that the text in square brackets is written by the translator; we only wrote the ellipsis in square brackets and the words [语素], [汉语拼音] and [方块字]): "Chinese characters are a morphemic writing system. The 'morpheme' ([语素] yusu) is [defined as] the smallest [linguistic] unit combining sound and meaning. [...] Let us suppose for the moment that we take *Hanyu Pinyin* [汉语拼音] Chinese phonetic spelling as representative of phonetic writing. [Using this phonetic system] a single [morpheme spelled] mu

extension over the New Territories; as well as Macao (澳门 *ao men*)) or partially (as Shanghai (上海) or Qingdao (青岛)). Moreover, it is essential to remember that parts of China were repeatedly invaded by Western countries, though not for a long time, as happened in the colonies.⁶¹

1.1.2 The Opium Wars, resulting in the Unequal Treaties

Paloma García Picazo states that Europe, “a culture of wanderers” always unsatisfied with the borders of their small territories, undertook the so-called *dilatatio Europea*.⁶²

Since 1760, the full sea trade with the Western World was restricted to Canton (广州 *Guangzhou*) port.

The Emperor forbade building large vessels, thus China gave up going to sea. But simultaneously he prevented the world from entering China.⁶³ However, some authors consider that China, despite appearances, kept on trading with Europe, via the Manilla Galleon, and this way acquired immense reserves of silver.

In the XIX century, Western traders suffered an enormous trade deficit, due to the restrictions imposed by Chinese dignitaries, so they had to compensate the deficit by means of paying cash, and this, on those days, meant paying in silver. Western traders looked for a produce which they could introduce in China, so that they had the chance to compensate their deficit, and they found it. It was opium.⁶⁴

does not tell us what meaning is being expressed.” (p. 114) “Digraphia is also called ‘One language with two writing systems.’ This means using two writing systems to write the Chinese language; one way is to use the traditional Chinese characters ([方块字] *fangkuaizi*), the other way is to use the newly established *Hanyu pinyin* phonetic alphabet. Chinese characters will be the first writing system and *Hanyu pinyin* will be the second writing system. This is the only correct strategy for the twenty-first century. The East has Eastern culture and the West has Western culture. Digraphia represents a combination of the two cultures. Such combination is a necessity for our new age.” (p. 120) N.B.: In Chinese, surname comes first.

⁶¹ LITTLE, R., “Colonialism and imperialism: alibis for the looting and the debris”, Bicentenary of a nation in the world; Credencial Historia, No. 238. Banco de la República, Cultural Activity (Colombia). Unofficial translation. Original version: “Colonialismo e imperialismo: pretextos para el saqueo y los despojos”, *Bicentenario de una nación en el mundo; Credencial Historia*, No. 238. Banco de la República, Actividad Cultural (Colombia), available at <http://www.banrepcultural.org/blaavirtual/revistas/credencial/octubre2009/colonialismo.htm>, last visited on 22/03/2017.

⁶² GARCÍA PICAZO, P., op. cit., “Módulo II: Situación Geopolítica,...”, p. 169.

⁶³ VOGEL, E., *Deng Xiaoping and the transformation of China*, Cambridge, Massachusetts, and London England, The Belknap Press Of Harvard University Press, 2011, p. 695, available at <https://ebookcentral-proquest-com.uma.debiblio.com/lib/bibliotecauma-ebooks/reader.action?docID=3300979&query=>, last visited on 21/09/2019, What Emperor Qianlong told the special British envoy Lord McCartney is meaningful, when he arrived in China in 1793: “We possess all things. I [...] have no use for your manufactures.” This way, Emperor Qianlong forbade foreign trade.

⁶⁴ “China Trade and the East India Company”, British Library, Help for Researchers, available at <http://www.bl.uk/reshelp/findhelpregion/asia/china/guidesources/chinatrade/>, last visited on 22/03/2017.

Consumption of opium was usual in Europe. Soon it extended along China. However, in 1729 Chinese authorities forbade its consumption, with the exception of therapeutic purposes. In Europe it was not generally forbidden till the XX century. At the beginning of the XX century, it was the most valuable crop worldwide. The problem for such a good business was that it was an illegal commodity in China, but not in the rest of the world. In 1830, the civil servant Lin Zexu (林则徐) was sent by Chinese authorities to end up the illegal trade on opium. He was quite successful in the repression of the Chinese, but he failed with the foreigners.⁶⁵

The East India Company, an initially monopolistic company, gave in the pressure of the Qing authorities and gave up selling opium in China, but private traders kept on dealing with opium. Importation grew, so the deficit on the trade balance felt on Chinese side. Chinese authorities were worried by the national economy, but also by criminality and morals, thus they decided to eliminate the illegal trade on opium, which was considered an attack on their interests, and in 1840 a British fleet arrived in China with the purpose of defending the businesses run by UK's nationals. China and the United Kingdom waged war, i.e. the First Opium War (1839-1842). China was defeated and had no chance but to sign the Nankin Treaty (南京条约 nanjing tiaoyue) on August 1842.⁶⁶

In 1860, due to a shipping conflict, the Second Opium War broke out. A huge French-British army landed in the coast near Beijing (北京) and marched towards the City, which was felt as another humiliation for China, as they razed the nowadays called "Old Summer Palace", which actual name is Yuan Ming Yuan (圆明园).⁶⁷ According to Frèches, Emperor Qianlong (乾隆) had asked Jesuit Missionaries for advice and cooperation, and the result was that the palace was built and furnished as a real "Versailles of the East".⁶⁸ According to Frèches the looting of this gem of architecture and landscape will be embedded in the

⁶⁵ "Lin Zexu, letter to Queen Victoria, 1839", *Educational Resource Kit for History Teachers*, National University of La Plata. Unofficial translation. Original text: "Lin Zexu, carta a la reina Victoria en 1839", *Carpetas docentes de Historia*, Universidad Nacional de La Plata, Argentina. Available at <http://carpetashistoria.fahce.unlp.edu.ar/carpetas-1/fuentes/el-imperialismo/fuente-7-lin-zexu-carta-a-la-reina-victoria-1839>, last visited on 09/09/2019.

⁶⁶ In the part dedicated to the Unequal Treaties, we analyse this point in depth.

⁶⁷ BOWLBY, C., "The palace of shame that makes China angry", *BBC News*, available at <http://www.bbc.com/news/magazine-30810596>, last visited on 22/03/2017. According to Bowlby "There is a deep, unhealed historical wound in the UK's relations with China - a wound that most British people know nothing about, but which causes China great pain. It stems from the destruction in 1860 of the country's most beautiful palace".

⁶⁸ "Versailles of East" destroyed in war, *Shanghai Daily*, November 3, 2013, Sunday, available at <https://archive.shine.cn/sunday/now-and-then/Versailles-of-East-destroyed-in-war/shdaily.shtml>, last visited on 21/09/2019.

memories of Chinese leaders for many years to come. And perhaps it will be never deleted in their memories.⁶⁹

According to Robert Weil:

“As the most powerful and visceral body of evidence remaining of such treatment and the national resistance to it, years ago, ‘Under the order of Premier Zhou Enlai, Yuanmingyuan became a park to remind the Chinese and the world of the destruction wrought by European colonial powers to a harmless and priceless cultural entity that rightly belongs to mankind.’ Signs erected on the walkways, some in English, remind visitors of this history still today, along ‘the ‘Never Forget National Humiliation’ memorial wall. There inscribed on numerous plaques was the sordid history of European and American incursions into China, of opium dealing, and the imposition of unequal treaties that made up the ‘century of humiliation.’ Recent discussions of plans for eventually rebuilding the complex have raised resistance because of this special historical significance. As Ye Yanfang, researcher of the Chinese Academy of Social Sciences has put it, ‘I have always held that the Yuanmingyuan ruins are the most concrete evidence of Western atrocities and should be preserved as the scene of a crime. The lonely, desolated site is a silent accusation of the aggressive acts of foreign invaders, serving as an ideal place for ‘patriotic education.’ In this regard, no other imperial park can compare.”⁷⁰

Mishra gives a detailed description of the said looting: first, the French Army plundered the Palace; second, the British Army set fire to the said palace, and it burned for two days.⁷¹

Western powers continued to dominate China. In 1898, United Kingdom, France, Germany and Russia were granted several port concessions (as shown in the Unequal Treaties), which left China having even less sovereignty over its territory. In 1900, empress widower Cixi (慈禧) waged war against Westerners in China. Boxers (a mysterious religious society, enthusiast of martial arts) also rebelled themselves against the Westerners. In August that year, a multi-national force marched toward Beijing, scattered and destroyed the Boxers, once again swept the Summer Palace away and in 1901 the signature of the Boxer Protocol

⁶⁹ FRÈCHES, J., *Once upon a time in China. Since the antiquity to the XXI century* (English version of the book. Spanish version: *Érase una vez China. De la antigüedad al siglo XXI*. Original French version: *Il était une fois la Chine - 4500 ans d'histoire*) Pozuelo de Alarcón, Espasa Calpe, 2006, p. 345. Spanish version: FRÈCHES, J., *Érase una vez China. De la antigüedad al siglo XXI*, Pozuelo de Alarcón, Espasa Calpe, 2006, p. 345. In this regard, José Frèches highlights the fact that China didn't take revenge for the looting of Yuan Ming Yuan (圓明園). See pp. 437 and 440 of the above-mentioned book.

⁷⁰ WEIL, R., “Yuanmingyuan Revisited: The Confrontation of China and the West”, *Socialism and Democracy*, Vol. 27, 2013, no. 1, pp. 95-135, pp. 98-99, available at <https://www-tandfonline-com.uma.debiblio.com/doi/pdf/10.1080/08854300.2012.759704?needAccess=true>, last visited on 04/06/2019.

⁷¹ HIBBERT, C., *The dragon wakes: China and the West, 1793-1911*, p. 264. Quoted by MISHRA, P., op. cit., pp. 60-61.

was imposed on China, known in China as Xinchou Treaty (辛丑条约 xinchou tiaoyue) which is also one of the Unequal Treaties, and which included the payment of a compensation in the amount of double the tax revenue of the Dynasty.⁷²

The oppression by the foreign powers was suffocating the Chinese economy. So much that, according to Robert Eng: “As late as 1934, foreign firms still controlled all of the raw silk export trade at Canton.”⁷³

Paloma García Picazo states that for its part, Western diplomacy ignored, in international relations, each and any community not following Western legal customs, sending legations instead of embassies to those destinations. Hence, the name of the conflict in Beijing, named the Conflict of the Legations, during the uprising of the boxers (1900) which rebellion was quashed with force, in defence of Western interests.⁷⁴

As we have previously expressed, after the first probing movements with British troops, who were interested in controlling trade on opium, the Qing Dynasty (清代 qingdai) had no other chance than to lay down its arms and sign the Nankin (nowadays spelled Nanjing) Treaty (南京条约 nanjing tiaoyue) in August 1842. In accordance with the said Treaty, the British would have access to five ports, among them the Shanghai one; they would take possession of the island of Hong Kong, and they would receive a compensation amounting to 21 million dollars. The Nankin Treaty was the first of the Unequal Treaties. According to Frèches, it contained quite a few unfair terms for China, thus actually it was a “Perverse Treaty”, or anyhow an example of the oppressive imperialism exercised by Western powers during the XIX century not only in Asia.⁷⁵ Pintado Lobato submits that the Nankin Treaty and the Tianjin one were the first formal relations between China and the West. Both treaties had far-reaching effects.⁷⁶

⁷² CHEN, X, *Metabolism of modern Chinese society, Volume I*, Singapore, Enrich Professional Publishing (S) Private Limited, 2013 (English edition), pp. 176-219, available at <https://ebookcentral-proquest-com.uma.debiblio.com/lib/bibliotecauma-ebooks/reader.action?docID=3238166>, last visited on 04/06/2019.

⁷³ ENG, R., *Economic imperialism in China – Silk Production and Exports, 1861-1932*, Berkeley, China research monograph 31, Institute of East Asian Studies University of California, Berkeley Center for Chinese Studies, p. 88, available at http://digitalassets.lib.berkeley.edu/ieas/IEAS_31_0001.pdf, last visited on 04/06/2019.

⁷⁴ GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica...”, p. 167.

⁷⁵ FRÈCHES, J., op. cit. p. 335.

⁷⁶ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 129-130.

As a matter of principle, treaties are the essence of International Law. During the XIX century, Western powers developed their imperialist expansion, reflected on the above-mentioned Unequal Treaties. They are a number of International Treaties which China had no chance but to sign under the pressure of several Western powers, and this way finished the Opium Wars. After the Nankin Treaty, many other ones were to come.

According to the “The Most-Favored-Nation clause”, Russia, France and United States signed Treaties in Tianjin (天津) in 1858, according to which they would be entitled to obtain the very advantageous conditions as the ones United Kingdom had achieved with the use of violence. They were named “Unequal” Treaties because they awarded foreign powers privileges and they would obtain assignments from China.⁷⁷ For his part, Gelber explains in depth a very relevant concept to our analysis: the conflict of laws. It refers to the conflict between Chinese laws and the ones in force in the countries of origin of the foreigners living in the Asian country. In essence, he states that those foreigners believed in the “rule of law”, while Chinese civil servants, after all Confucians, were driven by what Gelber ironically calls “rule of virtue” (the principle of virtue). On the other hand, in China there was no right to private property, due to the total submission to the Emperor, and the State ruled with absolute power. The profession of lawyer did not exist either, nor the right to a fair trial, nor the “in dubio pro reo” principle. During the trial both plaintiff and defendant could be tortured, which terms were carefully defined, detention could be arbitrary and prison indefinite.⁷⁸ This was the reason why Westerners, in the Unequal treaties, required the right to extraterritoriality, as they didn’t trust the judicial system of the Qing Dynasty. Furthermore, the 1843 Additional Treaty included the first rights on extraterritoriality, according to which British nationals were not submitted to Chinese jurisdiction; it included also “The Most-Favoured-Nation clause”, in favor of the United Kingdom.

Moreover, Chinese autonomy and sovereignty were also violated by consular jurisdiction and concessions (租界 *zujie*).⁷⁹

The following ones were the Unequal Treaties (不平等条约 *bupingdeng tiaoyue*): Nankin Treaty (1842) (南京条约 *nanjing tiaoyue*), Humen Treaty (1843)

⁷⁷ “The Opening to China Part II: the Second Opium War, the United States, and the Treaty of Tianjin, 1857–1859”, Department of State. United States of America. *Office of the Historian*, available at <https://history.state.gov/milestones/1830-1860/china-2>, last visited on 22/03/2017.

⁷⁸ GELBER, H., *The Dragon and the Foreign Devils*, London, Bloomsbury, 2008, pp. 334-335.

⁷⁹ GERNET, J., *El mundo chino*, Barcelona, Crítica, 2007.

(虎门条约 humen tiaoyue), Whampoa o Huangpu Treaty (1844) (黄埔条约 huangputiaoyue), Wangsha Treaty (1844) (望厦条约 wangsha tiaoyue), Tianjin Treaty (1858) (天津条约 tianjin tiaoyue) and Beijing Treaty (1860) (北京条约 beijing tiaoyue).⁸⁰

In this respect, Alejandro Rodríguez Carrión maintains that there was a huge difference between China and Japan regarding the “progressive penetration of Western powers”. According to the said author, Chinese attitude was not cooperative but isolationist towards Westerners, closing itself in its own world, in spite of Western primacy (Nankin Treaty, 1842, between China and United Kingdom). For its part, Japan showed a remarkable adaptability under similar circumstances (Kanagwa Treaty, 1854). This way began the enforcement in Asia of the Unequal Treaties. These Treaties are those in which the weak country, given the hegemonic situation of the counterparty, had no other chance than to admit the submission.⁸¹

According to Frauke and Trauzettel, China in those days did not realize the socio-economic puissance of its opponents, and that in such a situation it had only two options: it could adapt to the situation or it could close itself. Unluckily for China, it opted for the second choice.⁸²

According to Alejandro Rodríguez Carrión, “China never became a Western colony”.⁸³ It is true, but it is also a matter of fact that, due to the weakness and inefficiency of the Qing Dynasty, China suffered humiliations, as the ones already analyzed. It never became a Western colony, but it fell prey of the oppressing imperialism those days.⁸⁴ Frèches affirms that, due to the many Unequal Treaties she was obliged to sign, Western countries deprived China of its sovereignty during nearly a century.⁸⁵ Later on, the same author states that China suffered a true exercise of administrative tutelage, reflected in “the reorganization of the customs administration implemented by the British.”⁸⁶

In the same matter, according to Patricia Buckley Ebrey:

⁸⁰ THEOBALD, U., “Chinese History - Qing Dynasty 清 (1644-1911) event history”, available at www.ChinaKnowledge.com, last visited on 22/03/2017.

⁸¹ RODRÍGUEZ CARRIÓN, A., *Lecciones...*, pp. 38-39.

⁸² Quoted by RODRÍGUEZ CARRIÓN, A., *Lecciones...*, pp. 38-39.

⁸³ Id., p. 39.

⁸⁴ Liang Qichao considered that China was a “semicolony”, which was “hundred times more weakened by Western trade than by Western troops”. LEVENSON, J., *Liang Ch’i-ch’ao and the Mind of Modern China*, Cambridge, Harvard University Press, 1953, p. 49, p. 203.

⁸⁵ FRÈCHES, *Érase una vez China...*, p. 346.

⁸⁶ Ibid., p. 350.

“According to the Chinese, it cannot be imagined a more obvious case of international intimidation, in which the morally abhorrent imposes its will upon those willing to do good. In turn, this moral dimension led that the Chinese felt it was really difficult to find within Western civilization anything worthwhile adopting.”⁸⁷

In fact, of all the humiliations China suffered in the XIX century, maybe the worst one was to be forced to tolerate the trade of a harmful substance such as opium, and this was the reason of an even more disastrous collapse of its economy, as it was not able to cover payment of the commercial deficit in silver. In 1900, 10% of the Chinese population smoked opium; more than 30% out of them where addicts.⁸⁸ Furthermore, during the chaos subsequent to the Opium War many Chinese were kidnapped or taken by deception to faraway places such as California or Cuba in order to work there as cheap labor.⁸⁹

Paloma García Picazo poses a key question: Given all the said regrettable facts, didn't the Chinese people have enough reasons to rise up?⁹⁰

The said author poses this rhetoric question, being the answer one of the reasons for nowadays China, given that the fight against imperialism was one of the foundations for the revolutions.

Unequal Treaties had a main purpose: the strengthening of the Western's trade channel in the rest of the world and, regarding the topic of our study, in China. And most of all, Britain was especially favored by the said situation. Nico Krisch makes a special mention to asymmetry: “Treaties with non-European rulers established European access to their markets, especially in the East, and increasingly so with the rise of power asymmetry”.⁹¹

Regarding the Unequal Treaties, there is a very enlightening working paper published in the Repository of the Law School of Beijing University. The author, Cheng Dao De (程道德), states that Unequal Treaties were in force since 1842 till 1943, when they were abolished by a new Treaty signed between China and the US, as well as by China and United Kingdom; this way ended the extraterritoriality in China. However the author recognizes that after 1943 there

⁸⁷ EBREY, P., *History of China* (Unofficial translation. Spanish version: *Historia de China*), Cambridge, Madrid, La Esfera de los libros, 2009, p. 302.

⁸⁸ EBREY, P., *The Cambridge Illustrated History of China*, Cambridge, 1996, p.240. Regarding the disasters caused to China by opium, see the analysis by Rabindranath Tagore and Bhudev Mukhopadhyay.

⁸⁹ MISHRA, P., op. cit., p. 59.

⁹⁰ GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica...”, p. 189.

⁹¹ KRISCH, N., “International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order”, *The European Journal of International Law* Vol. 16 no. 3, 2005, pp. 369–408, p. 383, available at <http://ejil.org/pdfs/16/3/301.pdf>, Last visited on 22/03/2017.

were still some Unequal Treaties in force and, as other authors, determines that the real termination for such agreements was in 1949, with the declaration of the People's Republic of China. Regarding the aim of the Unequal treaties, Cheng Dao De maintains that their “purpose was the extortion by foreigners and foreign powers of privileges and prerogatives, flagrantly violate China's sovereignty and independence and completely deny the notion of equality.”⁹²

Charlotte Ku maintains that China did not just suffered a century, but 150 years of humiliation, as it was in 1997 when China resumed control over Hong Kong and in 1999 the reversion over Macao, when restrictions imposed by the Unequal treaties finally ended.⁹³

1.1.3 Three revolutions, three leaders

In China broke out two revolutions, the first one in 1911 (led by Sun Yat Shen, aka Sun Zhong Shan 孙中山) and the second one which leader was Mao Ze Dong (毛泽东) (1949). Another Chinese leader, Deng Xiaoping (邓小平) is considered to have developed another “revolution”, which was the 改革开放 (gai ge kai fang) (open-up reform), and China's access to the WTO.⁹⁴

In 1911 broke out the first Chinese Revolution, which put an end to the Qing Dynasty, and thus to Imperial China. The Republic of China was proclaimed (1912-1949). According to Paloma García Picazo the full integration of China as a State –i.e. as a full right member in the international conventional system- did only happened, from a primary perspective, from the establishment of the Republic of Sun Yatsen [孙中山 Sun Zhongshan] (1912) on and, later on, after the civil war, in order to establish which political system would be the winner (1926-1949), with the establishment of the People's Republic of China in the mainland, ruled by Mao Zedong and the pro-Western nationalist China in Taiwan.⁹⁵

⁹² CHENG, D., “The Formation and Expansion of the Unequal Treaties in Modern China”. Unofficial translation. Original version: (程道德), 试述近代中国不平等条约体系的形成与扩展, available at http://www.pkulaw.cn/fulltext_form.aspx?Db=qikan&gid=1509952611, last visited on 22/03/2017. Unofficial translation. Original version: “目的在于为外国人及国家勒索权利和特权, 公然侵犯中国的主权和独立, 而完全否定了平等的概念。”

⁹³ KU, C., op. cit., p. 67.

⁹⁴ PALACIOS, L. and RAMÍREZ, R., *China: historia, pensamiento, arte y cultura*, Córdoba, Almuzara, 2011, pp. 302-303.

⁹⁵ GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica,...”, p. 167.

In October 1st 1949 the People's Republic of China was proclaimed, which meant a milestone. Then started a period of nearly two decades during which there were nearly no relations with Europe. The PRC was recognized only by several Northern European countries; most of the countries, along with the US, refused to recognize it. During this period, the main and most peculiar allied of Maoist China till the debacle of the USSR was Albania.⁹⁶ In 1962 it was recognized by France. Afterwards, in the mid-1970s, after the first diplomatic contacts between China and the US, and the award of a seat to China in the UN General Assembly, other European countries gradually recognized China.⁹⁷

José Antonio Pastor Ridruejo states that, after World War II, certain problems regarding the continuity of States emerged, due to several factors: changes in the borders in Europe and other regions, as well as socio-political changes, former States split up and the emergence of new independent States. Most of the scholars maintain the principle of continuity in the identity of the State, but it depends upon the changes in the decision-making bodies, territory and population.⁹⁸ Notwithstanding, short after 1949, the People's Republic of China, as well as Eastern European socialist States challenged the principle of continuity, which they regarded as an instrument of the counterrevolutionary struggle.⁹⁹

Revolutions are very important for China and its society. So much that, according to Paloma García Picazo, "China is the only country in the world in which the revolution, under certain circumstances, is a legitimate political action integrated in Public Law".¹⁰⁰

From an early age, Deng Xiaoping had had relations with France. In 1920 he had travelled to that country,¹⁰¹ where he studied and worked since he was 16 till 21 years old, although he did not spend much time in the first activity in favor of the second one, as a means of living. Those years would be essential for China's future and its relations with Europe. Ezra Vogel maintains that Chinese student-workers in France lived in poor conditions, earning even lower wages than their French colleagues. It was then when they developed not only their

⁹⁶ Ibid.

⁹⁷ GUAN, C., "Las relaciones entre China y la Unión Europea hacia el nuevo siglo", *CIDOB*, No. 63 2003, p. 142, available at <https://dialnet.unirioja.es/servlet/articulo?codigo=798853> Last visited on 22/03/2017.

⁹⁸ PASTOR RIDRUEJO, J. A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, Madrid, Tecnos, 2013, p. 298.

⁹⁹ Ibid.

¹⁰⁰ GARCÍA PICAZO, P., "Módulo II: Situación Geopolítica...", p. 175.

¹⁰¹ JOHNSTON, C., "What Deng taught Xi Jinping: pragmatism trumps ideology", *East Asia Forum*, available at <http://www.eastasiaforum.org/2013/09/28/what-deng-taught-xi-jinping-pragmatism-trumps-ideology/>, last visited on 22/03/2017.

communist conscience, but the antiimperialist one as well, wishing to become leaders in their country in order to substitute their weak Government and defend China from the “European imperialists”;¹⁰² Deng joined the Chinese Communist Party (CCP) in 1924.¹⁰³

As President of the PRC, his promotion of the 改革开放 (gai ge kai fang) (open-up reform) smoothed the way for international relations, and particularly with Europe. In fact, with a view to prepare the modernization of the country he established firm relations with France, during his visit to that country from May 12th till 17th 1975. Previously, in 1974, he had paid a short visit to France. Those trips were the way in which President Deng started to build up relations with Europe.¹⁰⁴

It was the first state visit by a leader of the People’s Republic of China to a Western country.¹⁰⁵ According to the Three Worlds Theory (put forward by Mao),¹⁰⁶ within the “Second World”, France was the one to show most interest in establishing relations with the PRC and, in fact, they established relations in 1962, when only few Western countries had the slightest intention of doing so.¹⁰⁷ For his part, President Pompidou in 1973 had paid a state visit to China, during which he was welcomed. China was eager to establish relations with other countries, which

¹⁰² VOGEL, E., op. cit., p. 20.

¹⁰³ Ibid.

¹⁰⁴ Id., p. 590.

¹⁰⁵ LAMO DE ESPINOSA, E., “The European Union and Russia – 40th anniversary of the establishment of diplomatic relations between Russia and Spain 1977-2017” (Unofficial translation. Original text: “La Unión Europea y Rusia - Cuadragésimo aniversario de las relaciones diplomáticas entre Rusia y España 1977-2017”), Russia and The World Setting Priorities, Gaidar Forum Moscow 12-14 January [sic], *Real Instituto Elcano Madrid*, p. 7, available at <http://www.realinstitutoelcano.org/wps/wcm/connect/22dfb97c-2f69-4c8a-a5db-5d779892043f/LamodeEspinosa-Union-Europea-Rusia-40-aniversario-relaciones-Rusia-Espana.pdf?MOD=AJPERES&cacheid=1484134859274>, last visited on 22/03/2017. Regarding the 40th Anniversary of the re-establishment of diplomatic relations between Russia and Spain, Emilio Lamo de Espinosa considers that it is a “re-establishment” because long time ago they already existed. The same could be said about this first visit being “the first state visit by a leader of the People’s Republic of China to a Western country”. The PRC was established in 1949. But before then, there already existed relations between European States and China.

¹⁰⁶ Ministry of Foreign Affairs of the People’s Republic of China, available at https://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18008.shtml, last visited on 01/05/2019. According to the Ministry of Foreign Affairs of the People’s Republic of China: “In February 1974, Chairman Mao Zedong set forth his strategic thinking of the division of the three worlds. He observed, ‘In my view, the United States and the Soviet Union belong to the first world. The in-between Japan, Europe and Canada belong to the second world. The third world is very populous. Except Japan, Asia belongs to the third world. So does the whole of Africa and Latin America.’”

¹⁰⁷ VOGEL, E., op. cit., p. 119.

eased the possibility of being officially recognized by them, and thus overcome in diplomatic terms its competitor, Taiwan.¹⁰⁸

Hence, when France formally invited President Deng to pay a state visit, he thought fit to re-launch his country in the sphere of diplomacy, which resulted in a very fruitful and friendly visit. Aiming to a closer relationship, Deng sought an issue of common interest, and found it in the fact that both parties resisted the surge of the USSR. During this trip, Deng visited factories. This was the first time Deng did so in the western world. He was impressed by the progress made by France in half a century, since himself had worked there, but he also realized the terrible backwardness his own country suffered. In fact, this state visit was epoch-making for the future of China, as it was in France where Deng decided that his own country should undertake major reforms, in order to bridge the wide gap with the western world.¹⁰⁹

Xu Zengyu maintains that Deng Xiaoping “travelled again, went to Europe and received the good influence of Europe and that broadened his mind.”¹¹⁰ In other words, he accepted the invitation to France, went there and, after studying thoroughly the counterparty, he put into action the aspects he thought fit.

From December 18th to 22nd 1978 in Beijing was held the Third Plenary Meeting of the Central Committee of the Communist Party of China. On that occasion huge reforms were decided: “An ordered recovery of the system was kicked off. China started shifting from ‘class struggle-oriented’ to ‘economic construction-oriented’, from ‘semi-rigid/rigid’ to comprehensive reform, and, from ‘semi-closed/closed’ to ‘opening up.’”¹¹¹ In particular, Deng decided that class struggle was no longer the basis for national policy.¹¹²

The Third Plenary Meeting was essential for the future of China because it would “adopt a series of new major economic measures, and proceed to a serious

¹⁰⁸ The State Council, The People's Republic of China, available at http://english.gov.cn/archive/china_abc/2014/08/27/content_281474983873401.htm, last visited on 22/03/2017. Regarding this point, we highlight that the People's Republic of China considers Taiwan as another province, just as the other ones.

¹⁰⁹ VOGEL, E., op. cit., pp. 119.

¹¹⁰ Xu Zeng Yu (许增裕), “Root of the conceptual differences between Mao Zedong and Deng Xiaoping about Politics and Justice” (Unofficial translation. Original text: 论毛泽东邓小平政治及法制思想差别的根源), Law School of Beijing University, available at http://article.chinalawinfo.com:81/article_print.asp?articleid=22452, last visited on 22/03/2017. Unofficial translation. Original text: “他又远渡重洋，旅居欧洲，受到西方文化的熏陶，使邓小平的文化观是一种大文化观”

¹¹¹ “Third Plenary Session of 11th Central Committee of CPC held in 1978”, *People's Daily Online*, available at <http://en.people.cn/90002/95589/6512371.html>, last visited on 22/03/2017.

¹¹² Ibid.

reform regarding economic management institutions and methods for economic management.”¹¹³

It was since 1978 when Deng most implemented his 28 characters strategy:

“[...] observe and analyze (developments) calmly; [...] secure (our own) position; [...] deal (with changes) patiently and confidently; [...] conceal our capabilities and avoid limelight; [...] be good at keeping a low profile; [...] never become a leader; [...] strive to make achievements.”¹¹⁴

Regarding the EU-China relations, the core of the reforms policy was clearly the ones referred to the economic sphere, which eased the foreign trade between China and Europe.¹¹⁵ Along Imperial China, Chinese leaders had no great interest in opening up to the world, with the exception of Admiral Zheng He. It was a regional power, not reaching a worldwide level. Neighboring countries respected China and its civilization, but the latter had no interest in the outside world. Chinese dignitaries thought that they had enough with maintaining their own country, and hence they would not go beyond their borders.¹¹⁶

At the beginning of this part of our work we mentioned the sentence which Emperor Qianlong told the British envoy Lord McCartney, when he landed in

¹¹³ 3rd Plenary Session of the 11th Central Committee of the Communist Party of China (Unofficial translation. Original text: 中国共产党第十一届中央委员会第三次全体会议公报), Database of the previous Central Committees of the Communist Party of China (Unofficial translation. Original text: 中国共产党历次全国代表大会数据库). Unofficial translation. Original text: “采取一系列新的重大的经济措施, 对经济管理体制和经营管理方法着手认真的改革” Available at <http://cpc.people.com.cn/GB/64162/64168/64563/65371/4441902.html>, last visited on 22/03/2017.

¹¹⁴ Original text: “冷静观察、稳住陈脚、沉着应付、韬光养晦、善于守拙、决不当头、有所作为”. Original title: “邓小平的二十八字方针” Unofficial translation: “Deng Xiaoping’s 28 character strategy”, available at http://www.360doc.com/content/14/0424/20/10966260_371815914.shtml, last visited on 22/03/2017. Translation taken from <http://huwengongmgatipo.blogspot.com.es/2009/02/deng-xiaoping-famous-28-characters.html>, last visited on 22/03/2017.

¹¹⁵ VOGEL, E., op. cit., p. 406. When Deng accessed power in 1978, Chinese foreign trade amounted less than 10 billion dollars, but a decade later, it multiplied by hundred.

¹¹⁶ VIVIANO, F., “China’s great armada: six hundred years ago China’s Admiral Zheng He led a mighty fleet on the first of seven voyages that reshaped an empire”, *National Geographic*, Vol. 208 No. 1, July 2005, p 28, from Student Resources in Context, available at www.livingston.org, Last visited on 23/11/2017. In the XV century China undertook overseas expeditions. Led by Admiral Zheng He (郑和), huge vessels set sail. But short afterwards, Emperors forbade the construction of oceanic vessels as well as exploration voyages: “The fleet commanded by Zheng He counted as many as 62 of [...] gargantuan vessels, which some nautical experts believe may have measured up to 400 feet in length and 170 feet across the beam--with nine masts, 50,000-square-foot main decks, and a displacement of at least 3,000 tons, ten times the size of Vasco da Gama’s flagship. Scholars disagree on the baochuan’s actual size, but even at far more modest estimates they were surely the largest wooden ships ever launched. [...] during the 1400s, China retreated into relative isolation. By 1500 the Chinese government had made it a capital offense to build a boat with more than two masts, and in 1525 the Government ordered the destruction of all oceangoing ships. A century earlier, China had a fleet of 3,500 ships.” In this regard, see also: VOGEL, E, op. cit., p. 695. GELBER, H., op. cit. p. 91. Gelber pays special attention to the negative consequences of such decision, regarding, e.g. the pirates.

China in 1793: “We possess all things. I ... [sic] have no use for your manufactures.”¹¹⁷ In a nutshell, a total closure to the outside world. Deng Xiaoping reversed that trend. He also started to reverse the asymmetrical trend, which so far had been suffering China in favor of the West, but Deng started to rebalance that trend, and later on the asymmetry started to be in favor of China, up to nowadays.

After China’s admission to the UN in 1971,¹¹⁸ President Deng was the first Chinese leader to address the General Assembly of the UN in 1974. He affirmed that the Asian giant would never seek hegemony in the world.¹¹⁹

Deng fostered the admission of his country to the International Monetary Fund (IMF)¹²⁰ and in the World Bank (WB), both of them in 1980.

Regarding International Relations, Kishore Mahbubani considers that “Deng Xiaoping’s pragmatic wisdom has outlived him, becoming firmly embedded in Chinese political culture.” Hence, the mentioned author maintains that the improvement of China’s International Relations “reflects the tremendous geopolitical acumen of Beijing in managing China’s relations with the world.”¹²¹

During Deng Xiaoping term, the Tiananmen incident happened. As a result, the formerly called European Economic Community (EEC), gathered at the end of June 1989 in Madrid, under the Spanish rotating Presidency, adopted a firm condemnation and imposed sanctions on China: “[...] interruption by the Member

¹¹⁷ VOGEL, E. op. cit., p. 695.

¹¹⁸ “Restoration of the lawful rights of the People’s Republic of China in the United Nations”, Asamblea General de las Naciones Unidas, Resolución 2758 (XXVI), available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/2758%28XXVI%29, p. 2, last visited on 22/03/2017.

¹¹⁹ VOGEL, E., op. cit., p. 714. General Assembly of the United Nations, General Debate of the 70th Session, available at <http://gadebate.un.org/68/china>, last visited on 22/03/2017.

¹²⁰ Special Drawing Right, International Monetary Fund, available at <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/14/51/Special-Drawing-Right-SDR>, last visited on 29/05/2019. “The SDR is an international reserve asset, created by the IMF in 1969 to supplement its member countries’ official reserves. So far SDR 204.2 billion (equivalent to about US\$291 billion) have been allocated to members, including SDR 182.6 billion allocated in 2009 in the wake of the global financial crisis. The value of the SDR is based on a basket of five currencies—the U.S. dollar, the euro, the Chinese renminbi, the Japanese yen, and the British pound sterling.” The IMF, on 01/10/2016, has accepted the Chinese currency, the renminbi (人民币), in the selected club. This group is named Special Drawing Right (SDR): “As approved by the Executive Board of the IMF on November 30, 2015, effective October 1, 2016, the RMB is determined to be a freely usable currency and will be included in the SDR basket as a fifth currency” IMF Launches New SDR Basket Including Chinese Renminbi, Determines New Currency Amounts, International Monetary Fund, available at <https://www.imf.org/en/News/Articles/2016/09/30/AM16-PR16440-IMF-Launches-New-SDR-Basket-Including-Chinese-Renminbi>, last visited on 29/05/2019.

¹²¹ MAHBUBANI, K., *The New Asian Hemisphere: The Irresistible Shift of Global Power to the East*, PublicAffairs, 2009, available at <http://0-proquestcombo.safaribooksonline.com.jabega.uma.es/9781586486280>, last visited on 22/03/2017.

states of the Community of military cooperation and an embargo on trade in arms with China”, as well as an interruption of the economic cooperation and the high-level meetings.¹²² The arms embargo is still in force. On June 27th 1989, at a meeting held in Madrid, the European Council issued a declaration in this regard. However, Spain maintained the Joint Commission on Economic Affairs, as well as the credit lines offered by the Development Aid Fund, which caused that EEC partners disregarded Spain. Moreover, Francisco Fernández Ordóñez, in 1990, was the first EEC Foreign Affairs Ministry to pay a visit to China after the said events; Felipe González was the first President of a Government to pay a visit to China and King Juan Carlos, for his part, the first head of state to do so. The reason why Spain supported Deng, according to Bregolat, was that Spain understood that the Chinese President was besieged by the conservatives, and sanctions would only support them, and under such circumstances, Deng and his reforms would collapse.¹²³

For his part, German chancellor Helmut Schmidt, in his memories “Retired” expresses the same opinion: “In 1990 I flew to Beijing...Isolation on China would only worsen the situation. I managed to convince my colleagues in the International Action Council (which consists of former heads of government) and we decided to oppose the trend to isolate China.” As above-mentioned, several sanctions were upheld in 1990.¹²⁴

1.1.4 China enters the multilateral world

On February 19th 1997 Deng Xiaoping passed away, and Jiang Zemin (江泽民) took over the Party and the State. He was very successful, as was proved by the success of the 1999 Sino-American Agreement and the 2000 Sino-European one (both before the Doha Agreement, held in November 2001).¹²⁵ After the signature of the said agreements, on September 17th 2001, China joined the

¹²² European Union Restrictive measures (sanctions) in force (Regulations based on Article 215 TFEU and Decisions adopted in the framework of the Common Foreign and Security Policy), p. 14, available at https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-08-04.pdf, last visited on 22/03/2017.

¹²³ BREGOLAT, E., *En torno al renacimiento de China*, Lérida, Edicions Universitat de Lleida, 2015, p. 236, available at <https://ebookcentral--proquest--com.uma.debiblio.com/lib/bibliotecauma-ebooks/reader.action?docID=4310341>, last visited on 04/06/2019. Note that at the time of the events, the author of the said book was the Spanish Ambassador in Beijing, which confers him the quality of a special witness.

¹²⁴ Ibid.

¹²⁵ At a worldwide level, in 2001, China obtained the success of the choice of Beijing for the 2008 Olympic Games as well as the Shanghai Expo in 2010.

WTO.¹²⁶ Regarding the WTO, China opened itself up to the world, due to its engagement to respect international transactions and, specifically, in the tariff sphere.¹²⁷ Palacios and Ramírez affirm that this liberalization has far-reaching consequences, both socially and economically. Ramón Tamames believes that, in fact, it is the Chinese fourth revolution; according to Tamames, the four revolutions are: the first one led to the proclamation of the Republic of China, by Dr. Sun Yat-sen (孙中山); the second one, the Communist Revolution, commanded by Mao Ze Dong (毛泽东), due to which the People's Republic of China was proclaimed; the third one, when Deng Xiao Ping undertook the Four Modernizations; and the fourth one, the reforms previous to the admission in the WTO.¹²⁸

Jiang Zeming took over the process of modernization started by Deng Xiaoping and, with pragmatism, continued the reform policies.

According to Paloma García Picazo, both in factual as well as in symbolic terms, the magic date in the full integration of China in the scene of the new *world-economy* of the *world system*, is its accession to the World Trade Organization (WTO), on December 11th 2001, under the auspices of the word chosen to do it: *ru shi* (入世) i.e. *entering the world*.¹²⁹

Kishore Mahbubani considers that the access of China to the WTO marks a turning point in the attitude of the USA and the EU regarding free trade and China. He considers that, since that moment, the West changed its defense of free trade due to the fear of a possible domination of China in a free trade situation and due to the fact that a good number of Americans had a lack of confidence in international commerce.¹³⁰ But the West complains that China artificially controls the RMB, i.e. the Chinese currency, and this fact demerits free trade.

There is a polemic between the West (including the European Union) and China about the Accession protocol of the latter to the WTO, as it affects the

¹²⁶ “WTO successfully concludes negotiations on China's entry”, WTO News: 2001 Press Releases, Available at https://www.wto.org/english/news_e/pres01_e/pr243_e.htm, last visited on 22/03/2017.

¹²⁷ PALACIOS, L. and RAMÍREZ, R., op. cit., pp. 302-303.

¹²⁸ Ibid. Note the analysis by Tamames, creating this idea. Strictly, there were two revolutions in China (1911 and 1949) plus the Cultural Revolution (1966-1976), which is not included here. However, he adds “the four modernizations”, which he considers another revolution, and the access to the WTO and the corresponding liberalizing measures.

¹²⁹ GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica...”, p. 193.

¹³⁰ MAHBUBANI, K., op. cit.

awarding to the Asian giant of the consideration as a market economy. We analyze this issue in the Economic Dimension.

The reason why China joined the WTO was the wish of Deng Xiaopin (邓小平) to accelerate China's modernization and the way was what Ramón Tamames considers as a further Chinese Revolution: the reforms China had to undergo in order to enter the said international body. The effects China's access to the WTO had can be divided into international or worldwide effects and national or Chinese domestic effects. The international effects reflect the Chinese expansion worldwide. The national ones signified for China the 入世 rushi, which literally translated means "enter the world", but here means "to join the WTO", which in fact was the transition to a capitalist communism, but with no political transition so far. Regarding Francis Fukuyama's theory on the end of History, in which he maintains that liberalism has spread worldwide, and there is no other ideology left, the Chinese case shows an expansion of the relative market economy, but no political liberalism. It is arguable whether this was a half victory of Western liberalism and hence Francis Fukuyama was at least partially right. Or probably it is rather a new ideology, as China names it, "socialism with Chinese characteristics".¹³¹

Paolo Davide Farah maintains that "[...] due to China's accession, the WTO finally became a truly worldwide organization."¹³² The said author considers that the accession to the WTO of new players e.g. the BRICS was a turning point for the worldwide governance. It meant the transition from a worldwide organization to smaller state associations, which led to the current multipolar world. Those associations hold regional neighbors or likeminded states. The USA withdrawal from the TPP could unchain reactions in the same direction. Discussions over the status of the Chinese legal system and 法治 (fazhi), which could either mean rule of law or rule by law, have worldwide repercussions. Regarding the WTO, there is a polemic on the integration of the so-called non-trade concerns in the WTO framework. Member states of the WTO should reach a

¹³¹ CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the law Forward. China Copyright and Media, The law and policy of media in China – edited by Rogier Creemers, Posted on October 28, 2014 Updated on October 30, 2014, translation complete, with the cooperation of Jeremy Daum, available at <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>, last visited on 08/02/2017.

¹³² FARAH, P., "The Chinese perspective of international law", (Unofficial translation. Original text: "La perspectiva china del Derecho internacional") *Revista Española de Derecho Internacional*, Vol. 70, No. 1, 2018, pp. 227-234, p. 229.

consensus about certain unified principles, which could reduce the WTO room of manoeuvre. This phenomenon is also known under the name of “constitutionalization of Law”. Constitutions, in Western democracies, set limits to the exercise of power; likewise, worldwide principles, argues the said author, could establish limits on WTO non-economic powers.¹³³ However, we find there are two detriments regarding the feasibility of the above-mentioned stance:

1. The worldwide “constitutionalization of Law”, maintains Paolo Davide Farah, would require respect for certain standards of the rule of law. However, this statement should necessitate a previous condition, i.e. an agreement on EU’s and China’s understanding for the rule of law, and it is known that for the moment being this condition would be difficult.
2. The worldwide “constitutionalization of Law”, maintains the said author, would necessitate that China renounced to some of its sovereignty, under its determination of its standards of the rule of law. It is well-known that sovereignty is one of China’s non-negotiable points.

The very Paolo Davide Farah admits that both aspects would be non-manageable, because China insists in a rule of law with Chinese characteristics. However, within the aftermath of China’s access to the WTO, some of the most meaningful effects are the amendments of the Chinese Constitution, which nowadays, among others, holds human rights (art 33), labor laws (art 42) or private property (art 34). Furthermore, the NHRAP determines and regulates the rights of the Chinese population.¹³⁴

According to Karen Halverson

“Jiang Zemin’s ‘three represents’ [三个代表 san ge dai biao] campaign, which emphasizes the CCP’s role in representing the interests of capitalists along with the interests of workers and peasants, is part of an ongoing effort by the Party to reform and revive itself.”¹³⁵

It is conspicuous that, in order to adapt to the new situation, the CCP accepted the role of representing the capitalists. This point is not easily understandable for European minds, but it shows the Chinese adaptability.

¹³³ Id., p. 230.

¹³⁴ National Human Rights Action Plan of China (2016-2020), Updated: Sep 29, 2016, 1:57 PM Xinhua, available at http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm, last visited on 27/06/2018.

¹³⁵ HALVERSON, K., “China’s WTO Accession: Economic, Legal, And Political Implications”, *Boston College International & Comparative Law Review*, Student Publications, Volume 27, No. 2, 2004, available at https://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/27_2/06_FMS.htm, last visited on 22/03/2017.

Li Shi submits that

“Since the end of the 1970s China has undergone dramatic changes in its economic structures, institutions and social policies, and in the composition of its employment. During the past three decades China’s economic growth has been among the fastest in the world. Yet China also experienced one of the fastest increases in income and wealth inequality in the world over the same period. While the rate of annual GDP growth was close to an average of 10 per cent between 1985 and 2014, the Gini coefficient of income distribution increased from 0.38 to 0.47 during the same period.¹³⁶”

Everywhere in the world, GDP growth usually causes wealth inequality. But the Chinese case is outstanding. According to Kishor Mahbubani:

“Certainly the facts are there that inequality in the advanced society [...] is getting worse, inequality in China is getting worse. But to balance off there I think it is very important to empathize that the last thirty years have been be [sic] the best thirty years for the bottom half of the world’s population. We’ve never seen such a dramatic reduction of absolute poverty [...]. China alone, figures vary from 500 to 800 million people have been rescued from absolute poverty.¹³⁷”

Hence, from the above-mentioned statement it could be deducted that, for the said author, the growth in inequalities is a lesser evil, given the simultaneous beneficial effects to the population suffering poverty.

In the last fifty years, the world has gone through huge changes in the geostrategic balance. Since the Cold War (with two opponents, i.e. the USA and the USSR) till the end of the glasnost and the perestroika, with the subsequent collapse of the USSR, which led to the current situation, in which there is an hegemonic power (USA) and several relevant powers, but none as much as the USA, though they keep on growing. Those non-hegemonic powers are mainly, on one side the BRICS (Brazil, Russia, India, China and South Africa), and on the other side, the European Union. No doubt that the outstanding power of the mentioned ones is China.

The dissolution of the USSR happened in December 1991. Chinese authorities had a great interest in having closer ties with the then called European Economic Community, and there was a reciprocal feeling by the latter. The mutual interest was so strong that in spring 1992 a Chinese Commission, led by

¹³⁶ LI, S., “Recent changes in income inequality in China”, *Current Trends In Inequalities*, Chapter 2, *Inequalities in different parts of the world*, *World Social Science Report 2016*, UNESCO and the ISSC, Paris, p. 84, available at <http://unesdoc.unesco.org/images/0024/002459/245943e.pdf>, last visited on 22/03/2017.

¹³⁷ “Davos: Spreading the Wealth?”, *In the Balance - BBC World Service*, Sun 28 Jan 2018 04:06 Local time, Transcription of a radio program, available at <http://www.bbc.co.uk/programmes/w3csvq2m>, last visited on 3/04/2018.

Prime Minister Li Peng (李鹏) and by the Minister of Foreign Affairs Qian Qichen (钱其琛), undertook a round of formal bilateral contacts along Western Europe. They visited the European Commission in Brussels and Bonn, among other capitals. The Sino-European relations are determined by the bilateral economic relations. In this regard, Maiza appoints that the important handicaps menacing these relations are, on the European side, the protectionist policies, and on the Chinese side the lack of transparency.¹³⁸

Möller states any policy adopted by China must have three features: economic considerations, worldwide considerations and regional considerations. The EU has stayed firmly regarding the first of the said aspects, but the USA has been stable in all the three aspects.¹³⁹ Möller believes that multipolarism depends more on concurrence than on the alliances that it faces.

Maiza, for his part, cites Holslag, who maintains that China wishes that the EU will be a partner to support it in its campaign for multipolarism, but however, it also cites Ferrero-Waldner, who affirms that Europe “is not interested in a multipolar world, but in a world according to rules established and controlled by multilateral institutions”.¹⁴⁰

Maiza highlights that both China and the EU consider that the USA has an excessive power. Although the EU does not agree with the USA in considering China as a menace, but it does not agree either with the Chinese idea of multipolarism. The EU supports multilateralism and considers that conflicts must be dealt with by the UN.¹⁴¹ The Elcano Royal Institute considers that the world will develop in a multipolar system, in which China will play an essential, but not hegemonic role.¹⁴²

Regarding this aspect there are several examples showing the positive cooperation between the EU and China, e.g. the meetings at different levels both between leaders and technical assistants from both sides. This cooperative perspective is far better than the confrontational one.

¹³⁸ MAIZA LARRARTE, J., *Políticas públicas de la Unión Europea ante el despertar económico del gigante chino*, Doctoral thesis, Universidad del País Vasco, 2009, p.6, available at <https://addi.ehu.es/bitstream/handle/10810/7642/MaizaLarrarte.pdf;jsessionid=8F458FC3C29E6CB2B52B87ACBC1BE8DA?sequence=4>, last visited on 26/04/2017.

¹³⁹ MÖLLER, K., “Strategic Perceptions: China and the European Union”, *The China Quarterly*, Vol. 169, 2002, pp 10-32, p. 30.

¹⁴⁰ MAIZA LARRARTE, J., op. cit., p. 268.

¹⁴¹ Id., p. 298.

¹⁴² ESTEBAN, M. (coordinator), op. cit., p. 38.

Concerning the choice between a multipolar perspective and multilateral institutions, the second option is feasible, but it seems also foreseeable that both powers, i.e. the USA and China would like to have the support of the EU. Furthermore, in nowadays predicaments, because the economic crisis, immigration or the security weaken the EU, they affect its position regarding the two mentioned powers.

Schoettli, cited by Paloma García Picazo wonders about the development of a “duopole” of superpowers in the world scene of the XXI century. It would be integrated by China and the United States which would cohabit quite peacefully as long as their economical and geopolitical interests would be complementary instead of opposed.¹⁴³

I.2 Precedents of the European Union-China trade

The History of the relations between the European Union and China develops on the mainstay of the Silk Road,¹⁴⁴ a long standing trade route between East and West.¹⁴⁵

However, we consider that there is another important backbone, i.e. the Manila Galleon, which probably was the first example of globalization, due to its capability of circumnavigation. We don't forget great antecessors of the relations between Europe and China, as e.g. Marco Polo (regarding trade) or Matteo Ricci (regarding culture), but our interest now is to study the trade between Europe and China, and hence we analyze trade phenomena, as the Silk Road and the Manila Galleon, which serve better for the purpose and the methodological analysis of our study.

The said two routes allowed not only the transportation of goods, but also of ideas and inventions.¹⁴⁶

¹⁴³ GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica,...”, p. 203.

¹⁴⁴ The term “Silk Roads” is used nowadays by certain authors. However, we have opted for the more common and recognizable “Silk Road”. As an example of the authors in favour of the term in singular: MARK, J., Silk Road, Definition, Ancient History Encyclopedia, available at https://www.ancient.eu/Silk_Road/, last visited on 23/11/2017.

¹⁴⁵ Ibid.

¹⁴⁶ Pleco Chinese Dictionary. Copyright © 2001-2019 Pleco Software Incorporated. The four great Chinese inventions of the ancient times: paper, printing, magnetic compass and gunpowder (四大发明: 纸、印刷术、指南针和火药).

1.2.1 The Silk Road

The exact starting date of the trade between Europe and China is uncertain, but we can determine that, at least, there are two certain facts in this regard: the first was the domestication of pack animals, which helped to transport goods; the second one was the expeditions sent by Alexander the Great to Kashgar (喀什加 kashijia) (nowadays in China's Xinjinag Province, 新疆).¹⁴⁷

In the year 2700 BC silk was invented. This is just an example showing that old China was refined and developed.¹⁴⁸ The technique to make silk arrived in Rome, where it was introduced to Justinian Augustus.¹⁴⁹

Silk is a Chinese invention, and so the Silk Road was also initially based on the trade of such a Chinese invention. And silk became an impulse for the trade between China and Europe. Actually, the person to whom is attributed the foundation of the Silk Road is the Chinese General Zhang Qian (张骞). He was sent not on an exploratory but on a diplomatic mission. On the 2nd century BC he was sent by emperor Wudi (of the Han Dynasty 汉武帝 han wudi) to the West to seal alliances against the Huns (匈奴 xiongnu). As a result, the Han Dynasty became partners of the Da Yuan (大宛),¹⁵⁰ i.e. the Great Ionians.

¹⁴⁷ Chinese trade, British Museum, available at http://www.britishmuseum.org/pdf/Chinese_trade.pdf, last visited on 05/01/2018.

¹⁴⁸ About the Silk Road, Silk Road – Dialogue, Diversity and Development, UNESCO, op. cit. Note that refinement was enjoyed by the Chinese civilization since the year 2700 BC. China did not forbid the exportation of silk manufactures; they were indeed a most wished diplomatic gift, as well as a Chinese exportation success.

Stone Age, Emerson Kent, available at http://www.emersonkent.com/history_dictionary/stone_age.htm, last visited on 5/1/2018. “All in all, the Stone Age covers roughly the time period from 2,500,000 years ago until 2000 BC.”

Timeline – B.C., available at <http://www.au.af.mil/au/awc/awcgate/timeline/time0002.htm>, last visited on 05/01/2018. N.B. With the exception of the reference to “9996-5000 BC Cave paintings in Spain show bows in use” there are only few notes referring to other European developments, and they are exclusively from Greece. On the other hand, there are many references to non-European cultures, including China.

Such difference in development was not always in favour of Europe. At the decline of the Qing Dynasty (清代 qingdai) China was so weak that it was not able to stand a chance of defeating Western powers.

¹⁴⁹ About the Silk Road, Silk Road – Dialogue, Diversity and Development, UNESCO, op. cit.

¹⁵⁰ MARK, J., op. cit, n. d. Here we must briefly analyze which was the reason for the contact between China and the West. This precedent is based on early examples of international relations: “After Alexander the Great conquered the Persians, he established the city of Alexandria Eschate in 339 BCE in the Fergana Valley of Neb (modern Tajikistan). Leaving behind his wounded veterans in the city, Alexander moved on. In time, these Macedonian warriors intermarried with the indigenous populace creating the Greco-Bactrian culture which flourished under the Seleucid Empire following Alexander's death. Under the Greco-Bactrian king Euthydemus I (260-195 BCE) the Greco-Bactrians had extended their holdings. According to the Greek historian Strabo (63-24 CE) the Greeks ‘extended their empire as far as the Seres’ (xi.ii.i). ‘Seres’ was the name by which the Greeks and Romans knew China, meaning ‘the land where silk came from’. It is thought, then, that the first contact between China and the west came around the year 200 BCE. The Han Dynasty of China (202 BCE – 220 CE) was regularly harassed by the nomadic tribes of the

Several cities along the said trading itinerary were policing the trade routes, as e.g. Palmira and Petra.¹⁵¹

However, the goods traded via the Silk Road did not constrain to silk manufactures, but many other objects were transacted this way, as

“[...] textiles, spices, grain, vegetables and fruit, animal hides, tools, wood work, metal work, religious objects, art work [sic], precious stones and much more.”¹⁵²

There was not only a land route, but also a maritime route, which succeeded in the trade of goods and ideas. Actually, according to Joshua Mark:

“The closing of the Silk Road forced merchants to take to the sea to ply their trade, thus initiating the Age of Discovery (1453-1660 CE) which led to world-wide interaction and the beginnings of a global community.”¹⁵³

According to Joshua Mark, the greatest value of the Silk Road was the exchange of culture.¹⁵⁴ It spread an early style of cosmopolitanism, creating a special atmosphere along its itineraries, developing not only the trade of goods but also the cultural exchange of ideas, religions and beliefs,¹⁵⁵ what is an advantageous version of globalization. The quest for knowledge was a further aim

Xiongnu on their northern and western borders. In 138 BCE, Emperor Wu sent his emissary Zhang Qian to the west to negotiate with the Yuezhi people for help in defeating the Xiongnu. Zhang Qian's expedition led him into contact with many different cultures and civilizations in central Asia and, among them, those whom he designated the 'Dayuan', the 'Great Ionians', who were the Greco-Bactrians descended from Alexander the Great's army. The Dayuan had mighty horses, Zhang Qian reported back to Wu, and these could be employed effectively against the marauding Xiongnu. The consequences of Zhang Qian's journey was not only further contact between China and the west but an organized and efficient horse breeding program throughout the land in order to equip a cavalry. The horse had long been known in China and had been used in warfare for cavalry and chariots as early as the Shang Dynasty (1600 – 1046 BCE) but the Chinese admired the western horse for its size and speed. With the western horse of the Dayuan, the Han Dynasty defeated the Xiongnu. This success inspired the Emperor Wu to speculate on what else might be gained through trade with the west and the Silk Road was opened in 130 BCE. Between 171-138 BCE, Mithridates I of Parthia campaigned to expand and consolidate his kingdom in Mesopotamia. The Seleucid King Antiochus VII Sidetes (138-129 BCE) opposed this expansion and, also wishing revenge for the death of his brother, Demetrius, waged war against the Parthian forces of Phrates II, Mithridates successor. With the defeat of Antiochus, Mesopotamia came under Parthian rule and, with it, came control of the Silk Road. The Parthians then became the central intermediaries between China and the west.”

¹⁵¹ Trade Routes between Europe and Asia during Antiquity, Heilbrunn Timeline of Art History, Department of Ancient Near Eastern Art. New York: The Metropolitan Museum of Art, 2000–, Available at http://www.metmuseum.org/toah/hd/trade/hd_trade.htm, last visited on 22/11/2017.

¹⁵² About the Silk Road, Silk Road – Dialogue, Diversity and Development, UNESCO, op. cit., n. d.

¹⁵³ MARK, J., op. cit., n. d.

¹⁵⁴ Ibid.

¹⁵⁵ About the Silk Road, Silk Road – Dialogue, Diversity and Development, UNESCO, op. cit. “Lively coastal cities grew up around the most frequently visited ports along these routes, such as Zanzibar, Alexandria, Muscat, and Goa, and these cities became wealthy centres for the exchange of goods, ideas, languages and beliefs, with large markets and continually changing populations of merchants and sailors.”

of the Silk Road.¹⁵⁶ This route, probably unknowingly, was an early essay to improve mutual understanding among peoples. However, despite the Silk Road, great differences and lack of understanding remains nowadays between both ends of Eurasia. The multiple itineraries of the Silk Road served as “the communication highways of the ancient world.”¹⁵⁷

The logistics of the land Silk Road were supported by caravanserais,¹⁵⁸ which were large inns hosting travelling traders, and thus become privileged places for the interchange of not only goods, but also ideas, cultures and languages. The Silk Road, which lasted till the XIX century, was the reason for the existence of a well-developed network of caravanserais, which extended along the Eurasian continent, and even stretched as far as North Africa. Caravanserais were positioned within a travelling day from each other (i.e. every 30-40 km.) for the convenience of travelling merchants.

Jan de Vries does not use the term *ideas* but the term *information*, as he just not refer to culture, but also to the information “about goods”, among other things, and hence make commercial improvements.¹⁵⁹ In this regard, the disclosure of the secret of the production of silk actually was an industrial property theft, although

¹⁵⁶ Ibid. “The diary of Xuan Zang (whose 25-year journal lasted from 629 to 654 AD) not only has an enormous historical value, but also inspired a comic novel in the sixteenth century, the ‘Pilgrimage to the West’, which has become one of the great Chinese classics. During the Middle Ages, European monks undertook diplomatic and religious missions to the east, notably Giovanni da Pian del Carpine, sent by Pope Innocent IV on a mission to the Mongols from 1245 to 1247, and William of Rubruck, a Flemish Franciscan monk sent by King Louis IX of France again to the Mongol hordes from 1253 to 1255. Perhaps the most famous was the Venetian explorer, Marco Polo, whose travels lasted for more than 20 years between 1271 and 1292, and whose account of his experiences became extremely popular in Europe after his death.”

¹⁵⁷ Trade Routes between Europe and Asia during Antiquity, op. cit. “The trade routes were the communications highways of the ancient world. New inventions, religious beliefs, artistic styles, languages, and social customs, as well as goods and raw materials, were transmitted by people moving from one place to another to conduct business. These connections are reflected, for example, in the sculptural styles of Gandhara (modern-day Pakistan and northern India) and Gaul (modern-day France), both influenced by the Hellenistic styles popularized by the Romans.”

¹⁵⁸ GARCÍA WEIL, A., “The profitable nexus between both ends of Eurasia: The Silk Road” in BRAVO CARO, J. J., ROLDÁN PAZ, L. y YBÁÑEZ WORBOYS, P. (eds.) *El Mediterráneo: sociedades y conflictos*, p. 569, ISBN: 978-84-18388-33-0, Silex, Madrid.

¹⁵⁹ DE VRIES, J., Understanding Eurasian Trade in the Era of the Trading Companies, The University of Warwick, p. 9, available at https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwjAuaftn7LXAhUEWhQKHdssB58QFggvMAE&url=https%3A%2F%2Fwww2.warwick.ac.uk%2Ffac%2Farts%2Fhistory%2Fghcc%2Ffac%2Ffintranet%2Feditedvolume%2F2_vries.doc&usq=AOvVaw0BxnG9EZ8t1E7tI-9SMYBP, last visited on 10/11/2017. “Goods from the East were less important than ‘information’ from the East: new knowledge (about goods, among other things) that changed tastes, created new markets, and laid the basis for developing new products. This argument emphasizes the dynamic aspect of East-West trade. It was not simply a matter of exploiting price differentials or reducing transaction costs—important though these were—but of gathering and assessing a vast amount of new information and incorporating it into European life. This stood at the foundation of changing tastes, the demand for new goods, and the development of new markets in the early modern era.”

in those days China considered it was rather a secret.¹⁶⁰ And this theft damaged the trade on silk, as it started being produced in the Roman Empire. However, due to its good quality,¹⁶¹ trade on Chinese silk carried on till today.

Sailing merchants faced other main challenges: the supply of fresh water and the pirates, eager to gain plunder. Hence, a network of ports developed along the maritime Silk Road.

In the late period of the Silk Road, the XIX century, it was a way for archaeologists and geographers to reach their points of interest, and this way they explored ancient sites along the Silk Road.¹⁶²

China not only invented many of nowadays articles of daily use,¹⁶³ but it also influenced the West in quite a few ways. According to Derk Bodde, such domains in which the West was affected by Chinese ideas were:

“the civil service [...], alchemy and chemistry, agricultural methods, thought in the Age of the Enlightenment, Western literature, and Western political and economic theories.”¹⁶⁴

It is well known that Europe established early contacts with China. According to Derk Bodde

“[...] the new era of Chinese-European contacts started in 1601, when the famous Italian jesuit [sic] Matteo Ricci (1552-1610) arrived in the Chinese capital, Peking, and established there a Catholic mission.”¹⁶⁵

¹⁶⁰ MARK, J., op. cit., n. d. “The Chinese had very purposefully kept the origin of silk a secret and, once it was out, carefully guarded their silk worms and their process of harvesting the silk. The Byzantine emperor Justinian (527- 565 CE), tired of paying the exorbitant prices the Chinese demanded for silk, sent two emissaries, disguised as monks, to China to steal silk worms and smuggle them back to the west. The plan was successful and initiated the Byzantine silk industry.”

¹⁶¹ DE VRIES, J., op. cit., p. 26. “Silk was produced in many places, including Europe. But the Chinese product was esteemed in both Europe and elsewhere in Asia as the finest available.”

¹⁶² About the Silk Road, Silk Road – Dialogue, Diversity and Development, UNESCO, op. cit.

¹⁶³ BODDE, D., China’s gifts to the West, for the Committee on Asiatic Studies in American Education, Columbia University, available at http://afe.easia.columbia.edu/song/readings/inventions_gifts.htm#intro, last visited on 24/10/2017. China invented many of nowadays everyday’s items as e.g. “silk, tea, porcelain (‘china’), paper, printing, gunpowder, the mariner’s compass, medicines, lacquer, games (including cards, dominoes, and kites), and miscellaneous items such as umbrellas, as well as natural resources, such as plants (including peaches, apricots, and citrus fruits) and minerals (including coal and zinc), first discovered and cultivated by the Chinese.”

¹⁶⁴ BODDE, D., Chinese Ideas in the West, China and Europe, 1500-2000 and Beyond: What is “Modern”?, Asian Topics in World History, Asia for Educators, Columbia University, p.1, available at <http://afe.easia.columbia.edu/chinawh/web/s10/ideas.pdf>, last visited on 24/10/2017.

¹⁶⁵ Ibid. Derk Bodde maintains that the new era (it could be said that perhaps it was the Golden Era) of the Chinese-Europe relations started in 1601. From a chronological-historical point of view, that year is situated in the Ming Dynasty (明代) (1368-1644) but most of the time of that era happened during the Qing Dynasty (清代) (1644-1911), and during this dynasty the said prosperous era of the relations ended.

Pleco, op. cit.

This stable relation lasted for two centuries. The relations of those Jesuits with the Chinese were so good that they even held prominent positions in the Government.¹⁶⁶ In those days there was plenty of exchange of ideas, and Jesuits resident in China wrote the famous *Jesuit letters*,¹⁶⁷ which spread the Chinese universe in the world, and attracted the attention of relevant European intellectuals, as Leibniz or Voltaire. In this case there is an evident asymmetric relation between Europeans and Chinese, as the said Jesuits took Chinese Government seats, but at least the relations were harmonic and it was a fruitful cooperation, just the opposite of the situation during the Opium Wars and the Unequal Treaties. Matteo Ricci, an Italian Jesuit, among others, was an example of cultural adaptation. Matteo Ricci learned Chinese as well as Chinese culture. His “willingness to dress, eat and live as a Chinese [...] made him very acceptable to the Chinese elite.”¹⁶⁸ Along the last centuries, China has adapted to the West and its way of life. From the historical point of view, there is at least a clear example of mutual adaptation, albeit not exempt of conflicts: the relation between the Spaniards in Manila and the local Chinese (the sangleyes). It was a distinct case of mutual adaptation, mostly in respect of the supply and demand rules.

A good example of scientific interest in China and understanding of such culture was Gottfried Leibniz, “a great German philosopher and universal thinker” (1646-1716). According to him:

“I consider it a singular plan of the fates that human cultivation and refinement should today be concentrated, as it were, in the two extremes of our continent, in Europe and in Tshina (as they call it), which adorns the Orient as Europe does the opposite edge of the earth. Perhaps Supreme Providence has ordained such an arrangement, so that as the most cultivated and distant peoples stretch out their arms to each other, those in between may gradually be brought to a better way of life.”¹⁶⁹

¹⁶⁶ BODDE, D., op. cit., “Chinese Ideas...”, p.5.

¹⁶⁷ OLLÉ, M., “The Jesuit Portrayals of China between 1583-1590”, *Bulletin of Portuguese - Japanese Studies*, Universidade Nova de Lisboa, Vol. 16, June, 2008, pp. 45-57, p. 48, available at <http://www.redalyc.org/pdf/361/36112468003.pdf>, last visited on 30/11/2017. “[...] after the 1580’s it became the seed that would grow into the second modern paradigm of the perception of China: the image formed by the first generation of Jesuit priests that were permanently set up in China by 1583. The most significant of works was by Father Matteo Ricci which was widely dispersed through successive versions in different languages translated from the first printed edition, a Latin translation from the Ricciano Italian originals. This first translation was carried out by Nicholas Trigault, a Flemish Jesuit in 1615, entitled *De Christiana Expeditione apud Sinas*. It was later printed in Castilian in 1621 as *Historia de la China i Christiana Empresa hecha en ella por la Compañía de Jesús* (History of China and of the Christian Mission accomplished by the Society of Jesus)”.

¹⁶⁸ GELBER, H., op. cit. pp. 103-105.

¹⁶⁹ Leibniz on China, from the Preface to the *Novissima Sinica* (1697/1699), Leibniz on China, East West Dialogue, available at http://east_west_dialogue.tripod.com/id12.html, last visited on 30/11/2017.

The above-mentioned paragraph is a paradigm of the understanding between two players in international relations. Leibniz did not exclude the differences between Europe and China, but

“[n]ow the Chinese Empire, which challenges Europe in cultivated area and certainly surpasses her in population, vies with us in many other ways in almost equal combat.”¹⁷⁰

Hence, Leibniz considered that in those days there was a nearly symmetrical relation between Europe and China. However he also mentions an aspect in which there is asymmetry between both sides:

“For they despise everything which creates or nourishes ferocity in men, and almost in emulation of the higher teachings of Christ (and not, as some wrongly suggest, because of anxiety), they are averse to war. They would be wise indeed if they were alone in the world. But as things are, it comes back to this, that even the good must cultivate the arts of war, so that the evil may not gain power over everything. In these matters, then, we are superior.”¹⁷¹

And the above-mentioned paragraph shows one of the probable reasons for the misunderstandings which led to the Opium Wars, as we analyze in the part dedicated to such terrible episode in the Europe-China relations. And it is also probably the reason why some current Chinese leaders maintain that China is no longer the weak country it used to be. In this regard, Eugenio Bregolat states that Deng Xiaoping and his colleagues were convinced that, in order to become a rich and strong country and that such could not be humiliated again, as it was from 1840 to 1949, they should undertake the reform of the economy.¹⁷²

According to Derk Bodde:

“[...] the most famous leader of the Enlightenment to fall under the Chinese spell was Voltaire (1694-1778), to whom Confucius was the greatest of all sages.”¹⁷³

Derk Bodde quotes Voltaire:

“One need not be obsessed with the merits of the Chinese, he wrote in 1764, to recognize . . . that their empire is in truth the best that the world has ever seen.”¹⁷⁴

He admired the Chinese civilization, to the point that he even started several of his works started with a reference to China, highlighting its advanced position, in certain aspects, compared to Europe.¹⁷⁵

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² BREGOLAT, E., op. cit., *En torno al renacimiento...* p. 251.

¹⁷³ BODDE, D., op. cit., “Chinese Ideas...”, p.5.

¹⁷⁴ Ibid.

There were significant western economic movements under the influence of Chinese ideas, as e.g. the Physiocrats and Adam Smith, according to Derk Bodde.¹⁷⁶ John Whalley, Xueyi Zheng and Yaguang Zhang submit that the Chinese monetary theory was prior to the Western one, they highlight the Chinese influence on Adam Smith, and they even consider that Karl Marx was also under the same effects.¹⁷⁷

Derk Bodde considers that, given that Voltaire died eleven years before 1789, the European interest for China died with the French revolution, the Napoleon wars and the Industrial Revolution of the nineteenth century; these events forced Europeans to pay attention to their near reality.

In return to all the knowledge flow between East and West eased by the Silk Road, in 1999 the Chinese cellist Yo-Yo Ma established the Silk Road Project, “which explored cultural traditions along its route and beyond as a means for connecting arts worldwide across cultures.”¹⁷⁸

One of the main ideas imported from China to Europe was the merit system to access the civil service. According to Derk Bodde:

“Not until 1883, two years after a president of the United States had been assassinated by a disgruntled office seeker, did the public wake up and demand a system of civil service examinations that would ensure the selection of most government employees on the basis of merit rather than party loyalty. The civil service idea did not originate in [the United States], however, nor in Europe, though it is true that in passing this legislation, [American] Congress followed the immediate lead of Great Britain and France, both of which had taken similar action a few decades earlier.”¹⁷⁹

¹⁷⁵ TSIEN, J., “‘Voltaire and China’, Sounding China in Enlightenment Europe”, Harvard Computer Society, available at <http://www.hcs.harvard.edu/soundingchina/Tsien.html#>, last visited on 30/11/2017. “Like most of his contemporaries, Voltaire learned about Chinese culture and mores from the famous Jesuit letters. In a number of works, Voltaire demonstrates his high regard for this country, especially its social structure, its early developments in technology, and its devotion to Confucianism [...] In other works, such as his monumental universal history, *Essai sur les mœurs et l'esprit des nations* (An Essay on Universal History: The Manners and Spirit of Nations, 1756), Voltaire also showed his admiration for Chinese civilization. The very fact that he begins his text with China demonstrates how he saw this country as far more advanced, in matters of technology and of governance, than any of the European latecomers.”

¹⁷⁶ BODDE, D., op. cit., “Chinese Ideas...”, p.1.

¹⁷⁷ WHALLEY, J., ZHENG, X and ZHANG, Y., “Monetary theory from a Chinese historical perspective”, Vox, CEPR’s policy portal, available at <http://voxeu.org/article/monetary-theory-chinese-historical-perspective>, last visited on 5/12/2017.

¹⁷⁸ Silk Road – trade route, Encyclopaedia Britannica, available at <https://www.britannica.com/topic/Silk-Road-trade-route>, last visited on 2/12/2017. Silk Road, available at <https://www.silkroad.org/>, last visited on 5/12/2017.

¹⁷⁹ BODDE, D., op. cit., “Chinese Ideas...” p.1.

The first country to implement the merit system was China, but the really astonishing fact is that it did it in the year 165 B.C., i.e. longer than two thousand years before it was introduced in the West:

“The first county [sic] to install the merit system was China. In the year 165 B.C., China inaugurated what later became a widespread system of competitive government examinations. And during the greater part of the time from that early date until 1905, shortly before the Empire passed out of existence, the majority of Chinese applicants for public office had to prove their ability by passing one of these tests.”¹⁸⁰

In Europe, probably the most interesting case of introducing the Chinese civil service system based on merits was in the United Kingdom, where it was first implemented in the British East India Company.¹⁸¹

Sinibaldo de Más, a Spanish diplomat posted to China, in his work *La Chine et les puissances chrétiennes* praised the imperial examinations system but criticized the syllabus, maintaining it was antiquated.¹⁸²

As above-mentioned, the Silk Road was not only a trading route, but also a vector of cosmopolitanism,¹⁸³ and we know it declined in the XV century. According to Jan de Vries, the revisionists of the *California School*:

¹⁸⁰ Ibid.

¹⁸¹ Id., p. 9. “During the eighteenth century a number of Englishmen wrote in praise of the Chinese examination system, some of them going so far as to urge the adoption for England of something similar. The first concrete step in this direction was taken by the British East India Company in 1806. In that year the Company established a small college near London whose purpose was to train Company employees for administrative service in India, the British-controlled portions of which were at that time still governed by the Company on behalf of the British Crown. The proposal for establishing this college came, significantly, from members of the East India Company's trading post in Canton, China. Thus the principle was established of using for public administration men who possessed certain preparatory qualifications. During the next several decades many Englishmen referred to the example of China as an argument for establishing a universal civil service system in England itself. Most persistent among them was Thomas Taylor Meadows, a gifted man who served for many years in the British diplomatic service in China. In 1847 he published a book, *Desultory Notes on the Government and People of China*, whose main purpose, in his own words, was ‘to urge the institution of Public Service Competitive Examinations for all British subjects with a view to the Improvement of the British Executive and the Union of the British Empire.’ In it he described the Chinese system and argued that ‘the long duration of the Chinese empire is solely and altogether owing to the good government which consists in the advancement of men of talent and merit only.’ Such public statements finally led the British government to create a committee to investigate the matter. In 1853 this committee presented to Parliament a report entitled ‘The Organization of the Permanent Civil Service.’ The report recommended that a central board of examiners be formed to prepare examinations on the general knowledge of the candidates; that these examinations should be held regularly and should be open to all; and that promotion in government service should be based on merit instead of favoritism. All these were principles that had governed the Chinese system for many centuries. Though bitterly attacked in Parliament, the report resulted in the creation of Britain's first civil service commission in 1855.”

¹⁸² Quoted by PERMANYER UGARTEMENDIA, A., “Sinibaldo de Más, un observador español de la realidad china del siglo XIX”, in SAN GINÉS AGUILAR, P. (ed.) *La investigación sobre Asia Pacífico en España*, Granada, Editorial Universidad de Granada, 2006, pp. 323-340, pp. 334-335, available at <https://www.ugr.es/~feiap/ceiap1/ceiap/ceiap1.pdf>, last visited on 16/12/2017.

“East and West were more similar than dissimilar in their economic performance, and that dissimilarities in institutions and laws do not generally support assessments of superiority and inferiority. Thus, Europe and Asia, or their economically more advanced zones, were on the same economic trajectory in the early modern era. That is, until the end of the Eighteenth Century, when the West postponed the onset of the developing ecological problems that faced all of Eurasia in the Eighteenth Century, and circumvented them altogether over the Nineteenth Century, by exploiting two windfalls of massive significance: cheap and accessible energy (coal) and the virgin oils and abundant natural resources of the New World. These contingent events, or historical windfalls, produced a ‘great divergence’: the West diverged from the East economically and, in short order, achieved political and cultural dominance as well.”¹⁸⁴

Let us analyze these considerations from a chronological perspective: until the late eighteenth century, Europe and Asia, at least in their most developed zones, “were on the same economic trajectory in the early modern era”. And it is also a matter of fact that the Silk Road harmonized the relations between Europe and Asia. The Silk Road, according to Joshua Mark, lasted till 1453, when the Ottoman Empire put an end to the Silk Road. We consider that it is probable that this fact had an influence on the *great divergence*.¹⁸⁵ Hence, we can deduct that there was a reciprocal influx between the Silk Road and the harmonious Europe-Asia relations. We don’t mean that the Silk Road enjoyed peace throughout its life, but it enhanced peaceful relations.¹⁸⁶ It improved trade between Europe and Asia, and such positive relations between both parties lasted for centuries, but as the Silk Road ended so did the fluid land trade, and along two centuries, the decline of the Silk Road also damaged the harmony in Eurasia, and thus arose the *great divergence*. Undoubtedly, after the Turkish blocked the land Silk Road, the

¹⁸³ According to UNESCO, *routes or roads* are vectors of culture, and they are essential for several cultural projects undertaken by UNESCO, “Integral Study of the Silk Roads: Roads of Dialogue”, The Silk Roads Project, 1988-1997, UNESCO, CLT/CPD/DIA/2008/PI/68, available at unesdoc.unesco.org/images/0015/001592/159291eo.pdf, last visited on 2/12/2017.

¹⁸⁴ DE VRIES, J., op. cit., pp. 3-4.

¹⁸⁵ LITTLE, D., “The great divergence”, Understanding society-Innovative thinking about a global world, 01/09/2012, available at <https://understandingsociety.blogspot.com/2012/09/the-great-divergence.html>, last visited on 18/05/2019. “Pomeranz doesn’t doubt that there were sharp differences in European and Chinese economic development in the 18th century. This is the “great divergence” to which he refers. But he doubts that there are grand socio-cultural explanations for this fact; instead he focuses on contingent conjunctival circumstances that gave England a lead that it maintained for 200 years. These include the fortuitous location of coal in Britain, the fact of New World wealth, and the returns if [sic] slave labor in North America. None of these is a deep systemic factor but rather a lucky break for Britain.”

¹⁸⁶ SHEPARD, W., “Multiple Routes Between China And Europe Is Why The New Silk Road Is A Real Game Changer”, Forbes, available at <https://www.forbes.com/sites/wadeshepard/2017/04/17/multiple-routes-between-china-and-europe-is-why-the-new-silk-road-is-a-real-game-changer/#12d98cb61feb>, last visited on 5/12/2017. “Like in the days of the ancient Silk Road, if one corridor goes down due to a change in government, war, an economic upheaval or a spat over tariffs, cargo can simply be shipped to similar destinations via alternative routes — like a river flowing around a boulder.”

maritime Silk Road grew as an alternative, but as the land route ended, a communication channel extinguished and, with it, a reason for peace.

According to Kenneth Pomeranz:

“I look back at China, Japan, and India, all places which, to varying degrees, had to adopt increasingly labor-intensive approaches to ecological stresses and to varying degrees found that these adjustments made capital-intensive, energy-intensive industrialization more difficult later. Since I have argued repeatedly that without the windfalls discussed here, Europe, too, could have been forced down a much more labor-intensive development path, these last examples are meant not just to round out a global story, but to complete the argument that the early nineteenth century represents a crucial moment of divergence with lasting effects—the moment when, thanks to all the factors we have discussed, England avoided becoming the Yangzi Delta, and the two came to look so different that it became hard to see how recently they had been quite similar.”¹⁸⁷

In other words, it could be said that, due to having had to adopt early labor-intensive work caused by Western powers (not explicitly argued by Kenneth Pomeranz in the above-mentioned paragraph, but clearly seen through the light of History) as well as ecological stress, on China among other countries, they were not able to catch up the industrial and thus economic pace of Western powers in the XIX century and till the late XX century.

1.2.2 The early Asia-Pacific trade. The Manila Galleon and beyond

Antonio Mira Toscano considers that, at the end of the Middle Age, Muslims and Venetians controlled the trade routes between Europe and the Far East. Hence, Europeans searched another route to reach the Far East.¹⁸⁸

In 1492, Columbus, under the auspices of the Spanish crown, reached America for the first time. It was the start of the era of explorations.

Hence, in 1497 Vasco de Gama managed to sail directly to India. In 1513 Núñez de Balboa crossed the Isthmus of Panama, discovering the South Sea or *Mare Pacificum*.

¹⁸⁷ POMERANZ, K., *The Great Divergence – China, Europe and the Making of the world economy*, Princeton, Princeton University Press, 2000, p. 283, available at <http://piketty.pse.ens.fr/files/Pomeranz2000.pdf>, last visited on 10/11/2017.

¹⁸⁸ MIRA TOSCANO, A., Andrés de Urdaneta y el tornaviaje de Filipinas a Nueva España, *Mercvrio Pervano*, 529 (2016): 107-122, p. 107, available at <https://dialnet.unirioja.es/servlet/articulo?codigo=5613036>, last visited on 6/12/2017.

In 1522 Juan Sebastian Elcano, commanding a Spanish expedition, completed the first circum-navigation voyage¹⁸⁹ i.e. to sail from Spain to America, across the Pacific Ocean, reach Asia and through the Indian Ocean and along the African coast, sail back to Spain. The expedition was first led by Magellan till he was killed by natives during the voyage in the Philippines. In 1521, when Magellan was still alive and commanded the enterprise, the expedition reached the Philippines, being the first Europeans to arrive in the said islands.¹⁹⁰ But on those days nobody had ever sailed from the Philippines back to America, what was called “el tornaviaje”, i.e. the Voyage back. Miguel López de Legazpi colonized the Philippines and founded the capital, Manila.¹⁹¹ Andrés de Urdaneta, in 1564-1565, commanded the first “tornaviaje”, i.e. the Voyage back, from the Philippines to America.¹⁹² The last one was in 1815. The Manila Galleon was on duty for 250 years, connecting three continents: Asia, America and Europe. The main problems for the Galleon, as Carmen Yuste submits, were that sometimes they went astray and the danger posed by the pirates (at an early stage, they were Chinese, Japanese and moors; later on, Europeans, mostly Dutch and English).¹⁹³

¹⁸⁹ ANDREWS, E., “Was Magellan the first person to circumnavigate the globe?”, History, available at <http://www.history.com/news/ask-history/was-magellan-the-first-person-to-circumnavigate-the-globe>, last visited on 6/12/2017. However, according to Evan Andrews, “Elcano and his sailors stand as the first people to have successfully voyaged around the world as part of a single journey, but they might not be the first humans to have circumnavigated the globe over the course of a lifetime. Opinions differ, but many historians give the honor to Magellan’s Malay slave, Enrique. Magellan had seized Enrique from Malacca during an earlier 1511 voyage to the East Indies, and the Malay later served as the round-the-world expedition’s interpreter in the Pacific islands. Enrique had previously traveled west with Magellan from Asia to Europe before joining in the voyage across the Atlantic and Pacific, so by the time the mission reached Southeast Asia, he had very nearly circled the globe and returned to his homeland—albeit over the course of several years and multiple voyages. Enrique abandoned the expedition and disappeared shortly after Magellan’s death in the Philippines. By then, he was only a few hundred miles short of his point of origin in Malacca. If he ever returned to his homeland, then Enrique may deserve the true credit for being the first person to circumnavigate globe.”

¹⁹⁰ Magellan reaches the Philippines, Oxford University Press, OUPBlog, Academic Insights for the Thinking World, available at <https://blog.oup.com/2012/03/magellan-reaches-the-philippines/>, last visited on 6/12/2017. “On March 16, 1521, Portuguese navigator Ferdinand Magellan, attempting to sail around the world for Spain, reached the Philippine archipelago. Magellan and his expedition were the first Europeans to reach the Philippines, a stop on the first circumnavigation of the globe”

¹⁹¹ Miguel López de Legazpi, Real Academia de la Historia, available at <http://www.rah.es/legazpi-3/>, last visited on 12/12/2017.

¹⁹² YUSTE, C., “The transpacific galleon. Trading networks regarding spices, textiles and silver.”, in LUQUE TALAVÁN, M. MANCHADO LÓPEZ, M. M. (eds.), *An ocean of exchanges: Hispanic Asia (1521-1898). Homage to Professor Leoncio Cabrero Fernández, I*, Madrid, Foreign Office, 2008, pp. 195-216, p. 199. Unofficial translation. Original text: YUSTE, C., “El Galeón transpacífico. Redes mercantiles alrededor de especias, textiles y plata.”, in LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *Un océano de intercambios: Hispanoasia (1521-1898). Homenaje al profesor Leoncio Cabrero Fernández, I*, Madrid, Ministerio de Asuntos Exteriores, 2008, pp. 195-216, p.199. According to Carmen Yuste, the tornaviaje, discovered by Andrés de Urdaneta, was due to the ocean stream called Kuro Sivo which, starting from the Japanese coast, reaches the californian coastline.

¹⁹³ Id., pp. 199-200.

The Manila link had different names, depending on the trading place.¹⁹⁴

The Manila Galleon was a result of the first encounter between Spanish and Chinese sailors. Aibek Yesbolov maintains that in 1574¹⁹⁵ a Spanish fleet defeated the Chinese pirate Li Mahong (林凤 lin feng), and so started the relations between both sides.¹⁹⁶ Leoncio Cabrero Fernández submits another theory, according to which the first direct contact of the Spaniards with China and the Spanish settlement in Manila (after the foundation of Cebú) happened almost simultaneously. The said author states that the starting point of trade between Spain and China was the result of an accident. One of the Legazpi vessels saved the crew of a large Chinese junk which was sinking and, in gratitude, the

¹⁹⁴ CABRERO FERNÁNDEZ, L., “The Manila Galleon: new reflections regarding the trans-Pacific route”, in LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *An ocean of exchanges: Hispanic Asia (1521-1898)*. Homage to professor Leoncio Cabrero Fernández, II, Madrid, Foreign Office, 2008, pp. 511-519, p. 513. Unofficial translation. Original text: CABRERO FERNÁNDEZ, L., “El Galeón de Manila: nuevas reflexiones en torno a la ruta transpacífica”, in LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *Un océano de intercambios: Hispanoasia (1521-1898)*. Homenaje al profesor Leoncio Cabrero Fernández, II, Madrid, Ministerio de Asuntos Exteriores, 2008, 511-519, p. 513.

¹⁹⁵ However, it is generally accepted that the first voyage of the Manila Galleon took place in 1565. For example: Encyclopaedia Britannica, Manila galleon-Spanish sailing vessel, available at <https://www.britannica.com/technology/Manila-galleon>, last visited on 10/12/2017.

¹⁹⁶ YESBOLOV, A., “Relations between Ming China and Spain during the Spanish Colonial Period in the Philippines: An Analysis of Berthold Laufer’s ‘The Relations of the Chinese to the Philippine Island’”, *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, Volume 20, Issue 4, Ver. IV, Apr. 2015, pp. 81-83, p. 82, www.iosrjournals.org DOI: 10.9790/0837-20448183, available at <http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue4/Version-4/L020448183.pdf>, last visited on 6/12/2017. “[...] there was some positivity in the political relations between Ming China and Spanishoccupied [sic] Philippines. The good political relations began because ofLimahong [sic](林凤) – a notorious Chinese pirate and warlord who invaded the northern Philippine Islands in 1574. The Spanish Philippines forces (including both Spaniards and Filipino natives) and the Ming China forces collaborated in order to fight against Limahong. In recognition of the service rendered to them by China, the Spanish-occupied Philippines sent envoys (two military officers, two Augustinian friars).A commander of an imperial Chinese war vessel even offered to take these Spanish envoys over to China in his ship.Both the Ming Dynasty Annals and the Spanish documents of that time mentioned about the envoys as having arrived after the defeat of Limahong. Guido de Lavezaris – the current governor-general of the Spanish Philippines at that time – considered it his principal task to entertain peaceable and amicable relations with an empire (Ming China) whose pirates alone were able to almost shatter the Spanish possessions in Asia. He desired for the cession of a trading port near mainland China (similar to Portugal’s Macau at that time).Ming China did not grant him his request but in 1576, after reading the letters from Lavezaris, the emperor of China agreed to cede to the Spaniards an island near Guangdong under the same conditions as Macau had been turned over to the Portuguese.”

SOLA GARCÍA, D., “Juan González de Mendoza and the History of the Great Kingdom of China: the construction of the account on China from the XVI century’s Europe”, *Revista Estudios*, (32), I-2016. ISSN 1659-3316, Dossier Between Asia, America and Europe: Christian missionaries as intercultural intellectuals? available at <http://diposit.ub.edu/dspace/bitstream/2445/116253/1/664765.pdf>, last visited on 10/12/2017. Unofficial translation. Original text: SOLA GARCÍA, D., “Juan González de Mendoza y la Historia del Gran Reino de la China: la construcción del relato sinológico desde la Europa del Quinientos”, *Revista Estudios*, 32, I-2016. ISSN 1659-3316, Dossier Entre Asia, América y Europa: ¿los misioneros cristianos como intelectuales interculturales?, p. 17, available at <http://diposit.ub.edu/dspace/bitstream/2445/116253/1/664765.pdf>, last visited on 10/12/2017. In fact, in those days there was a reciprocal feeling of sympathy between Spain and China. In this regard, the Spanish Augustinian monk Juan Gonzáles de Mendoza, in 1585 wrote a prominent book on China, titled *History of the Great Kingdom of China* (unofficial translation; original: *Historia del Gran Reino de la China*) highlighting that the Ming dynasty was a great and well-governed kingdom.

survivors brought this event to public attention in China. Early in the year 1572 the survivors returned to Manila with lots of goods.¹⁹⁷ There is yet another theory about the same issue, this one submitted by Antonio García-Abásolo González, who maintains that when Legazpi was arriving in the island of Mindoro, he met Chinese traders (there are authors who maintain that archeological remains proof that there were contacts between the Chinese and the Philippines two hundred years before the arrival of the Spaniards;¹⁹⁸ Ming emperors tried to dominate the island of Luzon; eventually, Chinese traders established ports in their commercial routes in the Philippines). Thirty of those Chinese traders had suffered a shipwreck and were subsequently made slaves; the Spaniards released them and this was the reason of the gratitude of the Chinese as well as the starting point of the trade between both sides.¹⁹⁹

As above-mentioned, between both communities there was a love-hate relationship. The understanding between them was necessary, as Manila lived, in a great proportion, on the Manila Galleon, but such understanding was based on a hard learning. Apparently, according to Antonio García-Abásolo González, in the late XVIII century they had adapted to each other. But, till that point, both went through ups and downs, typical to the clash of so different cultures, and hence grave confrontations took place, leading to slaughters, in which the sangleyes usually bore the brunt.²⁰⁰ Spaniards managed to bring the 1603, 1639, 1686 and 1745 uprisings under control. And the sangleyes were able to recover from the 1755 and 1762 formal expulsions. Antonio García-Abásolo González maintains that maybe the reason for those cases of overcoming was the implicit acceptance

¹⁹⁷ CABRERO FERNÁNDEZ, L., op. cit. p. 513.

¹⁹⁸ MANCHADO LÓPEZ, M., “Chinese and Spaniards in Manila in the early XVII century”, in LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *An ocean of exchanges: Hispanic Asia (1521-1898). Homage to Professor Leoncio Cabrero Fernández, I*, Madrid, Foreign Office, 2008, pp. 141-160. Unofficial translation. Original text: MANCHADO LÓPEZ, M., “Chinos y españoles en Manila a comienzos del siglo XVII”, in LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *Un océano de intercambios: Hispanoasia (1521-1898). Homenaje al profesor Leoncio Cabrero Fernández, I*, Madrid, Ministerio de Asuntos Exteriores, 2008, pp. 141-160. According to Marta Manchado López, Chinese traders arrived in the Philippines before the Spaniards. Short after the foundation of Manila in 1571, Chinese junks from Cantón (广东 guangdong) and Amoy (厦门 xiamen) tried to find out how the Spanish domination would affect their commercial business.

¹⁹⁹ GARCÍA-ABÁSULO GONZÁLEZ, A., “The Chinese world within the Spanish Empire (1570-1755)”, in LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *An ocean of exchanges: Hispanic Asia (1521-1898). Homage to Professor Leoncio Cabrero Fernández, I*, Madrid, Foreign Office, 2008, 117-140, p. 120. Unofficial translation. Original text: GARCÍA-ABÁSULO GONZÁLEZ, A., “El mundo chino del imperio español (1570-1755)”, in LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *Un océano de intercambios: Hispanoasia (1521-1898). Homenaje al profesor Leoncio Cabrero Fernández, I*, Madrid, Ministerio de Asuntos Exteriores, 2008, 117-140, p. 120.

²⁰⁰ Id., pp. 117-140.

that the understanding was necessary, in order to reach their respective goals,²⁰¹ According to Marta Manchado López, the first big crisis of the Chinese-Spanish relations in the Philippines was the Chinese uprising in 1603. This violent happening was a result of the difficult balance the Spanish community tried to keep between the fear they felt for the sangleyes and the fact that they depended on them.²⁰²

Occasionally, the sangleyes outnumbered the Spaniards, what created in the latter ones uneasiness. Moreover, the remoteness of the archipelago from Spain, compared to the relative short distance till China made the Spaniards even more nervous.²⁰³

The Spain-China relations always counted with the support of the Spanish colony of the Philippines, although the Manila Galleon was not in service at the date the 1864 Friendship, Trade and Navigation Treaty between Spain and China was signed.

Sinibaldo de Mas y de Sanz (1809-1868), a Spanish Diplomat, was essential for the relations between Spain and China. Miguel Luque Talaván states that in 1842, de Mas was appointed first diplomatic representative of Spain in China and was the promoter of the Spanish politics in the Celestial Empire. His main goal was the signature of a Spanish-Chinese treaty, what he didn't achieve till twenty two years after his appointment, i.e. in 1864. He negotiated the treaty since 1848 till 1862. Since he arrived in China till 1863, just one year before the treaty, whenever he was sent to China, always stayed in Macao. In 1863 the site of the diplomatic legation moved to Beijing. In 1864 the Treaty was signed. Miguel Luque Talaván considers that the imperial government didn't fulfill the treaty, and it did so with the support of Great Britain, United States and France. We don't overlook the oppressive situation under which China was constrained to sign the said treaties; the above-mentioned breach of the treaty was a matter of fact, and compared with the way China respected the treaties signed with other powers, shows the weakness of Spain in those days. The said author states that those two factors permeated the Spanish foreign policy in the Far East: the lack of rigor of the imperial government and the interference of Western powers with interests in the area.²⁰⁴

²⁰¹ Id., p. 125.

²⁰² Id., pp. 117-140.

²⁰³ MANCHADO LÓPEZ, M., op. cit. p. 144.

²⁰⁴ LUQUE TALAVÁN, M., "The Asian context of the nineteenth-century Philippines. Sinibaldo de Mas y de Sanz and the Spanish foreign policy regarding the Celestial Empire (1844-1849)", in

Miguel Luque Talaván states that Spain, with a view to take profit of the situation created by the first Opium War, appointed Sinibaldo Mas y de Sanz as diplomatic and commercial agent in China. Furthermore, he was appointed for the following tasks:

- He should obtain from China the acknowledgement of privileges and exemptions with which Spain had already been entitled.
- Afterwards, he should inquire which Spanish and Filipino goods could be coveted by China and the Western nations established in China. The reason for this point was that, this way, the crown could protect the industries producing those goods.
- He should find out the experiences other States had had in the practice of international treaties with China. The purpose was to avoid claims and modifications.
- He should ascertain the parameters of Chinese diplomacy, quite different from the Western ones.²⁰⁵

The above-mentioned tasks must be understood within the framework of a long standing reciprocal incomprehension, which determined the relations between the Chinese and the Europeans. According to Confucianism, the only true power was the Emperor, and all embassies were to accept such principles; diplomatic legations were just a sign of submission to the Emperor. Meanwhile, Europeans thought of themselves as superior in economics, politics and even as a race; hence, they would not submit to Chinese rules, and this was the cause of several conflicts. The situation even worsened as a result of the first Opium War and the Taiping (太平) Revolution.²⁰⁶

In his report, de Mas y de Sanz fulfilled all the above-mentioned tasks, and made several discerning suggestions, as e.g. he highlighted the importance of the port of Shanghai (上海) in comparison to the one of Canton (广东 Guangdong). He also argued in favor of establishing political-economic relations with China. He was in favor of taking as models the treaties signed by other European States. The signature of the treaty had two favorable factors: the first, the long standing

LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *An ocean of exchanges: Hispanic Asia (1521-1898)*. Homage to professor Leoncio Cabrero Fernández, I, Madrid, Foreign Office, 2008, pp. 323-354, p. 334. Unofficial translation. Original text: LUQUE TALAVÁN, M., “El contexto asiático de la Filipinas decimonónica. Sinibaldo de Mas y de Sanz y la política exterior de España con el Celeste Imperio (1844-1849)”, in LUQUE TALAVÁN, M. and MANCHADO LÓPEZ, M. M. (eds.), *Un océano de intercambios: Hispanoasia (1521-1898)*. Homenaje al profesor Leoncio Cabrero Fernández, I, Madrid, Ministerio de Asuntos Exteriores, 2008, pp. 323-354, p. 334.

²⁰⁵ Id., pp. 323-354.

²⁰⁶ Id., p. 335.

relation between both nations, and the second one, the Philippines, a Spanish enclave not far from China. As an example, Canton was the only port open to foreign trade, while the Filipino trade had access to three ports. He expressed his negative opinion about establishing large-scale trade with China, due to the privileged position of other European powers. Moreover, he considered the impossibility of improving the trade between China and the Philippines, as the latter had no industry.²⁰⁷

The Treaty was finally signed in 1864 in Tianjin (天津). David Martínez-Robles states that in 1868 de Mas quitted China, returned to Spain and died in Madrid.²⁰⁸ María da Conceição Meireles Pereira maintains that he died in 1869.²⁰⁹ However, Ander Permanyer Ugartemendia considers that he passed away in 1868.²¹⁰ According to the mentioned authors, after he ceased as Spanish diplomat, he was commissioned by the Qing (清) Emperor, who was aware of the financial constraints of Portugal, in order to negotiate with Portugal, the acquisition of Macao by China. But, short after his arrival in Madrid, he died.

Summing up, Sinibaldo de Más had a deep knowledge and comprehension of China, but still believed in the European superiority.²¹¹ His main contribution to the understanding of the XIX century China was his work *La Chine et les puissances chrétiennes*.²¹² As an example of his ideas on China, here we can see in short some of the backbones of Chinese culture and philosophy, mainly still remaining nowadays: “[...] the principle, so sacred for the Chinese, to honor the memory of the parents, the ancestors and Confucius.”²¹³

Sinibaldo de Más refers several times in his work to the lack of understanding between the Europeans (his above-mentioned work is written in French, and he uses the term *puissances chrétiennes*, i.e. *Christian powers*) and the Chinese.

²⁰⁷ Id., p. 337.

²⁰⁸ MARTÍNEZ-ROBLES, D., “Sinibaldo de Mas”, Archivo China-España 1800-1950, available at <http://ace.uoc.edu/exhibits/show/galeria-de-personajes/sinibaldo-de-mas>, last visited on 16/12/2017.

²⁰⁹ MEIRELES PEREIRA, M. da C., “Sinibaldo De Más: el diplomático español partidario del iberismo”, *Biblioteca de la Universidad de Navarra*, p. 353, available at http://dadun.unav.edu/bitstream/10171/21549/1/ADI_XVII_2001_13.pdf, last visited on 02/05/2019.

²¹⁰ PERMANYER UGARTEMENDIA, A., op. cit., p. 324.

²¹¹ Id., p. 328.

²¹² Id., p. 337.

²¹³ DE MÁS Y SANZ, S., *La Chine et les puissances chrétiennes*, p. 294, available at <http://scans.library.utoronto.ca/pdf/7/11/lachineetlespuis02masy/lachineetlespuis02masy.pdf>, last visited on 17/12/2017.

The 1864 Spanish-Chinese Friendship, Trade and Navigation Treaty (hereinafter the Treaty) is a good example of the arrogance with which the Europeans treated the Chinese. Several authors concur with this opinion, adding that Sinibaldo de Más maintained that the lack of understanding between both sides led to the breach of treaties and frequent conflicts, and therefore was essential the establishment of embassies in China, and Chinese embassies should also be established in more countries.²¹⁴ Miguel Luque Talaván analyzes the 1845 treaty project. We have studied the 1864 Treaty itself,²¹⁵ which has coincidences with the said treaty project.

The most relevant aspects regulated by the Treaty are the following ones:

- The first articles deal with the minimum reciprocity in order to establish diplomatic relations. But from article 5 onwards there is little clue of reciprocity; with the exception of article 9 (regulating labor agreements between “Chinese [...] and Spanish subjects” [sic] in which there is equality between both sides) and article 47, (regulating the access of Chinese vessels to Filipino ports, which we analyze afterwards). The rest of the provisions are devoted to rights in favor of Spain. We should remember that this Treaty is inspired on the other treaties signed, actually imposed after the victory of the Western powers on the Chinese, and therefore they are named the Unequal Treaties, being the earliest of them the Treaty of Nanjing, dated 1842,²¹⁶ twenty two years before the signature of the Treaty we are analyzing.
- Appointment of the Chinese ports which would be open to Spanish vessels (article 5)
- Christians and those teaching the Christian faith would be protected by the Chinese authorities (article 6).
- “Chinese subjects” [sic] would be entitled to go to work in Spanish overseas possessions (article 10). In fact, there was a considerable free migration from China to the Spanish American colonies. But they were made slaves upon arrival in Cuba. According to Maria

²¹⁴ Españoles olvidados VII: Sinibaldo de Más y Sanz, Iberista y embajador en China, La trompeta de Jericó, available at <https://latrompetadejerico.wordpress.com/2014/12/04/sinibaldo-de-mas-iberista-y-embajador-en-china/>, last visited on 16/12/2017.

²¹⁵ *Tratado de amistad, comercio y navegación ajustado entre España y China, y firmado en Tien-Tsin el 10 de Octubre de 1864*, Biblioteca Digital Hispánica, Biblioteca Nacional de España, available at <http://bdh-rd.bne.es/viewer.vm?id=0000144623&page=1>, last visited on 16/12/2017.

²¹⁶ Unequal Treaty, Chinese History, Encyclopaedia Britannica, available at <https://www.britannica.com/event/Unequal-Treaty>, last visited on 17/12/2017.

Montt Strabucchi, “Between 1847 and 1874 around hundred fifty thousand Chinese arrived in the island as result of the trade on *culíes* (coolies), who were treated as slaves for the construction of railway lines and the work on sugar plantations.” (Unofficial translation) Hence, Cuba received the most numerous Chinese migrant populations in Central America and Caribe, only followed by Peru.²¹⁷ The last paragraph of article 10 determines the exception of kidnapped Chinese. Should such a case be discovered, the local authority would claim the devolution of the said Chinese. According to Rudolph Ng, “On paper, the indentured workers were abroad legally and voluntarily and were given regular salaries, certain benefits, as well as various legal rights not granted to slaves. In practice, however, coolies were often kidnapped before departure and abused upon arrival.” Hence, “resulted in the dispatch of a Qing delegation to Cuba to investigate the allegations of mistreatment. Its final report described the appalling working conditions of the Chinese coolies in the Spanish possessions.”²¹⁸ “In 1867, the Spanish government finally abolished [slave trading] effectively.”²¹⁹ But slave trading carried on clandestinely.²²⁰ To a great extent, the African slave was replaced by the cheated (or kidnapped) and enslaved Chinese migrant (between 1847 and 1874

²¹⁷ MONTT STRABUCCHI, M., review on *Chinese Cubans: A Transnational History*, by Kathleen López, Chapel Hill, The University of North Carolina Press, 2013, 340 páginas, HIB. Revista de Historia Iberoamericana, Semestral, Vol. 8, 2015, Núm. 2, pp. 1-2, available at <https://revistahistoria.universia.net/article/viewFile/1762/1742>, last visited on 17/12/2017.

²¹⁸ NG, R., “The Chinese Commission to Cuba (1874): Reexamining International Relations in the Nineteenth Century from a Transcultural Perspective”, University of Heidelberg, available at <http://heiup.uni-heidelberg.de/journals/index.php/transcultural/article/view/13009/11348>, last visited on 17/12/2017.

²¹⁹ SCHMIDT-NOWARA, C., “Spanish Antislavery and Africa, 1808–1898”, *Republics of Letters: A Journal for the Study of Knowledge, Politics, and the Arts* 3, no. 1 (September 15, 2012), p. 4, available at http://arcade.stanford.edu/sites/default/files/article_pdfs/ROFL_v03i01_SchmidtNowara_091512_0.pdf, last visited on 17/12/2017.

Gaceta de Madrid, no. 281, de 8/10/1886, pp. 76-77, available at <https://www.boe.es/datos/pdfs/BOE/1886/281/A00076-00077.pdf>, last visited on 17/12/2017. “Article 1: Since the enactment of this law in the island of Cuba, slavery, established by the Act introduced on February 13th 1880, will cease.” Unofficial translation. Original text: “Artículo 1º. Desde que este decreto sea promulgado en la Isla de Cuba, Cesará el patronato establecido por la ley del 13 de febrero de 1880.”

²²⁰ ZUBELDIA PÉREZ, G., “The abolition of slavery in Spain. An approximation compared to the British and French cases”, translation by the author; original text: “La abolición de la esclavitud en España. Una aproximación comparada a los casos británico y francés”, 2017, p. 26, available at <https://repositorio.unican.es/xmlui/bitstream/handle/10902/11442/ZubeldiaPerezGerman.pdf?sequence=1>, last visited on 17/12/2017.

around hundred fifty thousand Chinese were sent to Cuba);²²¹ the blatant slave trading was superseded by the treacherous enslaved migration (or kidnap).²²² Actually, the Cuba Commission was sent to the island in 1874, i.e. ten years after the signature of the Treaty and seven years after the abolition of slave trading in Spain. Obviously, both legal obligations were not fulfilled. Unfortunately, such a terrible situation was not an exception. According to the Immigration History Research Center of the University of Minnesota: “[...] 250,000 to 500,000 Chinese coolies were imported from 1847-1874 to various British, French, Dutch and Spanish colonies in the Americas, Africa and Southeast Asia. During this twenty-seven year period, about 125,000 Chinese coolies were sent to Cuba. They were predominantly men from southern China exported via Macao (then a Portuguese colony). Eighty percent or more were sent directly to sugar plantations.”²²³

The situation of the *culíes* was so appalling that this was the reason why in 1874 the first ambassador of China to Europe and America was appointed: the Ambassador to Madrid. His aim was to protect the Chinese workers in Cuba.²²⁴

- Extraterritoriality in case of controversy between Spanish and subjects from other countries in China (article 12). In such cases the treaties signed between both parties should apply. Extraterritoriality is one of the essential features of the unequal Treaties.²²⁵
- Extraterritoriality in criminal cases committed by Spanish subjects, who should be judged by Spanish consular authorities according to Spanish laws. In case of serious offences, the Spanish subject should be sent to Manila to be judged according to Spanish laws. In case a Chinese subject committed an offence against a Spanish subject, he

²²¹ MONTT STRABUCCHI, M., review on LÓPEZ, K., *Chinese Cubans: A Transnational History*, Chapel Hill, The University of North Carolina Press, 2013, 340 pgs., Hlb. Journal on Spanish-American History. Unofficial translation. Original text: Revista de Historia Iberoamericana), Vol. 8, 2015, No. 2, pp. 1-2, available at <https://revistahistoria.universia.net/article/viewFile/1762/1742>, last visited on 17/12/2017.

²²² NG, R., op. cit.

²²³ “Coolie Trade in the 19th Century”, Immigration History Research Center, A Research Center of the College of Liberal Arts, University of Minnesota, available at <https://cla.umn.edu/ihr/news-events/other/coolie-trade-19th-century>, last visited on 18/12/2017.

²²⁴ CANTALAPIEDRA ALONSO, F., *La primera embajada china en Europa y América: Chen Lanbin y Li Shuchang en España (1874-1879)*, Tesis doctoral, Universitat Pompeu Fabra, Institut Universitari d’Història Jaume Vicens i Vives Departament d’Humanitats, 2015, p. 360, available at https://jabega.uma.es/discovery/fulldisplay?docid=cbuc_tes10803%2F307058&context=PC&vid=34CBUA_UMA:VU1&lang=es&search_scope=MyInst_and_CI&adaptor=Primo%20Central&tab=default&query=any,contains,La%20primera%20embajada%20china&offset=0, last visited on 21/06/2019. The first Ambassador to Madrid was Chén Lánbīn 陈兰彬 (1816-1895) and the Counsellor of the Chinese legation in Madrid was Lí Shùchāng 黎庶 (1837-1897).

²²⁵ “The Opening to China Part II...”, op. cit.

would be judged by the Chinese authorities according to Chinese law (article 13). Note the infringement of the modern principle of the presumption of innocence, not yet in force those days.

- From article 14 till article 50, the provisions of the Treaty mainly regulate customs and excise.
- The most favored nation clause (article 50). This is other of the typical features of the Unequal Treaties.²²⁶ It is one of the few cases in which there is reciprocity, but not for the whole Celestial Empire; Chinese vessels (in unlimited number) would be entitled to trade in the Philippine islands, where they would be granted the most favored nation clause. Miguel Luque Talaván maintains that, in spite of the original purpose of being an unfavorable treaty for China, this article turned the tables in favor of China. He states that in the two last decades of the XIX century, Spanish traders in the Philippines expressed their displeasure with the situation.²²⁷

I.3 Conclusions

In a nutshell, in Chapter I (the Historical Dimension), the most relevant point is that nowadays EU-China relations are under the influx of the century of humiliation, meaning the period of time elapsed between the first Opium War (1839) and the Chinese Revolution (1949), but actually the said period is extended till the handover of Hong Kong (1997) and Macao (1999), i.e. a century and a half. The shame and destruction caused in the said period is reflected in the ruins of Yuanmingyuan 圆明园, sacked and looted by the Anglo-French Allied Forces (1860). China maintains that it will not allow Westerners to humiliate it again.

The century of humiliation is also mirrored in a series of legal documents, i.e. the Unequal Treaties. The cause of the Opium Wars was that Western powers constrained China to accept the opium trade on its territory, but China did not accept such a shame, war broke out, and China was defeated. As a result, China was forced to sign the Unequal Treaties, which are an epitome of asymmetry in international relations. Among other impositions, China had to accept the trade on opium. Regarding the treaties, they imposed on China issues such as the conflict of Laws, the “Most-Favored-Nation clause” and the extraterritoriality of

²²⁶ Ibid.

²²⁷ LUQUE TALAVÁN, M., op. cit., p. 338.

foreigners within the Chinese boundaries. Furthermore, it had to give up part of its territory and allow foreign trade on several of its ports.²²⁸

Fortunately, there are also historical episodes of fruitful cooperation as e.g. the Silk Road, which paved the way for the current New Silk Road. The Silk Road was not only a trade route, but also a cultural link between both ends of Eurasia. As a result, there was exchange in goods, but also in ideas, as the modern civil service system, which is a millenary Chinese idea, which only arrived in Europe in the XIX century. In 1453 the Ottoman Empire put an end to the Silk Road. The Silk Road had created a certain degree of harmony along its itinerary. Certainly, as it ceased, such harmony also declined as well as the prosperity it brought to the people under the influence of the route.

Another example of successful cooperation between both sides is the Manila Galleon, though it also suffered convulsive periods. The Galleon covered the line between Manila, i.e. the capital of the Philippines, and Acapulco, in nowadays Mexico, during the period 1565–1815. A good part of the goods and staff for the Galleon arrived from China. Apart from the Galleon itself, the cooperation between Spaniards and Chinese in Manila was outstanding. In our view, the Sangleyes (Chinese merchants) from Manila were a precedent of Chinese merchants nowadays, as they imported from China to Manila among others the metallic parts for the construction of the galleons, and participated in the construction of the galleons. But Sangleyes also served the Spanish colony in many trades, to the satisfaction of Spaniards, and they even financed the colony and the trade of the Galleon itself.

The Galleon served the route for two centuries and a half, time during which in Manila happened several clashes between Spaniards and Sangleyes. A despicable affair also was that, according to the 1864 Spanish-Chinese Friendship, Trade and Navigation Treaty, sangleyes were allowed to establish in the Spanish colonies. However, some of them were kidnapped in Manila and conveyed to Cuba, where they were made slaves; others were deceived in Manila and sent to Cuba, where upon arrival, were made slaves. The said slavery was a clear infringement of the mentioned Treaty. This way, between 1847 and 1874 ca. hundred and twenty five thousand of the so-called *culíes* (coolies) were victims of slavery in Cuba, where they built the railway or worked in sugar plantations. The

²²⁸ “The Opening to China Part II: the Second Opium War, the United States, and the Treaty of Tianjin, 1857–1859”, Department of State. United States of America. *Office of the Historian*, available at <https://history.state.gov/milestones/1830-1860/china-2>, last visited on 22/03/2017.

appalling working conditions of the coolies resulted in the dispatch to the island of Cuba of a delegation of the Qing dynasty in 1874, which, in its final report established the deplorable living conditions of the coolies. In 1867, the Spanish government finished the slavery on coolies, although it remained as an illegal practice till 1874. This episode of slavery could also be considered as part of the century of humiliation. Unfortunately, other Western powers such as France and the United Kingdom proceeded in the same way as Spain regarding the Chinese; they were made slaves and sent to the colonies.

More recently, there is a historical milestone for the EU-China trade relation, i.e. the access of China to the WTO (入世 *rushi*) in 2001. It was a transcendental event, but it was also the beginning of a conflictive era, which we will refer to in the part dedicated to trade. The said access is considered by some authors as one of China's revolutions. Previously, the Asian giant had to undergo a process of decisive reforms, essential not only for its integration in the said international body, but also for its current preponderance as a world trade champion.

II. LEGAL DIMENSION

II.1 Foundations of international law: The concept of sovereignty of the States and its influence on the symmetry-asymmetry of international relations

II.1.1 The concept of asymmetry and the asymmetry in concepts

Before delving into the concept of sovereignty, as it is an institution of International Law, we will analyze this field of Law, guarantor of the relations between States. We will have the opportunity to see how even in this aspect there is asymmetry between the points of view of the EU and China.

According to the Encyclopedia Britannica, the term “International Law” “was coined by Jeremy Bentham (1748–1832). Following Bentham’s classic definition, international law is a collection of rules governing relations between states.” Notwithstanding, international environment has deeply changed since the times of Bentham, to the point that his definition does not mention international individuals and institutions.²²⁹

Alejandro Rodríguez Carrión submits that “International Law is a legislative project aimed to regulate the international society”. He maintains that, therefore, the analysis must be kept on a legal basis. However, the legal perspective is not enough to explain the multifaceted international society. International Law usually happens to be analyzed through a cross-disciplinary study, with the basic help of disciplines such as History, Economics and Sociology. Therefore, instead of the Bentham’s reference to the “relations between states”, within the definition by Alejandro Rodríguez Carrión there is a pretty accurate mention to “regulate the international society”.²³⁰

Antonio Remiro Brotóns et al. maintain that “International Law [...is the] whole body of legal rules which, at a particular point in time, governs the relations (rights and obligations) of the members of international society which are recognized as subjects in this context.”²³¹

²²⁹ International law, Britannica.com, available at <https://global.britannica.com/topic/international-law>, last visited on 25/03/2017.

²³⁰ RODRÍGUEZ CARRIÓN, A., op. cit., p. 15.

²³¹ REMIRO BROTONS, A. et al., op.cit, p. 37.

Julio González Campos, Luis Ignacio Sánchez Rodríguez and Paz Andrés Sáenz de Santa María consider that Public International Law is the legal system of the international community.²³²

José Antonio Pastor Ridruejo states that International Law is the body of rules established by the normative powers proper of the International Community.²³³

According to the United Nations, the answer to the question “What Is International Law?” is “International law defines the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries. Its domain encompasses a wide range of issues of international concern, such as human rights, disarmament, international crime, refugees, migration, problems of nationality, the treatment of prisoners, the use of force, and the conduct of war, among others. It also regulates the global commons, such as the environment and sustainable development, international waters, outer space, global communications and world trade.”²³⁴ This is much more than a definition, as it determines the aims and domains of International Law, and maybe the most important factor is that this concept is issued by the United Nations. This text firstly refers to the function of International Law within State boundaries; then it substantiates the international domain and it points out the global commons.

And what is the definition of International Law in China? According to Hungdah Chiu, the standard textbook on international law edited by Wang and Wei in the PRC adopts the following definition:

“International law [...] is primarily a law among states. That is to say, it is a body of binding principles, laws and regulations primarily adjusting the relations between states. [The reason why we use the word] “primarily” [in this definition] is because, in addition to states, there are political entities similar to states and international organizations established by states [in the international community]. Within specific conditions and bounds, there are subjects of international law and their relations are also subject to the restraint of principles, rules and regulations of international law.”²³⁵

²³² GONZÁLEZ CAMPOS, J. SÁNCHEZ RODRÍGUEZ, L. I. and SÁENZ DE SANTA MARÍA, P. A., *Course on Public International Law* (Unofficial translation. Original text: *Curso de derecho internacional público*), Madrid, 8th ed. (3rd by Civitas), Thomson Civitas, 2003, p. 67.

²³³ PASTOR RIDRUEJO, J.A., op. cit. p. 33.

²³⁴ United Nations - Uphold International Law - What Is International Law?, available at <http://www.un.org/en/sections/what-we-do/uphold-international-law/>, last visited on 25/03/2017.

²³⁵ CHIU, H., “Chinese attitudes toward International Law in the Post-Mao Era, 1978-1987”, *Occasional Papers / Reprint Series in Contemporary Asian Studies*, Vol. 84, 1988, no. 1, School of Law, University of Maryland, p. 8, available at <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1083&context=mscas>, last visited on 25/03/2017.

Hungdah Chiu affirms that this definition of International Law is very similar to the common Western ones.

The said author considers that in China there has been a polemic point regarding International Law: is there just one International Law or are there many International Laws? Apparently, the general response is gradually increasing in favour of the existence of only one International Law.

According to the National People's Congress (NPC) of the PRC (全国人民代表大会, *quan guo ren min dai biao da hui*), the definition of International Law is as follows:

“International Law (International Law) [sic], originally called Law of Nations (Law of Nations) [sic] refers to the law between States, which arises from the relations between States, and is the generic denomination for the principle, rule and system to regulate the relations between States.”²³⁶

There is a trend to unify definitions between West and East, which might indicate that institutions are also under the effects of globalization.

In the last decades, International Law has experienced major changes in China, which could facilitate an approach between the UE and China.

Before deepening in the Chinese concept of International Law, we will analyze the Chinese concept of Law. According to Paolo Davide Farah Chinese view of Law is deeply determined by its eclectic legacy, including indigenous concepts, e.g. Confucianism and Legalism, the influx of Western legal concepts as a result of the Opium Wars, as well as during Chiang Kai-Shek [蒋介石, in mandarin Jiang Jieshi] brief term of office, and the influx of Soviet Law and the socialist legal thinking, after the Communist Party accession to power in 1949.²³⁷

In China, International Law as a subject in legal studies has also changed dramatically. Xue Hanqin offers illustrative statistics:

“On the occasion of the 60th anniversary of the PRC in 2009, the Chinese Society of International Law conducted national surveys of international legal education at law

²³⁶ The National People's Congress of the People's Republic of China (全国人民代表大会), available at http://www.npc.gov.cn/npc/xinwen/2000-04/29/content_1459914.htm, last visited on 25/03/2017.

Unofficial translation. Original text:“国际法（International Law），原称“万国法”（Law of Nations），是指国家之间的法律，是国家在其相互交往中形成的，主要用来调整国家之间关系的有法律约束力的原则、规则和制度的总称。” Some questions about International Law and International Treaties (国际法与国际条约的几个问题), Jiang Guo Qing (江国青).

²³⁷ FARAH, P., op. cit. pp. 227-234, p. 228.

schools and universities which indicated dramatic change. Currently there are approximately 600 universities in China that offer courses on international law, 64 university law schools and legal institutes that have masters' degree programmes on international law and 16 that have doctoral degree programmes. This development evinces a significant change of China's attitude and practice in international law."²³⁸

The said statistics reflect the Chinese adaptability; in this case China adapts to the Western legal system. But, as we demonstrate later on, this docile attitude is changing, as China and other global powers are claiming for a cosmopolitan international law, based on many worldwide influences.

Xue Hanqin states that in China there are two clear eras regarding this issue: the first was between the 1949 Revolution and 1978; the second, between 1978 and 2011, when China has been admitted to international organizations.

A significant aspect in which we can observe the evolution of International Law is its purpose. According to Xue Hanqin, in the era between the revolution and the admission to the WTO, this was the impression China had:

"China was very critical of traditional international law that it understood to primarily protect the interests of the colonial and imperialist powers to the detriment of most developing states."²³⁹

Those were the days when the access to a place in the UN was expressly forbidden to China. However, China supported the UN Charter.

Xue Hanqin considers that China, under the presidency of Mao Zedong, established the basis for its foreign policy:

"China established its foreign policy on three basic principles: equality, mutual benefit, and mutual respect for sovereignty and territorial integrity."²⁴⁰

Hence, since the very start of the People's Republic of China, sovereignty was an essential factor. Those postulates marked the way for the Five Principles of Peaceful Coexistence,²⁴¹ established in the 1950s, which served as some of the cornerstones of the first Chinese Constitution (1954) and which has been kept as a

²³⁸ XUE, H., "China and International Law: 60 Years in Review", *International Law Summary*, p.2, available at <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/080313summary.pdf>, last visited on 01/02/2017.

²³⁹ Id., p. 2.

²⁴⁰ Id., p. 3.

²⁴¹ PANDA, A., "Reflecting on China's Five Principles, 60 Years Later", *The Diplomat*, available at <https://thediplomat.com/2014/06/reflecting-on-chinas-five-principles-60-years-later/>, last visited on 18/11/2019.

steady premise for the subsequent reforms, till the current Constitution, which dates from 4th December 1982, last revised in 2004.

In the second period, from late 1978 onwards, China's International Law has experienced relevant changes. Nowadays, China is an active international player, taking part in all major international organizations.²⁴² An essential step in this phase was China's access to the WTO. According to Xue Hanqin:

“[...] as Chinese scholars have pointed out, WTO negotiations were not simply a process for China. They have manifested, in a way, China's growing trust in the international legal system. They also demonstrate how international rules and regulations have affected China's domestic legal development in ways that go far beyond the areas of trade and economy.”²⁴³

It is evident that the access to the WTO and the subsequent adaptation process helped China progress to a new era, i.e. the era of globalization. We should keep in mind that, in Chinese, the access to the WTO is called 入世贸组织 (rushì mào zú zhī), but is abbreviated as 入世 (rushì), which word by word means *enter (or join) the world*. This shows us the importance the Chinese attach to that accession, which in fact is to join the globalization.

Paolo Davide Farah submits that China's access to the WTO confronted the Asian giant with international criteria, based on transparency and the rule of law, which had been alien to Chinese culture. The very author states that, although in 1979 China indicated its intention of building a legal system based on the rule of law, along recent History it has been gradually evident that Chinese rule of law will not completely reflect the Western idea of rule of law. In this regard, we consider that this issue is under the influence of cultural divergences. First, it is so because certain ideas, when they are imported in China, are marked with the supplement “with Chinese characteristics”. This is the permanent ethnocentric issue, affecting both the EU and China. But in this case there is another issue: as we analyze in other parts of this work, in Chinese “rule of law” is translated as 法治 (fǎzhì), but this term means both “rule of law” and “rule by law”. Both terms have quite different meanings.

In comparison with the former USSR and the USA, China has several aspects in common, as e.g. regarding the International Court of Justice. Eric Posner and John Yoo state that

²⁴² Ibid.

²⁴³ Ibid.

“China, like the Soviet Union, has refused to submit to the ICJ's jurisdiction and has refused to appear before it. China, like the US in the last three decades, has also refused to agree by treaty to jurisdiction. Neither state takes the ICJ seriously even today, when global rivalries are at an historic low. It is hard to believe they will take it seriously when these rivalries become more significant.”²⁴⁴

The above-mentioned paragraph regards features related to the marked sense of sovereignty, which inter alia affects aspects such as jus cogens.

According to Zou Keyou:

“Only after the economic reform and opendoor policy were enacted in the late 1970s has China become more compliant with universally accepted principles of international law.”²⁴⁵

Therefore, Zou Keyou agrees with the above-mentioned statement by Xue Hanqin, regarding China's access to the WTO as a turning point.

Zou Keyou maintains that

“Generally, there are two approaches to the relationship between international law and municipal law [sic]: the monist approach (hereinafter ‘monism’) and the dualist approach (hereinafter ‘dualism’). According to the former, international law is part of domestic law, and there is no division between the two; the latter holds that international law and municipal law exist separately, and international law has to be transformed to be domestic for the purpose of its implementation at the domestic level. There is a third approach, however, that attempts to modify the dualist position by ‘denying that any common field of operation exists as between international law and municipal law by which one system is superior or inferior to the other.’”²⁴⁶

This third and last theory is the most accepted by Chinese scholars. Furthermore, as Zou Keyuan states, China is legally obliged not to take its national law as an alibi in order not to respect international law, as it signed the 1969 Vienna Convention on the Law of Treaties. The article incorporating the said provision is article 27, named “Internal Law and observance of Treaties”. The article also determines that

²⁴⁴ POSNER, E. and YOO, J. C., “International Law and the Rise of China”, *Chicago Journal of International Law*, Vol. 1, 2006, p. 10, available at http://chicagounbound.uchicago.edu/journal_articles, last visited on 05/02/2017.

²⁴⁵ ZOU, K., “International Law in the Chinese Domestic Context”, Vol. 44, 2010, no. 935, *Val. U. L. Rev.*, pp. 935-956, p. 935, available at <http://scholar.valpo.edu/vulr/vol44/iss3/10>, last visited on 06/02/2017.

²⁴⁶ Ibid.

“[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty [...]”²⁴⁷

Therefore, it is obvious that, according to the said article, international law is superior to national law. However, the key question is the stance States adopt regarding this issue.

According to Zou Keyuan, in respect of the priority of the applicable rules:

“It is unclear, however, whether China recognises the application of all norms and rules of international customary law. According to some observations, it only refers to customary rules of international trade based on China’s judicial practices.”²⁴⁸

It could be said that, implicitly, the above-mentioned situation is a further consequence of the different views of sovereignty.

Zou Keyuan quotes the terms included in the Chinese General Principles of Civil Law promulgated in 1986, Article 142, which determine:

“If any international treaty concluded or acceded to by the People’s Republic of China contains provisions differing from those in the civil laws of the People’s Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People’s Republic of China has announced reservations. International practice may be applied to matters for which neither the law of the People’s Republic of China nor any international treaty concluded or acceded to by the People’s Republic of China has any provisions.”²⁴⁹

The above-mentioned provision coincides with what is a generally accepted principle in the European Union, i.e. international treaties have a higher legal range than national law. But there is an exception for this applicability: if China has made reservations, according to the China’s above-mentioned law, they are to be respected. Zou Keyuan adds that

“[...] the first law to contain such a clause was actually the 1982 Chinese Law on Civil Procedure.”²⁵⁰

²⁴⁷ Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969, No. 18232 Multilateral, Authentic texts: English, French, Chinese, Russian and Spanish. Registered ex officio on 27 January 1980, United Nations Treaties, p. 339, available at <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>, last visited on 06/02/2017.

²⁴⁸ ZOU, K., op. cit., p. 939.

²⁴⁹ Id., p. 938.

²⁵⁰ Ibid.

General Principles Of Civil Law Of The People's Republic Of China, Translated By Whitmore Gray* And Henry Ruiheng Zheng, p.54, (Adopted April 12, 1986, at the Fourth Session of the Sixth National People's Congress, to take effect on January 1, 1987), available at

According to Sonya Sceats

“China punches below its weight in the development of international law, despite its growing international power and the participation of Chinese representatives and experts in various international law-making bodies. Judging by recent statements of intent from the Chinese government, this might be about to change.”²⁵¹

Sonya Sceats quotes Julian Ku (who in turn quotes Chinese Foreign Minister Wang Yi) who considers that nowadays China is a firm advocate of international law. She considers that this issue has two aspects: on one side, the geopolitical view, in order to curb the USA power, and on the other side, it lets us know that China will enhance its role in international law.²⁵²

But, in another article, Julian Ku submits that

“[...] it is striking how the Chinese government goes out of its way to downplay arbitration and judicial settlement from its public statements on ‘peaceful settlements of disputes’ and in a statement about the importance of the rule of law at the international level. Indeed, this particular statement on the rule of law goes out of its way to denounce the abuse of arbitration and judicial settlement.”²⁵³

According to Julian Ku

“China’s government tends to have a slightly different view on what constitutes ‘international law’ as compared to the United States or Europe.”²⁵⁴

The above-mentioned statement of Julian Ku is essential for the question we are analyzing.

In this regard, it is appropriate to remember the words pronounced by Catherine Ashton:

“Our role should be to support countries that decide for themselves that they want to move to democracy. [...] But what will be common is the need to secure deep democracy, and not just initial free elections. We need to help build up impartial administration, an independent judiciary, freedom of speech, enforceable property rights and free trade unions.

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3990&context=lcp>, last visited on 06/02/2017.

²⁵¹ SCEATS, S., “Guest Post: China As a Shaper of International Law?”, *Opinio Juris*, available at <http://opiniojuris.org/2015/03/17/guest-post-china-as-a-shaper-of-international-law/>, last visited on 06/02/2017.

²⁵² Ibid.

²⁵³ KU, J., “China’s Definition of the ‘Peaceful Settlement of International Disputes’ Leaves Out International Adjudication”, *Opinio Juris*, available at <http://opiniojuris.org/2013/10/15/obligation-see-peaceful-settlement-international-disputes-include-international-adjudication/>, last visited on 08/02/2017.

²⁵⁴ KU, J., op. cit., “What Does China Mean ...”

At the heart of this, and the key to promoting all four of my principles, is the rule of law. [...]

Where we help countries to advance the rule of law, we help them lay the foundations of deep democracy – a system that will last, a democracy that will be stable, and a democracy that will promote tolerance at home and co-operation abroad.²⁵⁵

According to Han Dorussen, Thomas Christiansen and Emil Kirchner, the visions of international law in the EU and in China differ considerably.²⁵⁶

The first asymmetry is that in the EU just exists the rule of law. In China, due to the ambiguity of the term 法治(fazhi) it is unclear whether it means rule of law or rule by law.

Julian Ku, as well as the previously quoted scholars, also maintains that History is essential for comprehending the Chinese vision of international law.²⁵⁷ It is evident that sovereignty, the main foundation of China's international law, is by large determined by the national humiliation that China suffered mostly since the Opium Wars (1840s) and during the first decades of the XX century. And we consider that this is also the reason for the development of a long-standing concept in China's civilization: 反霸 (fanba) which means "oppose hegemonism". This term is used by David Scott.²⁵⁸

Zihang Liu states that

"In the three decades immediately following the establishment of the state's communist regime (the Peoples' Republic of China or PRC) in 1949, the Chinese government adopted a policy of "starting anew" ("另起炉灶" [set up a new kitchen - make a fresh start; start all over again] and "打扫干净屋子再请客" [clean the kitchen and invite guests again]). This strategy amounted to the elimination of all traces of imperial influence over China with an emphasis on the sovereignty of an independent China, and the concordant development of the Five Principles of Peaceful Coexistence, which were enacted in 1954.

The Five Principles were based, in large part, upon the core values of the United Nations Charter, which hold state sovereignty in the highest regard. Concurrent to their development, China became cautious about numerous international laws, which the PRC

²⁵⁵ ASHTON, C., "A world built on co-operation, sovereignty, democracy and stability", p. 2, conference offered on 25 February 2011 at the Corvinus University, Budapest, SPEECH/11/126, Available at https://europa.eu/rapid/press-release_SPEECH-11-126_en.htm, last visited on 17/02/2017.

²⁵⁶ DORUSSEN, H., CHRISTIANSEN, T and KIRCHNER, E. "Security Cooperation in EU-China Relations", Paper prepared for presentation at the 2017 Conference of the European Union Studies Association, Miami, 4-6 May 2017, Work in Progress – Preliminary Draft, p. 292, available at <https://www.eustudies.org/conference/papers/download/462>, last visited on 8/03/2017.

²⁵⁷ KU, J., op. cit., "What Does China Mean..."

²⁵⁸ SCOTT, D., "EU-China Discourse on Multipolarity and Multilateralism: Mutual Interaction?", *European Foreign Affairs Review*, Vol. 19, 2014, Special Issue, pp. 19–34, p. 20, available at <https://dscottcom.files.wordpress.com/2017/03/china-eu-efar.pdf>, last visited on 08/03/2017.

perceived as imperial weapons serving the agendas of Western powers. During the Cold War era, the Western Bloc was wary of the East, as evidenced by its initial reluctance to admit the PRC into the international community. It was not until 1971 that China regained its seat at the United Nations.”²⁵⁹

According to Sonya Sceats:

“The key lies in a directive buried deeply in the [outcome document] from the 4th Plenary Session of the 18th Central Committee of the Chinese Communist Party, known colloquially as the Rule of Law plenum. The plenum concluded on 23 October 2014, the day before the Foreign Minister released his article. According to the document, China must:

‘Vigorously participate in the formulation of international norms, promote the handling of foreign-related economic and social affairs according to the law, strengthen our country’s discourse power and influence in international legal affairs, use legal methods to safeguard our country’s sovereignty, security and development interests.’”²⁶⁰

We add that China attaches so much importance to international issues, that the above-mentioned outcome document from the 4th Plenary Session of the 18th Central Committee of the Chinese Communist Party deals with nine international questions.

In other words, China is not content with a mere passive role and desires to play an active role regarding international law.

In order to analyze the concept and object of international law in China, we need to analyze the above-mentioned outcome document, and this will lead us to analyze the idea of law in China.

In the above-mentioned “outcome document” (actually named “CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the law Forward”) we find the following paragraph which, regarding our topic of study, probably is the most relevant of the whole Decision:

“The general objectives to comprehensively move ruling the country according to the law forward are constructing a Socialist rule of law system with Chinese characteristics and constructing a Socialist rule of law country. That is to say, under the leadership of the Chinese Communist Party, persisting in the system of Socialism with Chinese characteristics, implementing the theory of Socialist rule of law with Chinese

²⁵⁹ LIU, Z., op. cit.

²⁶⁰ SCEATS, S., “China’s Cyber Diplomacy: A Taste of Law to Come?”, Dated 15 January 2015, Chatham House, The Royal Institute of International Affairs, available at <https://www.chathamhouse.org/expert/comment/china-s-cyber-diplomacy-taste-law-come>, last visited on 08/02/2017.

characteristics, shaping a perfect system of legal norms, a highly effective system to implement the rule of law, a strict system for rule of law supervision, and a powerful system of rule of law guarantees, shaping a perfect system of intra-Party regulations, persisting in moving ruling the country according to the law, governing according to the law and administration according to the law forward together, persist in the united construction of a rule of law country, a rule of law government and a rule of law society, realizing scientific legislation, strict law enforcement, judicial fairness and respect for the law among the entire population, and move forward the modernization of the national governing system and our governing ability.”²⁶¹

In the above-mentioned paragraph we observe that China attaches great importance to the rule of law (so much that, only in the quotation above, it is mentioned nine times). However, even this clear statement could lead to misunderstandings if we forget one of the key elements of our work: the decisive importance of culture in every aspect of the EU-China relations, including legal issues. “Rule of law” in China may have a different meaning from the one in the European Union. The most interesting is that “the rule of law” and its system is combined with the following words: “Socialist”, “perfect”, “highly effective”, “strict”, “powerful”, “united construction”, “scientific legislation”. In general terms, the said terms are not commonly used in the European Union when referring to the rule of law. But even more important is the very use of the term “rule of law”.

According to Julian Ku:

“Finally, I’ll note that the statement’s use of the phrase ‘international rule of law’ might help clarify a debate among China-watchers as to what China means by the phrase ‘rule of law.’ As Josh Chin has usefully explained in the Wall Street Journal here, the Chinese phrase ‘法治’ (fazhi) is often translated as ‘rule of law’ but could also be translated as ‘rule by law’. Indeed, there is a traditional Chinese ‘Legalist’ tradition that thinks of law as an instrument for ruling society, but less so as a constraint on lawmakers and government. Most China-watchers would probably say that ‘rule by law’ is a more accurate translation of what the Chinese Communist Party means when they call for the promotion of the ‘法治’ (fazhi) in domestic reforms, since most expect the Party to remain effectively above the law for most key matters in the future, but for law to be used as a mechanism of social and political control of everyone else.

No matter what the Party means domestically by 法治 (fazhi), it is clear that its use internationally fits within the Western conception of law as an autonomous force constraining state power and preserving state equality.”²⁶²

²⁶¹ CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the law Forward, China Copyright and Media, op. cit.

²⁶² KU, J., op. cit., “What Does China Mean ...”

It is meaningful that Julian Ku considers that, notwithstanding certain constraints, Chinese rule of law equals the Western rule of law. In this regard, the opinion of Josh Chin is clarifying:

“The problem: how to translate the theme of this year’s meetings, which according to party announcements is 法治 (pronounced ‘fazhi’), a word composed of characters meaning ‘law’ and ‘to govern.’

In official media coverage of the meetings, which begin today in Beijing and are scheduled to run through Thursday, the phrase in English has been rendered as ‘rule of law’ – as the official Xinhua news agency did in a Sunday [...] that argued rule of law was ‘vital’ to reforms in a market-oriented economy. [...]

The root of the problem is that Chinese phrases often lack prepositions, notes David Moser, academic director at the CET Beijing Chinese language program and author of a celebrated essay on the difficulty of learning Mandarin. In the case of 法治, that phenomenon has led to two similar but distinct translations in Chinese-English dictionaries: ‘rule of law’ and ‘rule by law.’”²⁶³

According to the Pleco Chinese electronic dictionary, 法治 has two meanings:

“1 rule of law

2 rule by law”²⁶⁴

Josh Chin concludes the issue as follows:

“Mr. Delury is not alone in thinking state media may be intentionally trying to send a different message to foreign readers. ‘My strong hunch is that official Xinhua translators are savvy about this of/by distinction, and the choice of ‘rule of law’ is a deliberate and careful choice,’ Mr. Moser says. ‘Most foreign readers are probably unaware of the preposition distinction, but for the few sensitive to it, ‘of’ sends the right message.’²⁶⁵,”

It is remarkable that historically there was a debate about whether in China there was a “rule by law” or “rule by man” system. But there was a third element in the discussion: the “rule by virtue”. According to Leigh Jenco:

“[...] contemporary variants of rule by man, such as Jiang’s ‘rule by virtue,’ may contribute to top-down autocratic control, but still contain the potential to challenge the very political apparatus that invokes them. Given the complex positions staked out in this debate, I resist

²⁶³ CHIN, J., “‘Rule of Law’ or ‘Rule by Law’? In China, a Preposition Makes All the Difference”, *The Wall Street Journal*, Oct 20, 2014 2:03 pm HKT, available at <https://blogs.wsj.com/chinarealtime/2014/10/20/rule-of-law-or-rule-by-law-in-china-a-preposition-makes-all-the-difference/><https://blogs.wsj.com/chinarealtime/2014/10/20/rule-of-law-or-rule-by-law-in-china-a-preposition-makes-all-the-difference/>, last visited on 13/02/2017.

²⁶⁴ Pleco, op. cit.

²⁶⁵ CHIN, J., op. cit.

translating fazhi as ‘rule of law,’ and hope my still-fraught choice of ‘rule by law’ will gain clarity as I elaborate its context.”²⁶⁶

As we see in the above-mentioned statements, there is no united opinion about the meaning of fazhi (法治).

It is evident that the theoretical legal parameters in China differ from the ones in the European Union.

According to Francis Fukuyama:

“[...] there are a number of Rule of Law measures that relate to bureaucratic quality, such as those published by the ABA Rule of Law Initiative and the World Justice Project’s Rule of Law Index. Some Chinese scholars have tried to measure the spread of rule-based decision-making by measuring the number of administrative cases filed against government agencies, as well as the percentage of such cases that are won by the plaintiff”²⁶⁷

According to Zihang Liu, the views and purpose of international law in China and the West differ considerably, but there are examples of hopeful convergence as, e.g. the R2P. Hence, a starting point for mutual understanding between the European Union and China is the concept “Responsibility to protect”. But, given that this concept affects mainly the principle of sovereignty, we deal with it in the part dedicated to the said principle.²⁶⁸

He Zhipeng, regarding the Chinese notion of international law, maintains that the main focus of the Chinese notion of international law are: “respecting the reality and based on the [sic] reality”, “realistic notion”, “seeking truth”, “to avoid the idealism on international law as well as the nihilism”, “to learn from realism”, “realist notion” and last but not least, “practical targetalization [sic]”. In a nutshell, the Chinese notion of international law has to be realistic, true and practical. This is to say, according to the said stance, such a theoretical issue has to be practical.²⁶⁹

²⁶⁶ JENCO, L., “‘Rule by man’ and ‘rule by law’ in early Republican China: contributions to a theoretical debate” Article (Published version) (Refereed) *The Journal of Asian Studies* Vol. 69, 2010, no. 1 (February), pp. 181–203, p. 184, available at <http://eprints.lse.ac.uk/45293/1/%E2%80%9CRule%20by%20man%E2%80%9D%20and%20%E2%80%9Crule%20by%20law%E2%80%9D%20in%20early%20Republican%20China%28Isero%29.pdf>, last visited on 13/02/2017.

²⁶⁷ FUKUYAMA, F., “What Is Governance?” *CGD Working Paper* 314, p. 3, Center for Global Development, available at <http://www.cgdev.org/content/publications/detail/1426906>, last visited on 17/02/2017.

²⁶⁸ LIU, Z., op .cit.

²⁶⁹ HE, Z. (何志鹏), “The Chinese Notion of International Law” (“国际法的中国观念”), *Beijing University Law School*, [pkulaw.cn](http://www.pkulaw.cn), available at http://www.pkulaw.cn/fulltext_form.aspx?Db=qikan&Gid=1510158080&keyword=&EncodingName=help/fabao_kuaixun.htm&Search_Mode=&Search_IsTitle=0#, last visited on 13/02/2017.

He Zhipeng submits that, before the United Nations were established, the basis of international law was that of the law of Western European Christian countries.²⁷⁰ Hence, He Zhipeng quotes the outcome document from the 4th Plenary Session of the 18th Central Committee of the Chinese Communist Party, which advances some features of the Chinese notion of international law:

“It will derive from the essence of Chinese legal culture, draw on the beneficial experience of the rule of law of foreign countries, but on no account rigidly imitate the values and models of foreign countries.”²⁷¹

He Zhipeng adds that Western natural law would not be suitable for China.²⁷²

According to Daniel Levy and Natan Sznaider, the new International Law (we guess they refer to the EU new International Law or perhaps the Western one) is more interested in juridical aspects as the stability of peoples.²⁷³

A new trend is rising. Manuel Montobbio, among other scholars, claims a wider-range in international law, with more diverse states contributing to the creation of a new global order.²⁷⁴ In this respect, the role of China in international law is in the process of evolution. Probably this is one of the first cases in which China acts as not a mere subject of international law, but as an international law shaper (opposed to international law taker).²⁷⁵ According to Sonya Sceats, apparently internet would be the first aim of this new trend.²⁷⁶ And few things are more permeated by internationalization than internet. In words of Zhimin Chen, China is no longer an order-taker, but an order-shaper.²⁷⁷

Paolo Davide Farah connects this issue with Chinese history and culture. This author maintains that Confucianism, as one of the aspects that characterize the Chinese understanding of Law, could be seen as reluctance from Chinese

²⁷⁰ Ibid. Unofficial translation. Original text: “在联合国建立之前，国际法主要是西欧基督教国家之间的法律。”

²⁷¹ Ibid. Unofficial translation. Original text: “汲取中华法律文化精华，借鉴国外法治有益经验，但决不照搬外国法治理念和模式。”

²⁷² Ibid. Unofficial translation. Original text: “西方的自然法传统在中国既缺乏信仰基础，也缺乏分析前提，所以不足以成为中国国际法观念和理论的基石”

²⁷³ LEVY, D. and SZNAIDER, N., “Sovereignty Transformed: A Sociology of Human Rights”, *The British Journal of Sociology*, Volume 57, 2006, Issue 4, pp. 657-676, p. 671, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.532.4800&rep=rep1&type=pdf>, last visited on 27/02/2017.

²⁷⁴ MONTOBBIO, M., op. cit., “El ascenso global de China y la ...”, pp. 10-11.

²⁷⁵ In this regard, other authors share the same opinion: John Ikenberry and Paolo Farah, among others.

²⁷⁶ SCEATS, S., op. cit., “China’s Cyber Diplomacy...”.

²⁷⁷ CHEN, Z., “China, the European Union and the ...”, pp. 775-792, pp. 779-780.

culture to solve conflicts through judges, but rather turn to out-of-court settlements, as e.g. through mediation. Furthermore, Chinese tend to resort to norms and informal relations ([关系] guanxi) as well to the respect to authorities.²⁷⁸

As a result of the above-mentioned argumentation and bibliography, we consider that EU and Chinese concepts and purposes of international law differ. However, there are certain points in which they are approaching, as for example the responsibility to protect, which in first instance was opposed by China, but afterwards it created its own version, named responsible protection, which is an approach between both sides.

We will analyze the concept of asymmetry in three different environments: in general, in international relations and in International Law.

Firstly, we will specify the general meaning of asymmetry. The Oxford Dictionary defines “asymmetry”, a noun, as: “Lack of equality or equivalence between parts or aspects of something; lack of symmetry.”²⁷⁹

In order to find out the meaning of “lack of symmetry”, we look for the meaning of “symmetry”. The said dictionary defines symmetry. We believe the meaning suitable for symmetry in International Law is the one under “1.2”: “Similarity or exact correspondence between different things.”²⁸⁰

The second environment we consider is the concept of asymmetry in the scope of international relations. Frank R. Pfetsch and Alice Landau point out several connotations of symmetry-asymmetry in social sciences. Such connotations are: utility, gain-lose, (in)equality in power capacities, threats and pressure, imperial(ism), dependence of center/periphery, development/less development, rich/poor, north/south (divided), stable symmetry/unstable

²⁷⁸ FARAH, P., op. cit., pp. 227-234, p 229.

²⁷⁹ English Oxford Living Dictionaries, “asymmetry”, <https://en.oxforddictionaries.com/definition/asymmetry> (Last visited on 25/03/2017). The origin of the word “asymmetry” dates from the mid 17th century, and derives from “Greek *asymmetria*, from *a-* ‘without’ + *symmetria* (see *symmetry*).”

²⁸⁰ “Symmetry”, English Oxford Living Dictionaries, available at <https://en.oxforddictionaries.com/definition/symmetry>, last visited on 25/03/2017. “The quality of being made up of exactly similar parts facing each other or around an axis. ‘this series has a line of symmetry through its centre’ ‘a crystal structure with hexagonal symmetry’ 1.1 Correct or pleasing proportion of the parts of a thing. ‘the overall symmetry makes the poem pleasant to the ear’ 1.2 Similarity or exact correspondence between different things. ‘the political symmetry between the two debates’ count noun ‘history sometimes exhibits weird symmetries between events’ 1.3 Physics Mathematics [count noun] A law or operation where a physical property or process has an equivalence in two or more directions.”

asymmetry.²⁸¹ We add to these connotations that the dichotomy north/south is still valid, but lately we should consider an increasing one: east/west, which should be considered in terms of a paradigm difficult to measure: this is what some scholars consider the vitality of the east in comparison to the decadent west. Obviously, the growth rate can be measured, but the concept of vitality of a country (in this case of a whole region, nearly a whole continent, as China) goes far beyond. This concept of vitality is supported by Kishore Mahbubani²⁸² or Pankaj Mishra.²⁸³

The third environment to help us to determine the concept of asymmetry is International Law. We find very enlightening the analysis by Paul Stephan. He deciphers the relations between “the powerful state” and “the weaker state”.²⁸⁴ We would like to go a step beyond and analyze the not so evident asymmetry, i.e. the relations between a powerful state (China) and a big but not so consolidated association of states (the European Union), which can also be asymmetrical.

In practical terms, what is the origin of asymmetry in International Law? Brantly Womack in an accurate analysis considers that the standard of multipolarity is no longer enough to explain the national disparities in International Law. He maintains that the new parameter to explain the said phenomena is the asymmetry.²⁸⁵

Apart from the fact that the European Union-China relations are asymmetrical, there is another fact which derives in asymmetry in this relation, i.e. the European Union in itself is very heterogeneous, and this fact leads to even more asymmetry. China is very heterogeneous as well, but within such

²⁸¹ PFETSCH, F. and LANDAU, A., “Symmetry and Asymmetry in International Negotiations”, *International Negotiation*, Vol. 5, 2000, pp. 21–42, pp. 25–26, available at <https://pdfs.semanticscholar.org/ed85/feaf4bf712bb9b9723516fdffcf1dfc5e5f.pdf>, last visited on 25/03/2017.

²⁸² MAHBUBANI, K., op. cit.

²⁸³ MISHRA, P., op. cit.

²⁸⁴ STEPHAN, P., “Symmetry and Selectivity: What Happens in International Law When the World Changes”, *Chicago Journal of International Law*, Vol. 10, 2009, no. 1, Article 6, pp. 93–94, available at <http://chicagounbound.uchicago.edu/cjil/vol10/iss1/6>, last visited on 25/03/2017.

²⁸⁵ WOMACK, B., “Asymmetry Theory and China’s Concept of Multipolarity”, *Journal of Contemporary China*, Vol. 13, 2004, no. 39, May, pp. 351–366, p. 351, available at <https://pdfs.semanticscholar.org/ed61/fecb11d32e3eda43377b76c31d4799483056.pdf>, last visited on 25/03/2017. “Although multipolarity is empirically correct in its questioning of the superpower’s capacity for domination and it is ethically attractive in its insistence on international cooperation, it does not address the real problems created by the disparity of power in international affairs. Asymmetry theory is a new paradigm that addresses the effects of national disparities on international relations. It argues that asymmetry inevitably creates differences in risk perception, attention and interactive behavior between states, and that it can lead to a vicious circle of systemic misperception. Despite such tensions, however, the international order is quite stable, and even asymmetric relations can rarely be forced by the stronger side. Asymmetry confirms multipolarity’s critique of unipolarity’s exaggerated claim to absolute power, and suggests a theory of international leadership based on negotiated relationships that avoid the systemic misperceptions that asymmetry encourages.”

heterogeneity, it keeps unity, given it is a unitary State. Jaume Giné Daví maintains that in the eyes of China, Germany is the great European power and its privileged partner in order to solve trade disagreements between China and the EU as was seen in the recent trade dispute on Chinese solar panels. And it is its main trade partner: German exports to China are nearly the half of the whole European exports to China.²⁸⁶

Paul Stephan argues that “the heady optimism and unchallenged US authority of the 1990s seem to have ended.” This statement implicitly admits that, at least as a trend, a hegemon is losing its power. But not necessarily all the existing big powers will be capable of assuming the role as new hegemons. However, he also maintains that “in any event the United States remains the one essential power.”²⁸⁷

Adrián Vidales García considers that the hegemonic power of the United States has finished, and at the same time new powers are emerging, as Brazil, India, South Africa or Russia. According to Vidales García: “But above them all, international society is witnessing the rise of a great regional power which could aspire to become the world hegemon: China.”²⁸⁸ However, in this regard Mark Leonard states that the peaceful rise²⁸⁹ is the aim stated by China of good neighborhood and global responsibility.²⁹⁰

Since the end of World War II, a bipolar power system ruled the world. The fall of the iron curtain led to the collapse of the Soviet Union, and hence the United States dominated the world for a decade. But the 9/11 (2001) terrorist attacks and financial crisis (2008), which especially damaged the West, and the simultaneous wake of China, Russia and India,²⁹¹ among others, have introduced a

²⁸⁶ GINÉ DAVÍ, J., “China-UE: relaciones desequilibradas”, *ESADE Crea Opinió*, La Vanguardia, 17/11/2013, available at <http://www.esade.edu/web/cat/about-esade/today/esade-opinion/viewelement/294601/1/china-ue:-relaciones-desequilibradas>, last visited on 31/05/2017.

²⁸⁷ STEPHAN, P., op. cit. pp. 107-108, available at <http://chicagounbound.uchicago.edu/cjil/vol10/iss1/6>, last visited on 25/03/2017.

²⁸⁸ VIDALES GARCÍA, A., “La nueva ruta de la seda y el resurgimiento geopolítico de China”, *Opinió*, 78/2016, 01 de agosto de 2016, Instituto Español de Estudios Estratégicos, p. 2, available at http://www.ieee.es/Galerias/fichero/docs_opinion/2016/DIEEE078-2016_RutaSeda_geopoliticaChina_AdrianVidales.pdf, last visited on 25/03/2017.

²⁸⁹ Pleco, op. cit. The said peaceful rise in Chinese is called 和平崛起(heping jueqi) which, according to the Pleco electronic dictionary, means 以和平方式迅速发展, i.e. “to develop rapidly in a pacific way”.

²⁹⁰ LEONARD, M., *Porqué Europa liderará el siglo XXI (original title: Why Europe will run the 21st century)*, Madrid, Taurus-Pensamiento, 2005, p. 144.

²⁹¹ STEPHAN, P., op. cit. p. 107. “This Article began with a highly simplistic account of international relations during the last sixty years: bipolar superpower competition gave way to US hegemony that in turn has receded as the rise of Russia, China and perhaps other developing-country great powers complemented Europe’s independence as an international actor. Reality is, of course, messier.”

new world order, which for the moment being could be named as multipolarism; we would concrete the term as “asymmetrical multipolarism”.

Paul Stephan considers that several emerging countries complement Europe’s “independence as an international actor.”²⁹² We would rather say that the said emerging countries also compete with the EU.

In this moment of our analysis arises a key question: what happens if there is no symmetry? Nico Krisch maintains that “international law often appears as the sphere of equality, in which reason and justice prevail, while power asymmetries are relegated to the sphere of politics where the law of the jungle seems to reign.”²⁹³ Hence, we can draw a conclusion: if asymmetrical international relations are ruled by politics, this kind of international relations is less predictable than the symmetric ones, which are ruled by international law.

Nico Krisch analyzes “the conditions for an effective international legal order in a world inextricably bound up with power asymmetries.”²⁹⁴

Regarding the practicalities of the asymmetry of international relations, we could follow the criteria proposed by Emilio Lamo de Espinosa. He maintains that any international relation has three dimensions: the time extension, i.e. the historic depth, which marks the present time; the intensity of that relation, marked by geography; and the quality of the relation, i.e., if it is good or bad.²⁹⁵

All the said dimensions are analyzed in our work, plus other ones. In a similar way as what the above-mentioned scholar maintains regarding the Spain-Russia relations, we consider that the EU-China (and their forerunners) relations have a long history, a strong intensity and a good but suboptimal relation.

II.1.2 Sovereignty in the light of the development of International Law

The concept of sovereignty has experienced a remarkable evolution, which affects International Law. Aguilar Navarro states that International Law is the Law most influenced by History: it is extremely dependent on social

²⁹² Ibid.

²⁹³ KRISCH, N., op. cit. p. 370.

²⁹⁴ Id., p. 371.

²⁹⁵ LAMO DE ESPINOSA, E., op. cit. p.4.

circumstances without a historical perspective, it would be impossible to understand International Law.²⁹⁶

Actually, International Law as we know it today, according to Alejandro Rodríguez Carrión, “[...] was only possible after the proclamation of the sovereign equality between the then existing political entities [...]”. Such a proclamation, at least for the European environment, was marked by the Treaties of Westphalia, which put an end to the religious wars of Europe, allowing each State to decide by itself.²⁹⁷ However, we believe that this statement has two implications: the first is that it marks the milestone of the birth of International Law, albeit only for the European environment, but it lets the rest of the world without a hint of the starting point of International Law. The second implication, which is an effect of the first one, is that it implicitly recognizes that, actually, all over the world there is no other International Law than the one based on European Law. This point leads to a Eurocentric vision of the planet and, therefore, of the worldwide International Law.

Alejandro Rodríguez Carrión mentions the term sovereignty. We believe it is essential to concrete the boundaries of this term. Robert Araujo states that

“[...] to be properly understood within the framework of international law, sovereignty is a compound doctrine that is best understood by examining the relationship between the sovereignty of a State and the sovereignty of peoples, i.e., the sovereignty of nations.”²⁹⁸

Hence, Robert Araujo refers to the sovereignty pertaining to two different subjects: States and peoples.

Alejandro Rodríguez Carrión maintains that in the XVII century, when the Treaties of Westphalia were signed, other territories were already known to the West, but the existing rules were only applied to the European World, while for the rest of territories the rules were just the simple convenience or necessity. In a nutshell, according to Rodríguez Carrión, European States, cannon of legality, might use the reason of power in order to impose their criteria in other territories,

²⁹⁶ RODRÍGUEZ CARRIÓN, A., op. cit., p. 27.

²⁹⁷ Id, p. 28. “...sólo (sic) fue posible tras la proclamación de la igualdad soberana de las entidades políticas existentes...”

²⁹⁸ ARAUJO, R., “Sovereignty, Human Rights, and Self-Determination: The Meaning of International Law”, *Fordham International Law Journal*, Volume 24, 2000, Issue 5, Article 1, p. 1482, available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1770&context=ilj>, last visited on 25/03/2017.

whether they were politically organized in a way similar to the European one or not.²⁹⁹

According to Alexander Orakhelashvili

“Barbary States could never be recognized by European nations because, so Lorimer attributed to them, they are burdened by their criminal intention and the consequent absence of rational will. Therefore, the conquest of Algeria by France was not a violation of international law; it was ‘an act of discipline which the bystander was entitled to exercise in the absence of police.’”³⁰⁰

What in German is called “Weltanschauung” is the vision of the world which, in past centuries, in the view of much of the West, actually denied the rest of the peoples in the planet to be entitled to enjoy any rights of International Law.

François Guizot believed that Europe had the only sophisticated culture. In 1828 he maintained that “European civilization has entered, if I may say so, in the timeless truth, in the Providence’s plan, and walks along the ways of God, along the rational principle of superiority.”³⁰¹

As a matter of fact, the disregard for other cultures led to the unawareness of them. One of the reasons for considering the European culture as the paramount of refinement was the exhaustiveness with which it was studied, while the rest of cultures were not even the object of a glimpse. Finally, the European culture was so hegemonic that it influenced every aspect, including History, and hence “Weltanschauung”, and this way there was room neither for other cultures nor for other visions of the world. Actually, this is one of the key elements of Eurocentrism, which still remains nowadays.

Oswald Spengler in his work “Der Untergang des Abendlandes” (“The decadence of the West”) marked a turning point regarding the view the West had about itself and the rest of the world. Spengler constructs his own conceptuality, stating that he names this the common west European scheme, which makes the great cultures to spin around us, as if we were the center of the whole universal

²⁹⁹ RODRÍGUEZ CARRIÓN, A., op. cit., p. 28

³⁰⁰ ORAKHELASHVILI, A., “The Idea of European International Law”, *European Journal of International Law*, Vol 17, 2006, no. 2, pp. 315-347, p. 319, available at <https://academic.oup.com/ejil/article/17/2/315/2756256/The-Idea-of-European-International-Law>, last visited on 25/03/2017.

³⁰¹ RODRÍGUEZ CARRIÓN, A., op. cit., p. 29.

affairs, the Ptolemaic system of History and will be replaced by the Copernican discovery in the field of History.³⁰²

Hence, there would not exist any longer a central civilization surrounded by a peripheral constellation, but each culture is in itself a unique experience.³⁰³

However, Alejandro Rodríguez Carrión states that however, any historical exposition of International Law will have to be Eurocentric, as long as it has been in the European cultures where an expansive political philosophy has been created. In opposition to the Japanese, Chinese or Indian civilizations, where going abroad or expanding was considered treachery to the own civilization, each and every culture around the Mediterranean basin have measured their strength and vigor depending on their capability to expand beyond their known limits.³⁰⁴

At least till the Middle Age, and even afterwards, there was the belief that any international relation is determined by the idea that relations between independent political entities are asymmetrical relations. Hermann Mosler maintains that “the necessity to develop such a general legal system *inter pares* never came up in the ancient times because there always was a small amount of institutions sufficiently organized as to name them States according to the modern terminology.”³⁰⁵ In other words, past civilizations just thought of themselves that they were hegemons, and the only possible relation with others was through supremacy, and this hindered the development of a proper international legal system for the relations between different peoples.

In the Congress of Vienna (1814-1815), the Government of the Great European Powers was established, not only *de facto* but also *de iure*. Antonio Truyol y Serra believed that the whole system is organized on the basis of the distinction, created by Charles Maurice de Talleyrand, between general interests’ powers and limited interests’ powers; only the first ones will be entitled to execute the European directorial function.³⁰⁶ And we believe that this was the legal ground for the oppression exerted by the Western powers over China, which led to the Opium Wars and the signature by China of the Unequal Treaties. Japan adapted to

³⁰² Quotation by RODRÍGUEZ CARRIÓN, A., op. cit., p. 29. Unofficial translation. SPENGLER, O., *Der Untergang des Oberlandes*, Erster Band, Gestalt und Wirklichkeit, München, C.H. Beck'sche Verlagsbuchhandlung, Oskar Beck, 1920, available at https://ia800301.us.archive.org/34/items/deruntergangdesa01spen/deruntergangdesa01spen_bw.pdf, last visited on 25/03/2017.

³⁰³ Quotation by RODRÍGUEZ CARRIÓN, A., op. cit., p. 29.

³⁰⁴ Quotation by RODRÍGUEZ CARRIÓN, A., op. cit., pp. 29-30.

³⁰⁵ Quotation by RODRÍGUEZ CARRIÓN, A., op. cit., p. 30.

³⁰⁶ Id, p. 34.

the constraints imposed by the Western powers, while China precluded itself, which caused the above-mentioned wars and its defeat. Japan adapted so well to the Western imperialism that they even attacked the then Russian enclave of Port Arthur and two years later defeated Russia. “It was the first time in Modern History that a European power was humiliated by a power from outside the Christian States system.”³⁰⁷ It was in the battle of Tsushima, when Japan defeated Russia.³⁰⁸

European colonization would not be limited within the “uncivilized or barbaric peoples”. According to the Final Act of the Congress of Berlin (1885) such expansion was limited by only two requirements: the effective occupation and the notification to the rest of the colonial powers. However, Juan Antonio Carrillo Salcedo states that the behavior of the metropolises regarding the peoples subject to colonialism was their own competence, and hence an issue ruled by the respective legal regimes of the colonial powers, with the exception of some limitations which could be introduced by international conventional rules.³⁰⁹

The Congress of Berlin reinforced the basis for Western expansion established by the Congress of Vienna. In perfect timing with the development and expansion of the international society, the authors on International Law would construct the theoretical building of an International Law proper to the civilized States. However, even in the post-colonialism remained an evident asymmetry.³¹⁰

According to Alejandro Rodríguez Carrión, even in the Covenant of the League of Nations, the Statute of the Permanent Court of International Justice, the United Nation Charter and the Statute of the International Court of Justice, all of them legal instruments created in the XX century, still remain certain reminiscences about the degree of civilization. In the XXI century, any kind of segregation according to the type of society aiming to limit the right of participation of all States in the international society is unacceptable. Even nowadays we could still see a certain tendency to maintain the old criteria. However, the acceptance or unacceptance by several States of certain duties

³⁰⁷ Id, p. 39.

³⁰⁸ MISHRA, P., op. cit., p. 19. According to Mishra, contemporary world started having nowadays shape as of May 1905, as result of the naval battle of Tsushima, when a small Japanese fleet destroyed the bulk of the Russian Army.

³⁰⁹ Quotation by RODRÍGUEZ CARRIÓN, A., op. cit., p. 40.

³¹⁰ QIN, Y., “Culture and global thought: Chinese international theory in the making” (Translation by the autor. Original text: “Cultura y pensamiento global: una teoría china de las relaciones internacionales”) *Revista CIDOB d’Afers Internacionals*, 2012, no.100, p. 67-90, available at https://www.cidob.org/es/articulos/revista_cidob_d_afers_internacionals/100/cultura_y_pensamien_to_global_una_teoría_china_de_las_relaciones_internacionales, last visited on 25/03/2017.

imposed by International Law might lead to draw conclusions close to the above-mentioned ones, i.e. the ones not accepting the said duties could be considered as barbaric or savage peoples, while the ones accepting them could be the civilized ones.³¹¹

Setting aside the differences, Alejandro Rodríguez Carrión considers that, after the dissolution of the Soviet Union, there would have been the menace of the return to the world before Westphalia (Treaties) with the refusal to allow each State to choose their own system. Although, it is obvious that the watershed would not be the religious one, but the affirmation of certain new values (democratization or human rights). Alejandro Rodríguez Carrión maintains that they partially conceal other interests.

Notwithstanding the positions that Alejandro Rodríguez Carrión maintains, which we have already analyzed, he also states that the so-called State sovereignty, the capability of any State to decide about its basic organization and relation options is a mere fallacy: international life nowadays jettisons any attempt of autarchic operation of the States, and their decisions are constrained by the circumstances of the rest of States.³¹²

Alejandro Rodríguez Carrión analyses another aspect which is very important regarding the European Union-China relations: he maintains that the feeblest economic sector of the developed countries is the farming one, sustained with the help of tariff rates or quantitative restrictions to importations, to face agricultural products from developing countries, highly competitive due to the wage gap in these countries, or through production subsidies, or dumping practices and infringement of the rules on free competition. The defense argued by the developed countries is that the developing countries are applying a social dumping, as in the cost of their produces they do not include safety and welfare, charged from the cost of labor force, which are proper to the developed countries. Regarding this point, we make a deeper study in the analysis of the “Joint Communication to the European Parliament and the Council, Elements for a new EU strategy on China”, which repeatedly (10 times) reclaims a “level playing field” in the openness Chinese companies find when they enter the European

³¹¹ Alejandro Rodríguez Carrión Id, p. 43.

³¹² Id, p. 30.

market, but the lack of it when companies coming from the EU try to penetrate the Chinese market.³¹³ We also analyze this issue in the Chapter about Economics.

With a view to the future, will China in its relations with the EU establish a “level playing field”? The prospect is not exempt of ambiguity: on one hand, regarding Trump’s Administration in favor of protectionism, China is reacting with an open defense of free trade, but on the other hand, the “Made in China 2025” Strategy aims to promote Chinese innovative companies,³¹⁴ above their competitors, according to, among others, Jaume Giné Daví.³¹⁵

Sovereignty is essential for the States as subjects of International Law. The basis for the primeval International Law was the so-called *ius inter gentes* or *ius gentium*. According to Mariano Aguilar Navarro, the classics “[sic] did not commit the mistake to reduce the whole system to a regulation complex spinning around the State”.³¹⁶

However, the onset of the nation-State led to a conception of the International Law just as a legal system from and for the States. Along several centuries, with exacerbated dogmatism, it would still be maintained the concept that international rules could only have a validity range for a type of subject: the sphere of the States.³¹⁷

³¹³ High Representative of the Union for Foreign Affairs and Security Policy, European Commission, Brussels, 22.6.2016, JOIN(2016) 30 final; “Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China”, available at <http://www.ipex.eu/IPEXL-WEB/dossier/document/JOIN20160030.do>, last visited on 25/03/2017.

³¹⁴ WÜBBEKE, J., MEISSNER, M., ZENGLEIN, M. J., IVES, J. and CONRAD, B., “Made in China 2025 The making of a high-tech superpower and consequences for industrial countries”, *Merics Papers on China*, December 2016, núm 2, p. 6, available at <https://espas.secure.europarl.europa.eu/orbis/document/made-china-2025-making-high-tech-superpower-and-consequences-industrial-countries>, last visited on 02/06/2017. “However, Made in China 2025 in its current form represents exactly the opposite: China’s leadership systematically intervenes in domestic markets so as to benefit and facilitate the economic dominance of Chinese enterprises and to disadvantage foreign competitors. This is visible in smart manufacturing as well as in many other high-tech industries targeted by the strategy. In essence, Made in China 2025 aims for substitution: China seeks to gradually replace foreign with Chinese technology at home – and to prepare the ground for Chinese technology companies entering international markets. Indications of this intention are omnipresent in Made in China 2025. The strategy stresses terms like ‘indigenous innovations’ and ‘self-sufficiency’. It intends to increase the domestic market share of Chinese suppliers for ‘basic core components and important basic materials’ to 70 per cent by the year 2025.”

³¹⁵ GINÉ DAVÍ, J., “Las relaciones de la UE con Asia y China”, *CEI International Affairs*, Escuela Diplomática de Barcelona, University of Barcelona, Colección Debate Internacional 1/2015, 13/04/2015, p. 9, available at <http://diposit.ub.edu/dspace/bitstream/2445/65090/8/Las%20relaciones%20entre%20la%20UE%20y%20Asia%2C%20Jaume%20Gin%C3%A9%20Dav%C3%AD.pdf>, last visited on 31/05/2017.

³¹⁶ Quotation by RODRÍGUEZ CARRIÓN, A., op. cit., p. 69.

³¹⁷ Ibid.

José Antonio Pastor Ridruejo argues that the sovereignty of the State is a first-rank and key determinant of the current set-up of the international society and the Law of Nations.³¹⁸

According to Montserrat Pintado Lobato, who cites Liang Shoude, International Relations Theory with ‘Chinese Characteristics’ underpins on state’s sovereignty.³¹⁹ Therefore, probably this theory is a main reason why China has developed its fidelity to sovereignty as the essence of IR.

According to José Antonio Pastor Ridruejo, as stated by the Court of Justice in The Hague the principle of sovereignty of States allows these ones the freedom of choice of their political, economic, social and cultural system and the development of its foreign policy. Again, these are affairs within the domestic jurisdiction of States, in which they have discretionary powers, and in which the non-intervention principle is applicable.³²⁰

However, José Antonio Pastor Ridruejo adds that he also agrees with the point of view of the Court of Justice of The Hague, which considers that:

“The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations.”³²¹

Given the said opinion of the Court of Justice of The Hague, José Antonio Pastor Ridruejo argues that the growing interdependence between States is expanding the scope of only one of State’s powers, the circumscribed ones, while the one of the discretionary ones is diminishing, i.e. the scope of the sovereign liberties. But the practical key for this issue is the economy, i.e. the financial crisis which is undergoing the EU and its effects on the EU-China relations. Before the crisis, the EU paid much attention to an essential strain in these relations: human rights. But, since the financial crisis arose, several EU member States have a much looser attitude regarding this aspect.

According to Zhang Xiaotong

³¹⁸ PASTOR RIDRUEJO, J., op. cit. p. 293.

³¹⁹ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 124. LIANG S., “Constructing an International Relations Theory with ‘Chinese Characteristics’”, *Political Science*, Vol. 49, nº 1, 1997, p. 31.

³²⁰ PASTOR RIDRUEJO, J., op. cit. p. 295.

³²¹ CPJI, Serie B, no. 4, p. 24. Quoted by PASTOR RIDRUEJO, J., p. 295. Original text in English taken from the CPJI, Permanent Court of International Justice, 1923, February 7th, File F. c. V. Second (Extraordinary) Session, Docket II. 1, p. 36, available at http://www.icj-cij.org/pcij/serie_B/B_04/Decrets_de_nationalite_promulgues_en_Tunisie_et_au_Maroc_Avis_consultatif_1.pdf, last visited on 27/03/2017.

“History has proven that the EU, as a normative power, has gained more benefits from China through soft and institutionalized means than through hard means, such as those the EC employed during and subsequent to the 1989 Tiananmen Square Incident.”³²²

This is a meaningful statement. In other words, the author believes that, regarding China, the European Union should always implement the “engagement strategy” (as it is doing nowadays) instead of the “linkage strategy” (as it did after the “Tiananmen Square Incident”).

This point shows the importance of the symmetrical-asymmetrical factor: when Westerners attack the Chinese reaction in that circumstance, the Chinese feel that Westerners think the relation is not symmetrical, as they consider themselves superior to the Chinese, and, from the Chinese viewpoint, this is the reason why Westerners think fit to criticize other countries’ internal affairs. In a nutshell, this is the situation: criticism by the West about human rights vs. complaint of China because the West interferes in its internal affairs. As we can see also in this case, the situation is not symmetrical, and in this case the asymmetry is due to the different values sustained by each side.

According to Zhang Xiaotong, “In the future, China's rise may shape the world into a bipolar one.”³²³

Zhang Xiaotong maintains that, if so happened, the EU could still have room for manoeuvre, as China will be completely integrated into the world economy, and could still have the chance to play the role of “the third force”. Such a development does not seem probable because, at least in the medium term, the “US-China bipolar structure” is most unlikely, as the world nowadays still has other powerful players, not as much as China, but probably powerful enough as to hinder the mentioned bipolar structure. A good example of such players, apart from the EU is India. Most probably, in the medium term, there will be two major players, as the USA and China, but other middle-size players, as the EU, India, Russia and Brazil; therefore, the situation would not be that of a bipolar structure, but a two-level structure, holding each level several players.

However, the sole presentation of this idea drives our thinking back to the Symmetry-asymmetry factor. If China, following our statement, is a major player (or first level player) and the EU is a middle-size player (or second-level player),

³²² ZHANG, X., “European Union-China Trade Relations: A Concise History (1975-2014)”, Wuhan University Center for Economic Diplomacy, p. 13, available at <http://www.whuced.com/show/?id=205&page=1&siteid=3>, last visited on 27/03/2017.

³²³ Zhang, id., p. 25

it is obvious that in this relation there is no symmetry. In this regard, the ideas of Jinghan Zeng are very enlightening; he argues that “the EU/Europe is a second order concern for China, and Europe only plays a marginalized role in China’s policy discussion.”³²⁴

Notwithstanding, in case Zhang Xiaotong’s view regarding this point were correct, it would prove even more the asymmetry of the EU-China relations. The said author maintains that China could mold a bipolar world, being formed by the USA and China, and the EU as a third power. Hence, the EU would play only the role of the third player, which shows once again the asymmetry of the EU-China relations: on one side, the bipolar world formed by the eagle and the dragon, and, on the other side, the EU.

In a nutshell, we can argue that the EU and China are far from each other, but somehow they share common points. The distance between the EU and Beijing is probably the longest on-land separation between two large international subjects: the distance between each other’s capitals is nearly 8.000 km.³²⁵ They had few historical relations, mostly due to the huge distance between each other and due to the enormous differences in culture and language. But, on the other hand, both sides have certain easiness regarding international relations: they do not have longstanding controversies. Furthermore, they have very good perceptions of each other. Moreover, they have magnetism for each other.³²⁶ Nowadays there is no pending dispute between the EU and China.

Taking into account the above-mentioned analysis on several aspects affecting sovereignty, showing that several parameters of sovereignty have changed, the reconfiguration of sovereignty can be another issue to be analyzed. First, we will delve into several theoretical aspects regarding this matter.

Sovereignty is originally a European notion. Mart Veliste makes this detailed analysis of the origins and development of sovereignty:

“A crucial thing to note here is that stigmatization is not only something connected to history and the colonial period. Zarakol’s main argument is that even today this historic and

³²⁴ ZENG, J., “Does European Union Matter? The Role of European Union in Chinese Narratives of ‘One Belt One Road’ and ‘New Type of Great Power Relations’”, *Journal of Common Market Studies*, February 2017, p. 1, available at https://www.researchgate.net/publication/313445176_Does_Europe_Matter_The_Role_of_Europe_in_Chinese_Narratives_of_'One_Belt_One_Road'_and_'New_Type_of_Great_Power_Relations'/download, last visited on 27/03/2017.

³²⁵ Distance Calculator, Distance Brussels (Belgium)[-->] Beijing (China): 7,961 Kilometers, available at <http://www.entfernungsrechner.net/en/distance/city/2800866/city/1816670>, last visited on 27/03/2017.

³²⁶ Extrapolated from LAMO DE ESPINOSA, E., op.cit.

systemically induced stigmatization circumscribes the behaviour of non-Western states. This is due to the impact it had on the formation of the nations' identities and the hierarchic nature of the international system. Modern international society was built on a dynamic of stigmatisation where many 'joined at a disadvantage, and the various pathologies of stigmatisation have been incorporated into modern national narratives and state identities' [...]. According to Hedley Bull [...] continuous Western domination of international society has meant that non-European peoples have been compelled to use European concepts of self-determination and sovereign integrity in order to overthrow Western colonial dominance and safeguard their independence. Furthermore, European states have been successful in insinuating their idea of civilization into the Charter of the United Nations.”³²⁷

It is crystal clear that sovereignty is one of the essential elements of China's foreign policy. Yongjin Zhang, quoted by Mart Veliste, considers that

“[a]s the world seems to be moving beyond Westphalia, China stands as a staunch defender of the Westphalian order.”³²⁸

Montserrat Pintado Lobato considers that the values which China advocates in its foreign policy, especially non-intervention and respect of sovereignty, also affect its stance, fairly distant. For instance, it will let other players, not itself, oppose the US.³²⁹

One of the most significant factors regarding international relations are the respective cultural references and, logically, the key element is the understanding of each other perspective. Otherwise, the result will be the misunderstanding, as stated by Jeremy Garlick:

“While these debates may seem at first glance to be of only theoretical interest, the end result of these rather different overall takes on the relationship has been a tendency towards misunderstandings at the level of practical politics as well as academic debate. For example, Pan [...] analyses the different interpretations of sovereignty and their consequences, while Chan [...] looks at misunderstandings over attempts by Europeans to exercise soft power in the PRC: it quickly becomes clear from articles such as these that there is a need for both sides to step back and analyse the relationship with more objectivity, as well as greater understanding of the other's viewpoint, if EU-China relations are to be set on a sounder footing.”³³⁰

³²⁷ VELISTE, M., op. cit., p. 38.

³²⁸ Id., p. 23.

³²⁹ PINTADO LOBATO, M., “Reformulaciones teóricas en torno a la emergencia de China: la construcción de una institución hegemónica alternativa”, *Trabajos y ensayos*, Número 15, julio de 2012, p. 12, <http://www.diprriihd.ehu.es/revistadoctorado/n15/Pintado15.pdf>, last visited on 12/12/2020.

³³⁰ GARLICK, J., “A critical analysis of EU-China relations: towards improved mutual understanding”, *Contemporary European Studies* 1/2013 Articles, p. 57, available at

Balazs Ujvari considers that cultural background, and we would add that historical ones as well, affect international negotiations.³³¹

Professor Jia, quoted by Julian Ku, considers that sovereignty is the essential aspect of International Law in China:

“To most Chinese scholars, he hinted, state sovereignty (which necessarily includes the concept of sovereign equality and independence) is perhaps the pre-eminent principle of international law. Indeed, he maintained that this understanding is fully consistent with the language and structure of the U.N. Charter.”³³²

There is a long standing friction between the notion of sovereignty and human rights. In this regard, Julian Ku also quotes Professor Delisle:

“Professor Delisle did not contest this pre-eminence of sovereignty in Chinese thinking, and suggested that China’s concept of territorial sovereignty remains hard and uncompromising. This rigid adherence to an absolutist conception of state sovereignty in territorial matters makes it difficult for China to compromise in its many territorial and maritime disputes. But he did suggest that China has been far less rigid in non-territorial conceptions of sovereignty, and hence, it has joined several international human rights conventions that (at least in theory) limit its absolute sovereignty over the treatment of its citizens. Of course, the actual adherence to these treaty regimes remains highly doubtful, but the point is that, as a conceptual matter, China does not reject the notion that a nation’s sovereignty precludes adhering to human rights treaties.”³³³

The above-mentioned paragraph shows that, at least China’s vision of sovereignty is strict when it refers to territorial matters, but it is more flexible regarding other matters within the domain of sovereignty. This assessment could help both parties to gradually approach each other. Regarding the conceptual gap of sovereignty, Gustaaf Geeraerts states that:

“[t]he EU is an [sic] union of nation-states, a hybrid collective actor, which to this very day has the highest level of integration among all associations of states. As a substantially post-sovereign union, it welcomes mutual interference in domestic affairs, major transfers of sovereignty and strong rules-based international institutions in governing world affairs. In contrast, China is the largest sovereignist state in the world, which regards a strong sovereign state as a guarantor of its national independence and a precondition for national ‘rejuvenation’. As a result, China prioritizes the defence of state sovereignty and non-interference in domestic affairs, and prefers international cooperation based on

³³¹ UJVARI, B., “Introduction...”, pp. 2-4.

³³² KU, J., op. cit., “China and Sovereignty...”

³³³ Ibid.

intergovernmental consensus rather than the pooling of sovereignty under the heading of supranational governance.”³³⁴

Finally, according to Julian Ku:

“China has not tried to directly challenge the framework of the international legal system, even though it may emphasize certain elements (like state sovereignty and equality) much more than the U.S. or Europe. It is not openly avowing realism and pure power politics, at least not publicly.”³³⁵

Despite the above-mentioned statement, several scholars consider that China is not any longer an international order taker, but an international order-shaper. For instance, Montserrat Pintado Lobato, inspired by the ideas of Yongjin Zhang, rightly argues that China does not accept to be a passive subject of IR, but establishes its own terms, focusing on the rich and deep Chinese history.³³⁶ In fact, according to Yongjin Zhang, *Pax Sinica* was a successful system:

“*Pax Sinica*, frequently labelled as the Chinese world order, took centuries to take its definitive shape amidst the vicissitudes of the Chinese empire. It is, however, the only ‘sub-global international system’, in Buzan and Little’s words, that survived the ancient and classical period and flourished in the better part of modern world history. It co-existed with the European society of states until the second half of the nineteenth century when it was incorporated into the Westphalian order. As such, it can be counted as one of the greatest institutional innovations and achievements of traditional China. One of the remarkable feats of *Pax Sinica*, which is also an enduring puzzle, is the longevity and flexibility of its fundamental institution, the tribute system.”³³⁷

Regarding the EU’s attitudes, Jing Men considers that currently there is a change in the norm of sovereignty:

“The EU’s approach to promote democracy and human rights is regarded as ‘new interventionism’ which changes the norm of sovereignty. Values of human rights and democracy matter more than before, and become ‘hard’ values. Interventions aim at improving human rights. Those countries which have serious human rights problems can be understood as threats to international peace and security, as human rights and democracy are accepted as universal principles.”³³⁸

³³⁴ GEERAERTS, G., op. cit., “The EU and China: Modest...?”, pp. 1-2.

³³⁵ KU, J., op. cit., “China and Sovereignty...”

³³⁶ PINTADO LOBATO, M., “Hacia una teoría china de las relaciones...”, op. cit., p. 202-203. ZHANG, Y., «System, empire and state in Chinese international relations», *Review of International Studies*, vol. 27, 2001, núm. 5, pp. 43-63, esp. p. 63.

³³⁷ Id., p. 52.

³³⁸ MEN, J., “Between Human Rights and Sovereignty—An Examination of EU-China Political Relations”, *European Law Journal*, Wiley, Vol. 17, 2011, no. 4, p. 538, available at <https://onlinelibrary--wiley--com.uma.debiblio.com/doi/epdf/10.1111/j.1468-0386.2011.00564.x>, last visited on 20/02/2017.

As expressed above, there is an evident case of asymmetry regarding sovereignty. However, the above-mentioned sentence could be discussed:

“[...] human rights and democracy are accepted as universal principles.”

It is doubtful that they are so universally accepted. Obviously, there is a Universal Declaration of Human Rights,³³⁹ but it is also obvious that it is not so universally accepted, respected and implemented. The concept of human rights is not monolithic. In this respect, the analysis made by Paloma García Picazo about the Universal Declaration of Human Rights is clarifying. We will analyze it in the following page.³⁴⁰

Sovereignty reaches other aspects, and there is an issue regarding the priority between national and international norms:

“A rift almost as deep may be forming on political and security issues, where Europe had high hopes for cooperation. It is not only that China has a strong sense of its own sovereignty. It increasingly also places its own law and norms far above international law – norms and, of course, values. The rule of law will remain central to the EU’s approach; as long as there is an EU built on this basis, this will form the foundation of its international approach.”³⁴¹

Balazs Ujvari suggests a way in which both notions of sovereignty might converge:

“The dynamic, where the EU gives greater room for voluntary action (thus also showing greater respect for sovereignty) and none- or partially binding arrangements in exchange for robust policy action and transparency gains from China, may also have the potential to mark the way forward in other areas of international co-operation too. To ensure that China abides by its non-binding commitments, the EU could use a plethora of multilateral (e.g. G20, WTO) fora and bilateral policy dialogues (EU-China summit) to provide further – financial – incentives to the country (e.g. climate financing) in return for Beijing’s support for the Union’s stance in global regulatory processes (e.g. green goods, information technology, green finance).”³⁴²

There is room for dialogue and cooperation between the EU and China.

³³⁹ “Universal Declaration of Human Rights”, United Nations, available at http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf, last visited on 27/03/2017.

³⁴⁰ GARCÍA PICAZO, P., op. cit., *La investigación del medio ...*, pp. 139-140.

³⁴¹ GODEMENT, F. and VASSELIER, A., “China At The Gates: A new Power Audit of EU-China Relations”, *European Council on Foreign Relations*, *ecfr.eu*, p. 16, available at http://www.ecfr.eu/page/-/China_Power_Audit.pdf, last visited on 24/02/2017.

³⁴² UJVARI, B., “Conclusion”, in UJVARI, B. (ed.), *EU-China co-operation in global governance: going beyond the conceptual gap*, Egmont Paper 92, Brussels, Egmont – The Royal Institute for International Relations, April 2017, pp. 28-29, available at <http://www.egmontinstitute.be/content/uploads/2017/04/ep92.pdf?type=pdf>, last visited on 26/02/2017.

According to Daniel Levy and Natan Sznaider:

“[...] global interdependencies and the consolidation of a human rights discourse are transforming national sovereignty. Social researchers frequently address the supremacy of state sovereignty and the absoluteness of human rights as mutually exclusive categories. However, rather than presupposing that a universal rights discourse is necessarily leading to the demise of sovereignty, we suggest that an increasingly de-nationalized conception of legitimacy is contributing to a reconfiguration of sovereignty itself. Through the analytic prism of historical memories—which refers to shared understandings specific pasts carry for present concerns of a political community – we provide an explanatory factor for the salience of human rights norms as a globally available repertoire of legitimate claim making.”³⁴³

The said authors consider that radical stances about state sovereignty and human rights cause conflict. Precisely this is the case between the EU and China. Regarding the above-mentioned opinion, we remark the following aspects:

1. A “de-nationalized conception of legitimacy” does not seem possible in China, because China’s notion of sovereignty is very national, as it usually happens with world players, among other States. According to Montserrat Pintado Lobato, who quotes Liang Shoude, the statement that states’ rights are above human rights is one of the mainstays of the Chinese International Relations Theory with ‘Chinese Characteristics’.³⁴⁴
2. “Historical memories”: in the case of the EU-China relations, such memories haven’t been reason for sharing understandings, at least for a century and a half (since the Opium Wars till the handover of Hong Kong (1997) and Macao (1997)).

For the above-mentioned reasons, the said model does not seem appropriate for the EU-China relations, although perhaps it could fit other cases.

Daniel Levy and Natan Sznaider, regarding states, differentiate between their sovereign functions and their legitimacy:

“While states retain most of their sovereign functions, their legitimacy is no longer exclusively conditioned by a contract with the nation, but also by their adherence to a set of nation-transcending human rights ideals. Legitimacy is mediated by how willing states are

³⁴³ LEVY, D. and SZNAIDER, N., op. cit., p. 657.

³⁴⁴ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 124. LIANG S., “Constructing an International Relations Theory with ‘Chinese Characteristics’”, *Political Science*, Vol. 49, nº 1, 1997, pp. 31-33.

to engage with ‘judicial memories’ of human rights abuses and their articulation in cosmopolitan legal frames.”³⁴⁵

However, as stated by Paloma García Picazo, there is a huge difference between Western human rights and non-Western human rights. On 10/12/1948 was signed the Universal Declaration of Human Rights,³⁴⁶ which led to the signature of different covenants in New York in 1966.³⁴⁷ Hence, the said author states, “what would be the interrelationship between *democracy* (as simplified expression of political and civil rights) and *development* (as simplified expression of social, economic and cultural rights) regarding such reductionism as valid?”³⁴⁸ However, the EU-China Summit Joint statement considers that

“The two sides commit to uphold the UN Charter and international law, and all three pillars of the UN system, namely peace and security, development and human rights [...] The EU and China reaffirm that all human rights are universal, indivisible, interdependent and interrelated. Both sides welcome the holding of their regular Human Rights Dialogue on 1-2 April 2019 and will continue to conduct exchanges on human rights at the bilateral and international levels on the basis of equality and mutual respect, including at the UN human rights mechanisms. The EU and China will explore areas for enhanced cooperation in the future, in particular in UN fora”.³⁴⁹

Hence, both sides are making an effort to advance in search of common directions. Nonetheless, this is a declaratory stage, which should be reflected in the actions undertaken.

In respect of European states, Daniel Levy and Natan Sznaider consider that they have ceased part of their sovereignty to certain European institutions:

“[...] many countries are relinquishing aspects of their sovereignty to supranational bodies as well as incorporating international legal norms into their domestic adjudication. The

³⁴⁵ LEVY, D. and SZNAIDER, N., op. cit., p. 657.

³⁴⁶ Universal Declaration on Human Rights, United Nations, Human Rights, Office of the High Commissioner, available at https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, last visited on 20/06/2019.

³⁴⁷ The United Nations Human Rights Treaty System: An introduction to the core human rights treaties and the treaty bodies, Fact Sheet No. 30, Office of the United Nations High Commissioner for Human Rights, pp. 7-8, available at <https://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>, last visited on 20/06/2019.

³⁴⁸ GARCÍA PICAZO, P., op. cit., *La investigación del medio internacional...*, pp. 139-140. China signed the International Covenant on Civil and Political Rights on 5 Oct 1998 but, as expressed above, it has not ratified it yet. See footnotes 4, 5 and 6 of the UN Treaty Collection site. “CHAPTER IV HUMAN RIGHTS 4. International Covenant on Civil and Political Rights New York, 16 December 1966”, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en, last visited on 27/02/2017.

³⁴⁹ EU-China Summit Joint statement Brussels, 9 April 2019, p. 3, available at <https://www.consilium.europa.eu/media/39020/euchina-joint-statement-9april2019.pdf>, last visited on 02/07/2019.

most developed example of this trend would be the adjudicatory authority individual states have conferred upon the European Union. The European Court of Human Rights and the European Convention on Human Rights came into being during the 1950s. They are both exemplary cases for the symbolic value and the juridical power that human rights (can) carry. The commission accepts complaints from a variety of non-state actors and national jurisdictions have to abide by the decisions of the European court.”³⁵⁰

However, actually, the EU’s concept of sovereignty is based on the principle of attribution of competences, with which we deal in the part named “V.3.2 Human rights in China, seen from the EU”.

However, as we have ascertained, China’s concept of sovereignty does not allow any leniency, hence no sovereignty would be conferred.

Alice Ekman analyses if China is changing the global order:

“In China’s eyes, the EU appears to be an interesting partner with which to engage in the framework of the institutional competition in particular. This perception has strengthened since the Chinese government launched the Asian Infrastructure Investment Bank (AIIB), already hailed in Beijing as a success considering the number of countries who have signed up to it (14 EU member states have officially applied to join the new bank). The AIIB has certainly reinforced China’s confidence in its ability to create new international institutions, and given Beijing the impression that reshaping global governance is, after all, an easier task than expected.”³⁵¹

The AIIB (Asian Infrastructure Investment Bank), according to Alice Ekman, is another success case of “reshaping the world” by China. The said scholar considers that the OBOR is a means for cooperation between China and the EU, but also to reshape the world order:

“China’s renewed interest in developing cooperation with the EU should be understood in the context of the deployment of the ‘One Belt, One Road’ project, but also in the broader context of China’s ambition to reshape the global order, and challenge what it sees as America’s illegitimate hegemony on the world stage.”³⁵²

In the above-mentioned regard, Montserrat Pintado Lobato submits that

“In the case of China, despite examining how it interacts and gains status within the established hegemonic institution, there will be a broad examination of the institutional

³⁵⁰ LEVY, D. and SZNAIDER, N., op. cit., p. 657.

³⁵¹ EKMAN, A., “China: reshaping the global order?”, *Issue Alert*, July 2015, European Union Institute for Security Studies, pp. 1-2, available at https://www.iss.europa.eu/sites/default/files/EUISSFiles/Alert_39_China.pdf, last visited on 8/03/2017.

³⁵² EKMAN, A., op. cit., “China: reshaping the ...?”, p. 2.

alternatives that China is promoting, with a special attention to the newly created Asian Infrastructure Investment Bank (AIIB).”³⁵³

The said statement by Pintado Lobato is linked to the new role of China as not a mere order-taker, but as a new order-shaper, in which the AIIB could play a decisive role.

The OBOR is an economic way to exert soft power. However, Gustaaf Geeraerts maintains that economic power is not enough to become a world power:

“In Beijing’s view, economic prowess is not sufficient for a state to become a first rank power. ‘What is important is comprehensive national power, as shown by the ability of the Soviet Union to balance the much wealthier US in the Cold War and the continuing inability of an economically powerful Japan to play a political role’. This view is very much in line with the neorealist conception that to be considered a ‘pole’ a country must amass sufficient power in all of Waltz’s categories of power: ‘size of population and territory, resource endowment, economic capability, military strength, political stability and competence.’”³⁵⁴

Gustaaf Geeraerts foresees what could be a common point between the EU and China:

“We are moving steadily towards a new multipolar world order. In this order the major powers will have to balance between meeting increasing international expectations and persistent strong internal needs. The emerging multilayered and culturally diversified multipolarity will make global governance much more complex and is by no means a guarantee for multilateralism. To be effective, multilateral organizations need to reflect the emerging new international order, but effective multilateralism also implies that all parties are committed to overcoming diverging expectations and trying to reach a pragmatic consensus on how to make foreign policies complementary and mutually supportive. Europe and China could be in the vanguard here as well.”³⁵⁵

Therefore, both the EU and China could benefit from a multipolar world.

Hai Yang maintains that

“[...] the Chinese government under the leadership of Xi Jinping has undertaken a series of high-profile actions focusing on developing physical infrastructure and improving regional connectivity, such as the Belt and Road Initiative (BRI), Silk Road Fund (SRF), Asian Infrastructure Investment Bank (AIIB), and New Development Bank (NDB). Taken together, these noteworthy China-backed multilateral initiatives, coming at a time of global

³⁵³ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 26.

³⁵⁴ GEERAERTS, G., “China, the EU, and the New Multipolarity”, *European Review*, Vol. 19, 2011, No. 1, Academia Europæa, pp. 57–67, p. 59,
Available at doi: 10.1017/S1062798710000335, last visited on 8/03/2017.

³⁵⁵ Id., p. 66.

power shifts and economic doldrums, have given rise to renewed speculations about the intensifying competition between the ‘donor cartel’ and non-traditional donors, as well as their profound implications for the landscape of development finance and the rising powers’ ulterior motive to reshape/upend the existing global order.”³⁵⁶

The reshaping of the global order is at least partially due to the reconfiguration of bilateral relations. This fact is clearly seen, for instance, in the EU-China 2020 Strategic Agenda for Cooperation,³⁵⁷ where the word *global* (and other words with the same root) is used 19 times. This shows that both sides consider that their bilateral relation has worldwide repercussions.

The ideal of international relations for China is what in Chinese is known as 多极化 (duojihua) i.e. multipolarization.³⁵⁸ According to David Scott:

“Since the 1990s, China has openly accepted the inevitability and desirability of ‘multipolarity’ (duojihua), with itself as a rising pole of power, able to reshape US unipolarity. As the former leader Jiang Zemin told European leaders, ‘the force of one single polar [i.e., the US] can not achieve balance and only the combination of multi-polars can ensure equilibrium’. Indeed, in the wake of US economic difficulties in early 2009, the People’s Daily argued in an article titled ‘The U.S. Hegemony Ends, the Era of Global Multipolarity Enters’ that ‘a new phase of multipolar world power structure will come into being...and the international order will be correspondingly reshuffled’.”³⁵⁹

Probably such a change will happen, but apparently it still will take years to develop.

Zhongqi Pan, quoting Brantley Womack, makes clear the different views between the EU and China regarding the relations within international law:

“From a Guanxi perspective, the distinct way of thinking for the Chinese exemplifies itself not only in how the Chinese group things and make a society, but also in how they deal with their foreign relations. Brantly Womack has uniquely captured different mind-sets between Chinese and Westerners in this aspect. He refers to the Chinese way of thinking as ‘the logic of relationships’ and the Westerners’ as ‘the logic of transactions’. The main assumption in ‘the logic of relationships’ is that both sides are better off if they maintain a good and stable relationship. However, in ‘the logic of transactions’ a normal relationship requires symmetry of partners or equality of exchanges. He thus argues that, ‘As China applies relationship logic to international relations, its actions aim to optimise relationships rather than transactions. In this model China does not use preponderance of power to optimise its side of each transaction, but rather to stabilise beneficial relations.’ For him,

³⁵⁶ HAI, Y., op. cit., pp. 5-10.

³⁵⁷ EU-China 2020 Strategic Agenda for Cooperation, available at http://eeas.europa.eu/archives/docs/china/docs/eu-china_2020_strategic_agenda_en.pdf, last visited on 29/03/2017.

³⁵⁸ Pleco, op. cit., n. d.

³⁵⁹ SCOTT, D., op. cit., p. 20.

‘This is a fundamentally different attitude from that of the modern West, which has tended to use the carpenter’s rule of its own norms to level and if necessary pressurise others into uniformity’.”³⁶⁰

According to the above idea by Branly Womack, the current situation, given the lack of symmetry of partners in the EU-China relations, is seen by Westerners as *not normal*; but there is no such consideration regarding this aspect from the point of view of China, which does not attach importance to this question. However, the asymmetry is in the EU’s disadvantage. Otherwise, it should be compared as well, in order to ascertain this issue. Womack considers that one of the mainstays of the Chinese idiosyncrasy is the *guanxi*.³⁶¹

And Zhongqi Pan adds that

“In developing their respective foreign relations, China cares more about the longterm and overall nature of its relationships with others than about China’s specific benefits from every interaction, while the US follows a cost–benefit calculation in each transaction, rather than considering the long-term and overall nature of its relationships with others.”³⁶²

The above-mentioned opinion by Zhongqi Pan is about a comparison between the USA and China. The same could be roughly said about a comparison between the EU and China. We consider that keeping an eye on the long term is always worthwhile. Patience is essential for such purpose, but this quality is not common.

Manuel Montobbio rightly considers that the theory of international relations could break in fragments, unless a new theory is developed, but based not exclusively on western principles: ideas from different parts of the world should be put together in order to construct a new Theory of International Relations.³⁶³

There are grave disturbing factors in the EU-China relations, and obviously one of them is the asymmetries in the economy. Xieshu Wang, Joel Ruet and Xavier Richet point out this as a relevant issue:

“There are strong asymmetries among the European trading partners of China, the contents of import and export, and the sectoral growth rate. Machines and transport equipment occupy an absolute first weight in the trading volume on both ways. Meanwhile, among recent European exports to China, we observe a slight decrease of manufacturing contents

³⁶⁰ PAN, Z., op. cit., “Guanxi, Weiqi and ...” pp. 306-307.

³⁶¹ According to the Pleco Electronic Dictionary, *guanxi* means “connections; relations; relationship”. Pleco, op. cit., n. d.

³⁶² PAN, Z., op. cit., “Guanxi, Weiqi and ...” p. 307.

³⁶³ MONTOBBIO, M., op. cit. “El ascenso global de China y...”, pp. 10-11.

and a remarkable increase of food and commodities. In absence of a global treaty regarding the whole EU, these exchanges are generally based on Individualistic strategies and differentiated attractiveness of each member state.³⁶⁴

According to the above-mentioned authors

”The EU is important for China as an economic partner but the individual member states are also key players in China’s broader global strategic initiatives, in particular the on-going OBOR project, and probably each of them has a different role to play given their wide divergence. We are now witnessing the reconfiguration of multilateral and international institutions, as well as the emergence of a more multi-polar global order that precisely expresses itself and draws from concrete projects like OBOR.”³⁶⁵

Also regarding the influx of economy in the asymmetrical EU-China relations, Richard Ghasy and Jiayi Zhou submit that

“Although economic cooperation is usually framed in cooperative win-win terms by the government, it has been suggested that it will also increasingly be used as an asymmetric tool of economic and political leverage. However, in the absence of official verification, these remain only interpretations. It is also worth noting that there is often a lack of actual policy coordination between China’s economic diplomacy and its security interests in practical terms.”³⁶⁶

According to Matthieu Burnay, Joëlle Hivonnet and Kolja Raube

“By establishing a Legal Affairs Dialogue with China, the EU would apply the disamalgamation of the triangular relationship between Rule of Law, democracy and fundamental rights to its external action, as a means to further develop the EU-China strategic partnership. A dis-amalgamated approach is, in fact, a sine qua non for setting up an EU-China Legal Affairs Dialogue not only because it will save time arguing about definition but also because it will ultimately preserve the EU’s flexible approach to Rule of Law issues [...] The mutual benefits of such a new EU-China Legal Affairs Dialogue would be threefold. First, there is mutual interest in the modernisation of the PRC’s legal system. Secondly increasing knowledge and understanding of the Chinese system by the EU and increasing knowledge and understanding of the EU system by the PRC would enable them to draw lessons applicable to other situations. Thirdly, an EU-China Legal

³⁶⁴ WANG, X., RUET, J. and RICHEL, X., “One Belt One Road and the reconfiguration of China-EU relations”. This article will be published as Chapter 2 of *ISPI REPORT CHINA 2017*, Belt and Road: A game chang.. [sic] 2017. <hal-01499020>, pp. 1-17, p.2, available at <https://hal.archives-ouvertes.fr/hal-01499020/document>, last visited on 8/03/2017.

³⁶⁵ Id., p. 14.

³⁶⁶ GHIASY, R. and ZHOU, J., “The Silk Road Economic Belt-Considering security implications and EU-China cooperation prospects”, *Stockholm International Peace Research Institute and the Friedrich-Ebert Stiftung*, p. 5, available at <https://www.sipri.org/sites/default/files/The-Silk-Road-Economic-Belt.pdf>, last visited on 8/03/2017.

Affairs dialogue would enable both the EU and the PRC to fulfil their international obligations in different areas.”³⁶⁷

There are some authors who, in order to avoid conflicts between the EU and China, recommend mutual avoidance, while Matthieu Burnay, Joëlle Hivonnet and Kolja Raube consider that both sides should better improve their knowledge of each other.

Regarding the differences between the EU and China in respect of 关系 (guanxi), i.e. relation, Zhongqi Pan submits that

“Following the same logic of avoiding making enemies, China also refrains itself from Chinanizing [sic] other states. China’s underlying way of thinking is that likemindedness [sic] is not a necessary precondition for two countries to make friends and that maintaining good Guanxi with other states is more appropriate and desirable than changing their domestic governance according to China’s internal norms, as well as rules, laws, and institutions. This mind-set has been further strengthened after China adopted the European norm of sovereignty in the mid-nineteenth century. From China’s perspective, diffusing internal norms is somewhat intrusive to the sovereignty of other states and is in breach of the principle of non-interference that China cherishes so much. While China prioritizes good Guanxi with other countries, it does not prefer to make them Chinanized by imposing its internal norms on them. China’s position directly contradicts that of western countries, the EU for instance. The EU and its member states do not see keeping a good relationship with other states as more important than changing them into likeminded entities according to European norms. This mindset has been crucial in the process of European integration, which in turn encourages the EU to insist on this logic in developing its foreign relations. For the EU, national sovereignty has increasingly become a futile notion. Based upon their unique historical experience, Europeans have made efforts to re-conceptualize sovereignty [...]. They do not believe diffusing their internal norms violates the sovereignty of target states. Instead, they advocate the principle of humanitarian intervention as a replacement of non-interference. Europeans are thus very keen to Europeanize other states according to the norms of the EU.”³⁶⁸

Zhongqi Pan, in the above-mentioned paragraph, attaches importance to the EU’s and China’s perspectives of sovereignty; the EU has an expansive vision of sovereignty, with the excuse of humanitarian intervention, while China is much more restrictive regarding sovereignty.

Zhongqi Pan, elsewhere, analyzes the different EU’s and China’s views on sovereignty. He makes a previous consideration:

³⁶⁷ BURNAY, M., HIVONNET, J. and RAUBE, K., “Bridging the EU-China’s gap on the Rule of Law?”, *Asia Eur J*, Vol. 14, pp. 95–106, p. 105, published online: 24 September 2015 # Springer-Verlag Berlin Heidelberg 2015, available at <https://link.springer.com/article/10.1007/s10308-015-0437-7>, last visited on 14/03/2017.

³⁶⁸ PAN, Z., op. cit., “Guanxi, Weiqi and ...”, p. 313.

“In China's political discourses, the concept of sovereignty has been a key word for many decades and will continue to be so in years to come. China's first encounter with the concept of sovereignty was in the nineteenth century when it was invaded by Western powers. After being defeated in the First and Second Opium Wars (1840–1842 and 1856–1860, respectively), China of the Qing dynasty was forced to sign unequal treaties, cede territories to invaders, and accept the extraterritoriality of foreigners within China's borders. The misery of the ‘loss of sovereignty’ during the ‘century of humiliation’ saw China turn from victim to a seeker of its own sovereignty.”³⁶⁹

Zhongqi Pan links the divergence between each notion of sovereignty and the *century of humiliation*. History plays a relevant role in EU-China relations nowadays.

Zhongqi Pan adds that Chinese views on sovereignty are based on four aspects.³⁷⁰

1. Zhongqi Pan submits that China considers sovereignty as “entitled rights”. The Chinese have a view of sovereignty as “territorial integrity”. Mao Zedong (毛泽东) and Zhou Enlai (周恩来) established the “Five Principles of Peaceful Coexistence” (和平共处五项原则 *heping gongchu wu xiang yuan ze*), which had territorial integrity as one of its cornerstones. The said five principles are still essential in China nowadays. In China exists the term 人格 (*renge*), meaning “personality; character; moral quality”.³⁷¹ Building on this, Deng Xiaoping (邓小平) created another concept: 国格 (*guoge*), meaning “national prestige”. In 1993 he stated that “[...] without national dignity (*gouge*) [sic], disregarding national independence, a country, in particular the third world developing countries like China, cannot stand up”.³⁷²

As mentioned above, China equals the term sovereignty with territorial integrity, but it links it as well with two other aspects: independence and equality.

2. Zhongqi Pan states that China perceives sovereignty as “inseparable and non-transferable”. For the Chinese, sovereignty is paramount. The process of the EU integration (meanwhile, the EU Member States lose sovereignty) is an example of the different views of sovereignty in the EU and China.

³⁶⁹ PAN, Z., op. cit., “Managing the conceptual gap on...”, p. 229.

³⁷⁰ Id., pp. 229-232, available at <https://link--springer--com.uma.debiblio.com/content/pdf/10.1007%2Fs10308-010-0263-x.pdf>, last visited on 14/03/2017.

³⁷¹ Pleco, op. cit., n. d.

³⁷² PAN, Z., op. cit., “Managing the conceptual gap on...”, p. 230.

3. Zhongqi Pan maintains that, for China, “the principle of sovereignty remains the guiding principle of international relations”. The above-mentioned “Five Principles” were not coined by Deng Xiaoping (邓小平), but it was he who highlighted their importance, and that international relations should respect them.
4. According to Zhongqi Pan, China considers sovereignty as the essential principle to develop its foreign policy. And the way to carry it out is the above-mentioned “Five Principles”. The main consequence of the principle of sovereignty is the “one China principle”.

Zhongqi Pan submits that European countries were the first ones to establish the concept of sovereignty, but only for themselves, not for their colonies. The EU perception of sovereignty is based on four aspects:³⁷³

1. Zhongqi Pan considers that the EU perceives sovereignty rather as “accountabilities than as rights”. Moreover, Europe regards sovereignty as a term with no fixed meanings. This flexibility, in our opinion, is connected with the fact that the EU is an organization which members are to lose their sovereignty in favor of a higher authority (i.e. the EU itself). But, as Zhongqi Pan maintains, within the EU there is no unitary concept of sovereignty.

Under the increasingly powerful influx of the norm of human rights, the EU is prone to understand the concept of sovereignty in the light of the “responsibility to protect”.

2. Zhongqi Pan submits that the EU tends to understand sovereignty as relative and transferable. The essential reason for the foundation of the precedents of the EU was the prevention of another war.
3. Zhongqi Pan maintains that the EU considers that the function of “sovereignty as organizing principle of the international system is declining”. Zhongqi Pan offers us several examples showing how European leaders and scholars have criticized “the role of sovereignty”³⁷⁴

³⁷³ Id., pp. 232-236.

³⁷⁴ Id., pp. 234-235. “The role of sovereignty has been under attack from both politicians and scholars in Europe. In 1998, at a symposium on the continuing political relevance of the Peace of Westphalia, then NATO Secretary-General Javier Solana said that ‘the principle of sovereignty... produced the basis for rivalry, not community of states; exclusion, not integration.’ In 1999, just after the birth of the single currency, then German Chancellor Gerhard Schröder declared that ‘the introduction of the euro is probably the most important integrating step since the beginning of the unification process.... This will require us to finally bury some erroneous ideas of national sovereignty.’ In 2000, then German Foreign Minister Joschka Fischer indicated that the notion of sovereignty had been rejected by European countries by the transfer of their nation-state sovereign rights to supranational European institutions. While European politicians see sovereignty as an

4. According to Zhongqi Pan, in general, EU Member States put forward their sovereignty whenever the EU does not meet their expectations.

Regarding the above-mentioned analysis concerning the divergent notions of sovereignty in the EU and China, Zhongqi Pan considers there are four essential differences. We have prepared the following schema, comparing each other's views:³⁷⁵

Comparison between EU's and China's visions on sovereignty

European Union	China
Sovereignty as accountabilities	Sovereignty as entitled rights
Sovereignty as relative and transferable	Sovereignty as inseparable and non-transferable
The role of sovereignty as the guiding principle of international relations is declining	The principle of sovereignty remains the guiding principle of international relations
Europe generally takes sovereignty as its foreign policy tool	Sovereignty is the mother principle that directs China's foreign policy

SOURCE: Comparison chart made by the author, using data from PAN, Z., "Managing the conceptual gap on sovereignty in China-EU relations".

Taken all the above-mentioned aspects into consideration, Zhongqi Pan states that sovereignty in the EU and in China have radically different meanings: the EU is "reformist", while China is "fundamentalist". However, Zhongqi Pan regards that the EU and China enjoy common points regarding sovereignty, as each other respect, international recognition or the role of the UN.³⁷⁶

Zhongqi Pan considers that, in spite of the gap regarding sovereignty, the EU and China share many other aspects.

But the gap on sovereignty is still a paramount question with major consequences for the EU-China relations. According to Zhongqi Pan, differences

obstacle to be removed in the process of integration, scholars have questioned the relevance of sovereignty in a broader sense. For example, Neil MacCormick (1999) has argued that Europe is entering a 'post-sovereign' era, where sovereignty as such is outdated. As he graphically illustrates, sovereignty is 'like virginity, something that can be lost by one without another's gaining it.' He suggests that we simply ignore and dismiss the concept of sovereignty. Henkin et al. (1993) recommend that 'we might do well to relegate the term (sovereignty) to the shelf of history as a relic from an earlier era'."

³⁷⁵ Id., p. 235.

³⁷⁶ Id., p. 237.

on sovereignty are essential to EU-China relations. Fortunately, there are other aspects and values shared by both sides. Zhongqi Pan highlights the following impacts of the discrepancies on sovereignty between the said sides:

1. The said disagreements on sovereignty lead to misinterpretations and distress. There are several controversial cases between both sides, of which maybe the most disputatious one is Tibet. China maintains it is an issue within its sovereignty, while the EU regards it is about human rights. According to Zhongqi Pan “Different understandings of sovereignty and its applicability to the Tibet issue brought the China–EU relationship to a historical nadir in 2008.”³⁷⁷
2. Disagreements on sovereignty between both sides are a cause of troubled bilateral relations, with hard-to-reach agreements. Taiwan is another strenuous concern. For China, this is a non-negotiable matter, as it affects the “one China principle”, which is another aspect of Chinese sovereignty, specifically the territorial integrity. China maintains that Taiwan is just another of Chinese provinces. The EU holds this is a security problem. The EU favors “Taiwan’s referendum on UN membership”, while China is against it.
3. The conceptual gap on sovereignty entangles EU-China cooperation in third countries. Africa is the most perceptible exponent of this predicament.
4. The troublesome differences on sovereignty don’t make it impossible to cooperate. The EU does not represent any peril whatsoever for Chinese territorial integrity. China does not express any critics to the EU’s transfers of sovereignty or about separatism in their Member States. Moreover, both sides share great respect for the UN as a maximal way of conflict resolution. According to Zhongqi Pan

“Excluding sovereignty and human rights issues, China and the EU can usually find common language [...] Bilaterally, close economic interdependence is the backbone of the relationship [...] The principle of multilateralism championed by the EU also serves a building block of the partnership.”³⁷⁸

³⁷⁷ Id., pp.238-239. “Europe reacted to the unrest in Tibet by publicly denouncing Beijing’s policy, passed condemning parliamentary resolutions, attempted to boycott the Olympic Games, and received the Dalai Lama at high political levels notwithstanding China’s opposition and warning. These actions confirmed for China that Europe does not respect China’s sovereignty. In response, the Chinese boycotted the Carrefour supermarket chain in China, called off the scheduled 11th EU–China Summit in France in December 2008, and excluded France from a tour of several European states by Chinese Prime Minister Wen Jiabao in January/February 2009. In return, the Europeans were embarrassed, feeling their sovereignty was also being disrespected by China.”

³⁷⁸ Id., p. 240.

Zhongqi Pan concludes that even though the disagreements on sovereignty are profound, they can be handled on the following basis:

“[...] respect each other's sovereign status, and favor the UN as a preferred resolution mechanism.”³⁷⁹

Zhongqi Pan makes the following suggestions:

1. “Mutual avoidance”. Zhongqi Pan maintains this is a good way to hinder that their disagreements on sovereignty damages their strategic partnership.
2. “Mutual assurance”. Both sides should, states Zhongqi Pan, officially support each other's sovereignty.
3. “Mutual accommodation”. Both sides must be lenient about each other's concerns on sovereignty, and tend to be more adaptable on this issue.

Zhongqi Pan ends his analysis on the sovereignty gap by stating that

“It is not over the concept of sovereignty but the claim of sovereignty that China and Europe dispute.”³⁸⁰

From the said final sentence by Zhongqi Pan, a conclusion could be drawn: no claims on sovereignty should be made by any side. It could be said that this statement won't be easily applicable.

Zhimin Chen considers that sovereignty is one of the aspects affecting their different capacities as order-shapers: “Post-sovereign Union vs Sovereign State”. This difference is about their nature as international subjects. China is a country with full capability, while the EU is “a union of nation-states, a hybrid collective actor”. However, the EU has the tightest association degree of all international organizations. On its part, China is the most relevant “sovereignist” state in the world. Francis Fukuyama, regards China, in respect of national governance, as “[...] the first country to create a modern state: centralized, uniform system of bureaucratic administration that was capable of governing a huge population and territory”.³⁸¹

Zhimin Chen quotes Zhongqi Pan about the bitter Chinese experiences regarding sovereignty:

³⁷⁹ Id., p. 241.

³⁸⁰ Id., p. 242.

³⁸¹ Quoted by CHEN, Z., op. cit., pp. 782-783.

“After its bitter experience in the modern era as a victim of colonialism, obtaining equal sovereign state status has become the paramount aim for its people and political forces, and ‘the mother principle that directs China’s foreign policy’[...]”³⁸²

Zhimin Chen is another author supporting the recurrent idea of *the century of humiliation*.

According to Catherine Ashton, sovereignty is a necessary principle due to the following reason: “[...] every country deserves respect, and the chance to decide its own destiny”.³⁸³

II.1.3 Recent evolution of the notion of sovereignty: ius cogens and the responsibility to protect (R2P)

Ius cogens is a notion included in the Vienna Convention on the law of the treaties (VCLT):

“Article 53. TREATIES CONFLICTING WITH A PEREMPTORY NORM OF GENERAL INTERNATIONAL LAW (“JUS COGENS”)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”³⁸⁴

Since its inclusion in the said Convention, it has been the cause of dispute.

Is ius cogens a source of international law? Ricardo Abello-Galvis considers that, in the formal sense, it is not:

“In this regard, Michel Virally maintains that it is statutory law, and with this purpose he distinguishes it from natural law, as he states that ‘this one evolves according to the social and historical situation of the international Society and the modifications concerning political, ethical and ideological notions. In other words, jus cogens rules are rules of statutory law.’ Nevertheless, does this mean that it is a source of international law? Accordingly, we believe that jus cogens rules are a ranking order about certain rules and not sources of law in the formal sense. Therefore we consider that N’Guyen, Pellet and Dallier are right as they maintain that ‘by no means are they a new category of formal

³⁸² Ibid.

³⁸³ ASHTON, C., op. cit., p. 2.

³⁸⁴ “Vienna Convention on the law of treaties (with annex)”, op. cit., p. 344.

source of international law', but they are a ranking order between mandatory rules and the rest [...]"³⁸⁵

Now that we know the nature of the said rules as ranking orders, let us analyze its practical application. Daniel John Rafferty states that the European Court of Human Rights deals with the jus cogens in a straight way:

"[Several] courts have directly referred [...] to the concept of jus cogens. The European Court of Human Rights in *Al-Adsani* [...] chose to refer to the prohibition on torture as having evolved into a peremptory norm of jus cogens that enjoys a higher rank in the international hierarchy than treaty or custom. Although we may be able to conclude with relative certainty that the prohibition on torture is a norm of jus cogens, there is growing controversy about whether jus cogens norms, such as the prohibition on torture, are capable of having practical effect in cases concerning jurisdictional immunity."³⁸⁶

Also regarding the applicability of jus cogens rules, according to Andrea Bianchi

"Jus cogens may not sweep everything away when applied to a case. It may not be applied regardless of context and policy. There must be limits. And yet it would be a defeat for the international community to get rid of the concept altogether, reneging on the difficult but ultimately successful building up of communitarian values. The inderogability paradigm and its mechanical application may bring about anti-systemic effects and eventually jeopardize even the role that jus cogens may play in its symbolic dimension. The solution once again lies in purposeful interpretation. Rather than focussing on the hierarchical superiority of the rule and its mechanical application, regard should be had to implementing effectively its underlying values, taking context duly into account. The way in which the ILC has envisaged the consequences of a serious violation of a peremptory norm of international law seems to be inspired by such considerations [...]"³⁸⁷

According to Erika de Wet

"Practice has illustrated that the recognition of the peremptory status of a particular norm is no guarantee for effective enforcement of the norm and the values it represents. It also remains unclear if and to what extent peremptory norms can provide protection beyond what is also guaranteed by ordinary customary and/ or treaty law. It is therefore fair to conclude that the jury is still out on whether increased recognition of human rights norms

³⁸⁵ ABELLO-GALVIS, R., "Introducción al estudio de las normas de ius cogens en el seno de la Comisión de Derecho Internacional, CDI", *Vniversitas*, núm. 123, julio-diciembre, 2011, pp. 75-104, pp. 91-92, Pontificia Universidad Javeriana, Bogotá, Colombia, available at <https://www.unav.edu/publicaciones/revistas/index.php/anuario-esp-dcho-internacional/article/view/2534>, last visited on 24/03/2018.

³⁸⁶ RAFFERTY, D., "Constitutionalism in International Law: The Limits of Jus Cogens", Doctoral Thesis, University of Pretoria, pp. 31-32, available at <https://repository.up.ac.za/bitstream/handle/2263/27395/dissertation.pdf;sequence=1>, last visited on 24/03/2017.

³⁸⁷ BIANCHI, A., "Human Rights and the Magic of Jus Cogens", *The European Journal of International Law*, Vol. 19, 2008, no. 3, 491-508, p. 504, available at <http://www.ejil.org/pdfs/19/3/1625.pdf>, last visited on 24/03/2017.

as peremptory norms in international law is bound to enhance their effective enforcement internationally and domestically.”³⁸⁸

According to Thomas Kleinlein, in spite of the disappointing effectiveness of the jus cogens

“In any case, when extending the impact of jus cogens beyond the law of treaties, we should not lose sight of the original main purpose of Article 53 VCLT. It was conceived as a tool in the hands of poor, underdeveloped and neglected states to avoid being trapped by a formal consent extorted from them by more powerful states, to a treaty contrary to the fundamental basis of the contemporary international society. In short, thinking outside the jus cogens box could be preferable to opening the Pandora’s Box that once contained the jus cogens concept.”³⁸⁹

Regarding the limitation of jus cogens to the law of treaties, Antônio Augusto Cançado Trindade submits that

“The concept of jus cogens is in fact not limited to the law of treaties, and is likewise proper to the law of the international responsibility of the States. The Articles on the Responsibility of the States, adopted by the ILC of the United Nations in 2001, bear witness of this fact. Among the passages of such Articles and their comments which refer expressly to jus cogens, there is one in which it is affirmed that ‘various tribunals, national and international, have affirmed the idea of peremptory norms in contexts not limited to the validity of treaties’”³⁹⁰

We summarize the main above-mentioned features: it is doubtful whether they could have “practical effect in cases concerning jurisdictional immunity”; its application is not unlimited and should always regard its purpose; it is unclear whether human rights can be implemented both internationally and domestically; “the State is not the proper subject of prosecution”; it was conceived as a tool for poor and weak states; “jus cogens is in fact not limited to the law of treaties”. As we see, among the scholarship there are opposed opinions regarding jus cogens.

Concerning our topic, there are several civil claims against China which have been dismissed by foreign courts in cases regarding jus cogens. Some examples, quoted by Thomas Weatherall:

³⁸⁸ DE WET, E., “Jus Cogens and Obligations Erga Omnes”, in Dinah Shelton (ed), *Oxford Handbook on Human Rights* (OUP, 2013 forthcoming), p. 20, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2279563, last visited on 24/03/2017.

³⁸⁹ KLEINLEIN, T., “Jus Cogens as the ‘Highest Law’? Peremptory Norms and Legal Hierarchies”, *Netherlands Yearbook of International Law*, no. 46, 2015, 173–210, p. 204, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2923974, last visited on 24/03/2017.

³⁹⁰ CANÇADO TRINDADE, A. A., “Jus Cogens: The Determination And The Gradual Expansion Of Its Material Content In Contemporary International Case-Law”, p. 10, available at <http://www.oas.org/dil/esp/3%20-%20cancado.lr.cv.3-30.pdf>, last visited on 24/03/2017.

“Fang v. Jiang, [2007] NZAR 420 (HC) (NZ) (dismissing civil claims against former members of Chinese government for jus cogens violations).

Zhang v. Zemin, [2010] NSWCA 255 (Austl.) (dismissing civil claim for jus cogens violations against former President of China).”³⁹¹

Florabel Quispe Remón, about jus cogens, submits that

“[...] scholars don’t have a unitary vision about jus cogens, most of them are in favor of jus cogens, its development and its importance and the existence of a minimum consensus about the essential values of the international community, which limit State’s power, and other are against them due to the fact that it lacks clarity about its content [...] They are rules which will be imposed over the sovereign will of the State. Being a peremptory norm doesn’t mean that all States will assume such condition. [...] They place erga omnes obligations upon States and it is not restricted to the regional scope. [...] The said situation places it on top of the international legal order.”³⁹²

Hence, Florabel Quispe Remón is much more optimistic than the previous authors, as she has no doubt of the erga omnes effects of jus cogens.

According to Sevrine Knuchel

“The opacity of state practice is also due to the sensitivity of the questions at stake: often, legal decisions regarding state immunity yield to considerations of foreign relations and policy, so as to maintain friendly relations with the foreign sovereign. Against this backdrop, the adoption, in 2004, of the United Nations Convention on Jurisdictional Immunities of States and Their Property (JISP Convention) appeared as a major step towards enhanced legal certainty in this area of law. Designed to achieve “the codification and development of international law and the harmonization of practice in this area,” the JISP Convention embraces the restrictive approach to state immunity. While it has not yet entered into force, it seems likely that the 30 ratifications necessary to bring it into effect will soon be achieved. The support already demonstrated for this instrument by states which traditionally favored absolute immunity in the past, such as Russia and China, indicates how custom has evolved in this area and demonstrates that the JISP Convention can be expected to establish a universal standard for the treatment of state immunity by individual national legal systems.”³⁹³

The above-mentioned opinion is very optimistic. The fact is that the law was approved in 2004, but as we consulted the United Nations Treaty Collection, it

³⁹¹ WEATHERALL, T., “Jus cogens and sovereign immunity: reconciling divergence in contemporary jurisprudence”, *Georgetown Journal of International Law*, 2015, 46, pp. 1151-1212, p. 1198, available at https://heinonline-org.uma.debiblio.com/HOL/Page?public=true&handle=hein.journals/geojintl46&div=41&start_page=1151&collection=journals&set_as_cursor=0&men_tab=srchresults, last visited on 24/03/2017.

³⁹² QUISPE REMÓN, F., “Las normas de ius cogens...”, p. 147.

³⁹³ KNUCHEL, S., “State Immunity And The Promise Of Jus Cogens”, *Northwestern Journal of International Human Rights*, Vol. 9, 2011, no. 2, pp. 149-183, p. 151, available at <https://scholarlycommons.law.northwestern.edu/njihr/vol9/iss2/2>, last visited on 24/03/2017.

offer the following situation: the “United Nations Convention on Jurisdictional Immunities of States and Their Property”, “status as of: 01-04-2018 05:01:53 EDT”, 14 years after it was approved, the status is “Not yet in force”.

Sevrine Knuchel, regarding jus cogens and universal jurisdiction, adds that

“State immunity has also come to be challenged on the grounds that it is incompatible with the principle of universal jurisdiction associated with jus cogens violations. As peremptory norms are a matter of concern to all states, every state has an interest in repressing their violations. Therefore, international law has come to recognize that states could lawfully exercise jurisdiction over these violations even without territorial or nationality linkage. Historically, states relied on this notion to assert jurisdiction over crimes like piracy which occur on the high sea. For the safeguard of the interests of the international community, it is argued that states should be able to exercise the prerogative of universal jurisdiction over breaches of jus cogens committed by another state or its officials.”³⁹⁴

According to the above-mentioned paragraph, states and their officials can be liable for their breaches of jus cogens. Moreover, according to the above-mentioned statement by Sevrine Knuchel regarding peremptory norms, “every state has an interest in repressing their violations”.

According to Tawhida Ahmed and Israel de Jesús Butler:

“The first reference to human rights in one of the Community treaties was the Single European Act, 1986 in its preamble (OJ 1987 L 169/1).”³⁹⁵

According to the above-mentioned Single European Act

“DETERMINED to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice [...]”³⁹⁶

The precedents of the EU were in support of human rights. But then another question arises: to what extent is the EU obliged to respect human rights? According to Tawhida Ahmed and Israel de Jesús Butler

“While the question whether the EU is bound by the provisions of international human rights law directly has received consideration, most scholarship tends to focus on the extent

³⁹⁴ KNUCHEL, S., op. cit., p. 169.

³⁹⁵ AHMED, T. and BUTLER, I., “The European Union and Human Rights: An International Law Perspective”, *The European Journal of International Law*, Vol. 17 no. 4, Vol. 17, 2006, No. 4, pp. 771–801, p. 771, doi: 10.1093/ejil/chl029, available at <http://www.ejil.org/pdfs/17/4/99.pdf>, last visited on 24/03/2017.

³⁹⁶ Single European Act, 29.6.87 Official Journal of the European Communities No L 169, p. 2, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11986U/TXT&from=EN>, last visited on 04/05/2019.

to which the EU is bound to respect human rights by virtue of its internal rules. Where international law is discussed it is largely confined to the ECHR and the extent to which its provisions form part of the EU's internal legal order (via 'general principles of law' and Article 6 TEU) and the legal weight of the Charter of Fundamental Rights, rather than by virtue of any obligations which might be incumbent on the EU directly under international law.³⁹⁷

Finally, Tawhida Ahmed and Israel de Jesús Butler conclude that

“[i]f it is possible to accept that the EU is under direct obligations as a result of international law, one still has to consider the issue of enforcement. As noted above, currently the ECtHR and other monitoring bodies, such as the UN Human Rights Committee have no jurisdiction to hear claims against the EU as such, but only against Member States. This may be resolved if the relevant part of the constitutional treaty acquires legal force allowing the EU to accede to the ECHR. At the same time, it is clear that the CFI is willing to contemplate violations of international law by the EU as grounds for review under Articles 230 and 234. Unfortunately though, such an approach might be hampered by the ECJ's apparent reluctance to rely on human rights treaties beyond the ECHR. Might the ECJ, the font of human rights protection within the EU, be willing to lead further development in the EU's approach to human rights protection beyond mere respect for the 'general principles'?”³⁹⁸

Hence, the EU supports human rights, but the ECJ would not recognize human rights beyond the ECHR. Therefore, it could be said, that human rights are not so universal.

In respect of sovereignty and international law, according to Eugen Kontorovich

“International law regards criminal jurisdiction as a prerogative of sovereign states. As a result, the traditional limits on national criminal jurisdiction are largely coextensive with the contours of Westphalian sovereignty. States have what is known as territorial jurisdiction over offenses committed within their borders. The territorial principle encompasses extraterritorial conduct designed to cause harm within the forum states. States also have jurisdiction over offenses committed by their nationals abroad even if the conduct is lawful in the place it occurs.”³⁹⁹

According to the above-mentioned paragraph, state sovereignty and international law (pursuing individuals, in use of extraterritoriality) are incompatible.

³⁹⁷ AHMED T. and BUTLER, I., op. cit., p. 776.

³⁹⁸ Id., p. 801.

³⁹⁹ KONTOROVIC, E., “The Inefficiency Of Universal Jurisdiction”, *University Of Illinois Law Review*, 2007, pp. 389-418, p. 393, available at <https://www.illinoislawreview.org/wp-content/ilr-content/articles/2008/1/Kontorovich.pdf>, last visited on 24/03/2017.

According to Paul Verhoeven

“The danger for international law is not that it will lose its systemic character, but that it will be reduced to norms that are only concerned with upholding its systemic character, i.e. merely containing norms solving problems between conflicting sub-regimes. As a result, international law will become a value-barren desert and loses its legitimacy as a tool to foster cooperation and coexistence at the international level, which implies a minimum of universally accepted norms. Thus, there is a need to have a mechanism that while respecting the principle of *lex specialis*, limits its operation as not to affect the basic, commonly shared values and interests. Therefore, it is not unremarkable that together with highlighting the fragmentation of international law, more importance is attached to norms reflecting the basic values of the international community, binding upon all States, and that an increasing scholarly voice on the constitutionalization of international law has grown.”⁴⁰⁰

However, given all the said legal background, such a solution will be difficult.

According to Armin von Bogdandy

“The last challenge moves human rights to the core of the supranational order in yet another way, by attributing to human rights a founding function for the entire legal order. The very idea is to give the process of constitutionalization of European law a new dimension. This thesis requires that the essence of constitutionalization be reconsidered. The process of constitutionalizing the founding Treaties began by imposing a constitutional type of relationship between the supranational order and the national legal orders, mostly through direct applicability and supremacy.”⁴⁰¹

Regarding this issue, Armin von Bogdandy deepens the above-mentioned reasoning:

“Not only secondary law will be affected, but the institutional law of the European Union, too. Major changes in Union law must occur if it is to change into a legal order that places human rights or the citizen at its center.”⁴⁰²

The aim is the constitutionalization of international law; regarding the EU, Armin Bogdandy foresees the dramatic changes to come to the legislation of the EU.

⁴⁰⁰ VERHOEVEN, S., *Norms Of Jus Cogens In International Law A Positivist And Constitutionalist Approach*, Doctoral Thesis, University of Leuven, Law Faculty, 2011, p. 215, available at <https://lirias.kuleuven.be/bitstream/123456789/350295/1/Norms+of+Jus+Cogens.pdf>, last visited on 26/03/2017.

⁴⁰¹ VON BOGDANDY, A., “The European Union as a human rights organization? Human rights and the core of the European Union”, *Common Market Law Review*, no. 37, 2000, pp. 1307–1338, p. 1333, available at <https://www.kluwerlawonline.com/abstract.php?area=Journals&id=315870>, last visited on 26/03/2017.

⁴⁰² *Id.*, p. 1336.

One of the effects of the changes in the traditional notion of sovereignty is the creation of the Responsibility to protect (R2P). Let us analyze the precedents and consequences for the creation of this concept. At the United Nations General Assemblies in 1999 and in 2000, Secretary General Kofi Annan, on the occasion of the massacres of Ruanda and Srebrenica, implored to “forge unity”:

“[...] if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Ruanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?”⁴⁰³

In response to the above-mentioned plea, the Canadian Government, along with a group of relevant foundations, announced at the General Assembly in September 2000 the creation of the International Commission on Intervention and State Sovereignty (ICISS). In the report, the Commission maintained that

“Our Commission was asked to wrestle with the whole range of questions – legal, moral, operational and political – rolled up in this debate, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground.”⁴⁰⁴

The result of the above-mentioned commitment was the creation of the R2P as a new legal institution.

According to the Report issued by the ICISS, sovereignty is necessary, but it is not unrestricted. The exercise of sovereignty is limited by a double restriction: the first one, externally, i.e. each state has to respect the sovereignty of other states; the second one, internally, this is to say, to respect the dignity and human rights of all the human beings within the State. As a result of the ICISS Report, the said double restriction is respected in international law.

According to the report, there is a transformation (“re-characterization”) affecting sovereignty. The ICISS determines the threefold meaning of sovereignty:

“There is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved: from sovereignty as control to sovereignty as responsibility in both internal functions and external duties. Thinking of sovereignty as responsibility, in a way that is being increasingly recognized in state practice, has a threefold significance. First, it implies that the state authorities are responsible for the functions of protecting the

⁴⁰³ ICISS, The responsibility to protect, Report of the International Commission on Intervention and State Responsibility, Published by the International Development Research Centre PO Box 8500, Ottawa, ON, Canada K1G 3H9 <http://www.idrc.ca>, © HER MAJESTY THE QUEEN IN RIGHT OF CANADA 2001 as represented by the Minister of Foreign Affairs, National Library of Canada cataloguing in publication data, p. VII, available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf>, last visited on 27/02/2017.

⁴⁰⁴ Ibid.

safety and lives of citizens and promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN. And thirdly, it means that the agents of state are responsible for their actions; that is to say, they are accountable for their acts of commission and omission. The case for thinking of sovereignty in these terms is strengthened by the ever-increasing impact of international human rights norms, and the increasing impact in international discourse of the concept of human security.”⁴⁰⁵

The key issue in the above-mentioned paragraph is the following sentence: “from sovereignty as control to sovereignty as responsibility”. Maybe this phrase represents the original core of the asymmetry regarding sovereignty. Sovereignty as control is what does a country which does not forget the humiliation suffered for a century; therefore, China constantly regards its territory as the kern of sovereignty. Meanwhile, sovereignty as responsibility is what does an international association convinced that human rights are sacred, and therefore must be respected. The EU practices this position nowadays, but it nearly does not practice sovereignty as control; therefore, this is an expansive view of sovereignty: it could be exerted wherever needed (R2P). However, the above-mentioned original situations are changing and approaching each other, as we will analyze afterwards.

R2P, according to Andrew Garwood-Gowers, has the following connotations:

“R2P first appeared in a 2001 report by the International Commission on Intervention and State Sovereignty (ICISS), a body set up by the Canadian government to consider how the international community should address intra-state humanitarian crises. However, after the initial concept proved contentious a modified version of R2P – labelled “R2P-lite” by one commentator – was unanimously endorsed by states at the 2005 World Summit. In its current form R2P consists of three mutually reinforcing pillars. The first is that each state has a responsibility to protect its populations from the four mass atrocity crimes (genocide, war crimes, crimes against humanity and ethnic cleansing). Pillar two stipulates that the international community should encourage and assist states in fulfilling their pillar one duties. Finally, pillar three provides that if a state is manifestly failing to protect its populations the international community is prepared to take collective action in a timely and decisive manner on a case-by-case basis, in accordance with Chapter VII of the UN Charter.”⁴⁰⁶

Alex J. Bellamy submits that the three pillars are inextricably intertwined:

⁴⁰⁵ Id., p. 13.

⁴⁰⁶ GARWOOD-GOWERS, A., “China and the Responsibility to Protect”, *Peacekeeping Challenges and the Responsibility to Protect (R2P)*, May 31, 2016, Sustainable Security, a project of Oxford Research Group, available at <https://www.oxfordresearchgroup.org.uk/Blog/china-and-the-responsibility-to-protect>, last visited on 27/02/2017.

“Conceptually, the three pillars of RtoP are so intertwined as to make sequencing impossible in practice. States are supported in their efforts to fulfill the first pillar by both pillar two and those elements of the third pillar which relate to assisting ‘states under stress’ before they reach the point of ‘manifest failure’.”⁴⁰⁷

However China has issued the Responsible Protection (RP), based on the first two pillars of R2P. According to Caterina García-Segura, on pillar three, the Chinese doctrine of RP applies a much more restricted approach than the R2P Western one. She adds that BRICS have played a considerable role, defending sovereignty and non-intervention; this way, they have gained the status of international norm-shapers. Caterina García-Segura states that Chinese leaders never opposed R2P openly. She maintains that even in the occasion of humanitarian crisis, it refused to support certain resolutions of the Security Council, but always on the base of International Law and for realistic reasons. Chinese policy efforts, she submits, always had the aim to avoid using R2P with a view to enforcement.⁴⁰⁸

Caterina García-Segura considers that the Chinese relation with the R2P can be sequenced in three phases:⁴⁰⁹

1. Opposition phase (2001-2005): Beijing feared that the West could use R2P as an alibi for interventions.
2. Cautious acceptance (2005-2011): China expressed its support, but in the praxis, it was more restrained.
3. From an apparent flexible support to return to more rigidity (2011-2012): this phase coincided with Libyan and Syrian crisis.

RP, which is the Chinese version of R2P, consists of six aspects:⁴¹⁰

- The goal of RP is the protection of people
- Governments are the only institutions entitled to protect their citizens; failing this, only the Security Council will be entitled to do so
- Military protection resources will be strictly limited and will be applicable only after having tried all political and diplomatic means

⁴⁰⁷ BELLAMY, A., “The Three Pillars of the Responsibility to Protect”, *Pensamiento Propio* 41, Coordinadora Regional de Investigaciones Económicas y Sociales (CRIES), pp. 35-64, p. 53, available at <http://www.cries.org/wp-content/uploads/2015/09/006-bellamy.pdf>, last visited on 18/03/2017.

⁴⁰⁸ GARCÍA-SEGURA, C., op. cit., “Westfalia, Worldfalia, Eastfalia. El impacto de...”, pp. 65-66.

⁴⁰⁹ Id., pp. 66-67.

⁴¹⁰ Id., pp. 67-68.

- The aim of the protection has to be determined (to relieve an humanitarian crisis) and no major problems should be caused, and it should not be taken as an excuse to overthrow governments
- Protecting states, which are liable for the post-intervention
- UN must establish scrutiny, evaluation and accountability, in order to ensure the efficacy of RP

Regarding China's attitude about R2P, Andrew Garwood-Gowers states that

"China's traditional insistence on a strict interpretation of sovereignty and non-intervention has made it uncomfortable with the coercive, non-consensual aspects of R2P's third pillar. As a result, Beijing has consistently emphasised the primacy of pillars one and two, while downplaying the scope for pillar three action."⁴¹¹

Ruan Zongze criticizes the R2P as a Western idea, and proposes the Responsible Protection as a superior concept:

"Since the mid-1990s, the West has dished out one after another such theories as 'humanitarian intervention', 'the supremacy of human rights over sovereignty' and 'exceptions to non-interference in internal affairs' in an attempt to provide grounds for interfering in internal affairs of other countries. The advocates of such theories allege that armed intervention is a 'moral responsibility' and 'just war' so long as it is out of 'humanitarian purposes'.

The humanitarian catastrophes happened in Rwanda, Somalia, Bosnia and other places prompted people especially politicians to re-consider such issues as the 'inviolability of state sovereignty' and 'which is more important between human rights and sovereignty'. The 'responsibility to protect', which came into being in the course of massacres in Rwanda and other places, became a prop to the 'humanitarian intervention' theory. But unfortunately this notion has, in the almost ten years since its formulation and in its application in the Libyan War, become a synonym of 'regime change' and constituted severe challenges to the traditional concept of 'state sovereignty' and such principles as 'non-interference in other's internal affairs'."⁴¹²

The most significant point of the above-mentioned paragraph is that it considers R2P as "an attempt to provide grounds for interfering in internal affairs of other countries". Here we encounter a further example of how EU's and China's notions of sovereignty collide with each other.

According to Ruan Zongze

⁴¹¹ GARWOOD-GOWERS, A., op. cit. "China and the Responsibility to ..."

⁴¹² RUAN, Z., "Responsible Protection: Building a Safer World", *China Institute of International Studies (CIIS)*, Time: Jun 15, 2012, Editor: 姜志达 [Jiang Zhida], available at http://www.ciis.org.cn/english/2012-06/15/content_5090912.htm, last visited on 28/02/2017.

“Today, China has become a leading actor on the international stage thanks to the fast growth of its strength. China needs to get acclimatized to the new environment of being under the spotlight and likewise the international community has to familiarize with this new actor of China. China must have the courage to speak out and contribute its ideas to the world even though it means China will face with more difficult and complicated options in addressing and handling diverse and complex international affairs. The idea of “responsible protection” is an endeavor made by China in actively participating in the solution of hotspot issues and in building a just and reasonable new international political order. China shall continue to undertake its due responsibilities in upholding, together with the vast developing countries, the purposes of the UN Charter and the basic norms governing international relations.”⁴¹³

An analysis of the above-mentioned opinion is appropriate. The most relevant aspects of the above-mentioned opinion by Ruan Zongze are the following ones:

1. Ruan Zongze mentions about China “the fast growth of its strength”. He mentions one of the main causes of China’s growth, i.e. its strength, which grows *fast*. This idea is on the same line as the ones by Kishor Mahbubani.⁴¹⁴
2. Regarding EU’s and China’s roles as world players, Ruan Zongze states that they have to “get acclimatized” and “familiarize” to each other. But Zhongqi Pan, in his analysis of the conceptual gap of sovereignty (with which we deal deeply in the part dedicated to the reconfiguration of sovereignty) is more pessimistic than Ruan Zongze. Zhongqi Pan only mentions such recommendation in the third place: “Mutual avoidance”, “Mutual assurance” and “Mutual accommodation”.⁴¹⁵
3. China is not any longer a mere international order taker, but an international order shaper. There are three points that we find remarkable:
 - a. Ruan Zongze uses the word “endeavor” to refer to the action undertaken by China in order to create the responsible protection. This is probably one of the first times China shows its new stance as an order shaper. This aspect is supported by Manuel Montobbio, who considers that international order shouldn’t be ethnocentrically oriented, and should receive multicultural influences.⁴¹⁶

⁴¹³ Ibid.

⁴¹⁴ MAHBUBANI, K., op. cit.

⁴¹⁵ PAN, Z., op. cit., “Managing the conceptual gap on...”, p. 241.

⁴¹⁶ MONTOBBIO, M., op. cit. “Tianxia, teoría de...”, p. 244.

- b. Ruan Zongze states that China is “together with the vast developing countries”, i.e. the BRICS. This shows that China supports a multipolar world
- c. Ruan Zongze maintains that China should carry on its responsibilities supporting UN Charter and international law. As stated by Caterina García-Segura,⁴¹⁷ China supports international legality.

Regarding the above-mentioned Ruan Zongze and the Responsible Protection, Andrew Garwood-Gowers submits that

“China’s contribution to the post-Libya debate over R2P’s third pillar is less widely documented than Brazil’s efforts. In mid-2012 the notion of ‘Responsible Protection’ was floated by Ruan Zongze, the Vice President of the China Institute for International Studies (CIIS), which is the official think tank of China’s Ministry of Foreign Affairs. Although China has not explicitly adopted the concept as a formal policy statement on R2P, its implicit endorsement means it can be described as a ‘semi-official’ initiative.”⁴¹⁸

Ruan Zongze enumerates the six points of RP, a notion coined by him in respect of the Syrian crisis:

“The Syrian crisis is at crossroads at present. China is opposed to any one carrying out intervention in Syria’s internal affairs in the name of ‘humanitarianism’. Hence, it is necessary for China to propose in time the idea of ‘responsible protection’ or ‘RP’ to contribute its public goods to the international community. The basic elements of this idea are specified as follows:

First, the object of RP must be made clear. Of course, it is the people of the target country and peace and stability of the relevant region. The objects of protection must be the innocent people, not specific political parties or armed forces. Only such kind of protection is rightful and well-intentioned and is protection in its true sense.

Second, the legitimacy of the ‘protection’ executors must be established. The government of a given state bears the primary responsibility of protecting its citizens. Besides that, the UN Security Council is the only legitimate actor to perform this duty while no countries have such a right, let alone the legal status to do so.

Third, the means of ‘protection’ must be strictly limited. The prerequisite for invoking protection should be exhaustion of diplomatic and political means of solution. Non-military means like diplomatic efforts, though time-consuming, produce long-lasting results with lesser side effects. On the contrary, using military force at every turn would not only cause huge civilian casualties but also bring severe damage to infrastructure and downturn of national economy in the country or region to be ‘protected’, eventually aggravating humanitarian disasters and plunging the object of ‘protection’ into protracted and distressful post-crisis reconstruction.

⁴¹⁷ GARCÍA-SEGURA, C., op. cit. “Westfalia, Worldfalia, Eastfalia. El impacto de...”, p. 66.

⁴¹⁸ GARWOOD-GOWERS, A., op. cit. “China and the Responsibility to ...”

Fourth, the purpose of ‘protection’ must be defined. Just as doctors should not kill patients by means of treatment, the purpose of protection must be to mitigate humanitarian catastrophe. It is absolutely forbidden to create greater humanitarian [sic] disasters because of protection, let alone to use protection [sic] as a means to overthrow the government of a given state.

Fifth, the ‘protectors’ should be responsible for the post-‘intervention’ and post-‘protection’ reconstruction of the state concerned. They should absolutely not smash and go, leaving a terrible mess to the country and people subject to ‘protection’.

Sixth, the United Nations should establish mechanisms of supervision, outcome evaluation and post factum accountability to ensure the means, process, scope and results of ‘protection’.

In short, the idea of RP better embodies the purposes and principles of the UN Charter as well as the basic norms governing international relations, better conforms to the trends of peace and development of the present-day world, and is more conducive to building a just and reasonable new international order. Moreover, this idea is broadly based internationally.”⁴¹⁹

In this regard, two remarks on the previous statements:

1. In the third element Ruan Zongze makes a comparison between Western “using military force” and Chinese “non-military means”, very similar to the differences between Western medicine and Chinese traditional medicine, the way many Chinese and even Europeans see it. The said scholar states that while Western intervention, among other effects, would “bring severe damage”, and wouldn’t ease the situation, the Chinese way would be “time-consuming”, but would “produce long-lasting results with lesser side effects”. For the “distressful post-crisis reconstruction” caused by the Western means, the said author applies two adjectives common in medicine: “protracted and distressful”. His view, apparently, prioritizes not to cause further damages, and hopefully to solve the critical situation by peaceful means. In fact, in the fourth element he maintains that “[...] Just as doctors should not kill patients by means of treatment”
2. UN should take part in the post-intervention proceedings. China often refers to the UN and the international legality, as means to solve international conflicts.

Regarding the very Ruan Zongze’s idea, Sarah Teitt submits that

⁴¹⁹ RUAN, Zongze, op. cit., “Responsible Protection: Building a ...”

“Ruan Zongze’s “responsible protection” (RP) proposal is perhaps the most prominent example of what Chinese analysts deem ‘constructive engagement’ with the R2P agenda. Ruan presented RP as a proposal to help “make humanitarian interventions more acceptable” by providing criteria to guide UNSC decision-making on military intervention, and to ensure that the UNSC retains oversight and accountability on any future coercive action it authorises.”⁴²⁰

Andrew Garwood-Gowers justifies why he considers the RP is China’s semi-official vision of the R2P:

“Although it has not yet been formally adopted as official Chinese policy, there are several reasons to believe that RP represents Beijing’s current thinking on R2P, or at least a very close approximation of its position. First, Ruan is the current Vice-President of the CIIS, which is the official think-tank of the Chinese Ministry of Foreign Affairs. The CIIS employs a number of retired diplomats and in recent years has played an increasingly important role in the development of Chinese foreign policy. Second, RP was promoted by the CIIS at a recent conference in Beijing in which representatives from other, predominantly BRICS states were invited to discuss the concept. This reflects the CIIS’s growing role in conducting “public diplomacy” on behalf of the Chinese Ministry of Foreign Affairs. Third, the term “responsible protection” has been used, albeit briefly, in speeches made by Chinese officials, suggesting that the RP concept has received a degree of official endorsement.”⁴²¹

Finally, Andrew Garwood-Gowers considers that, in spite of China’s initial refusal of R2P, after its own re-configuration:

“Beijing does recognise that non-consensual military intervention for humanitarian purposes can be an appropriate course of action for the international community to pursue, albeit within a very narrow range of circumstances.”⁴²²

Caterina García-Segura states that the creation of the responsible protection (RP) reflects the new roll of Asian players within the current normative consensus, challenging the Western leadership, while they upgrade their position from mere order-takers to order-shapers. The said author considers that RP is essential for China’s foreign policy, as it regards the essential cornerstones of its foreign policy: sovereignty and non-intervention.⁴²³

⁴²⁰ TEITT, S., “China and the Responsibility to Protect”, *AP R2P Brief*, Vol.6No.2 (2016), p. 8 available at https://r2pasiapacific.org/files/3032/r2pbrief_2016_china_and_r2p.pdf, last visited on 17/09/2019.

⁴²¹ GARWOOD-GOWERS, A., “China’s ‘Responsible Protection’ concept : re-interpreting the Responsibility to Protect (R2P) and military intervention for humanitarian purposes”, *Asian Journal of International Law*, Vol. 6, 2016, no. 1, pp. 89-118, p. 12, available at <http://eprints.qut.edu.au/75548/>, last visited on 27/02/2017.

⁴²² *Id.*, p. 28.

⁴²³ GARCÍA-SEGURA, C., op. cit., “Westfalia, Worldfalia, Eastfalia. El impacto de...”, p. 65.

Obviously, there is asymmetry in the respective EU and China views of the R2P and Responsible Protection; they don't even agree in the name of the notion.

Furthermore, according to Andrew Garwood-Gowers, the EU, regarding R2P, lacks unity:

“Even among strong supporters of the concept distinct interpretations are evident. For instance, the UK and France continue to view R2P as a close relation of the doctrine of humanitarian intervention, thereby placing strong emphasis on R2P's military dimension. In contrast, Germany's history and strategic culture mean it remains far less comfortable with the use of force as a protection strategy, preferring instead to highlight R2P's non-forcible, preventive elements. As a recent in-depth study concluded, ‘major European governments and therefore the EU have never had a truly consensual position on R2P’.”⁴²⁴

Analyzing the above-mentioned paragraph we find, as well as in other parts of our work, that the EU, in its relations with China, suffers a double asymmetry: the first one is the external one, i.e. the asymmetry with China; the second one is the internal asymmetry, which is the recurrent “lack of unity” predicament.

While the EU does not have united criteria regarding R2P, the BRICS and other emerging states are gaining what could be considered as “norm shaping momentum”. Good examples of this are China's Responsible Protection or Brazil's Responsibility while Protecting.⁴²⁵

However, according to Oliver Stuenkel, there is still room for hope:

“Still, policy makers from around the world should recognize RP as an important and welcome contribution by China, and as an opportunity to engage with an actor that will inevitably play a key role in mass atrocity prevention in the coming decades. The deployment of the first Chinese infantry battalion to take part in a UN peacekeeping mission in South Sudan and China's offer to help the Iraqi government in its fight against the Islamic State underline a trend of China's more systematic international engagement.”⁴²⁶

⁴²⁴ GARWOOD-GOWERS, A., “R2P ten years after the World Summit: Explaining ongoing contestation over Pillar III”, *Global Responsibility to Protect*, 7, 3 - 4, Copyright 2015 Brill, 2015, pp. 300-324, p. 311, available at <http://eprints.qut.edu.au/87320/>, last visited on 27/02/2017.

⁴²⁵ Ibid.

⁴²⁶ STUENKEL, O., “Responsible Protection: Chinese norm entrepreneurship?”, *Post-Western World*, 24 Jan. 2015, available at <http://www.postwesternworld.com/2015/01/24/responsible-protection-entrepreneurship/>, last visited on 27/02/2017.

II.1.4 The elements of the State and the State as an element. Multilateralism and multipolarism

Before delving into this part of the analysis, we would like to make clear that, given the fact that the EU is not a State but China is such, there is no lowest common denominator between both elements. However, theoretically the EU tends to have a centripetal force (the integration process) and nowadays it even has a legal entity. Therefore, the axe of this comparison will be the State.

Traditionally, the appertaining components of the State have been the following ones:

- a) Territory: it is the spatial base on which the States' competences are exerted.

This element has two features:

- a. This space has to be steady and determined, with stable borders
 - b. The territory has a triple reality:
 - i. the land
 - ii. the maritime space adjacent to the land and subject to the State sovereignty
 - iii. the airspace or air mass above the above-mentioned spaces
- b) Population: personal element on which certain State competences are exerted, which indicates the link between the State and a number of individuals
- c) Political organization: it is the power suitable to assure the functions of the State both in the internal and international order.

The predecessor of the European Union in its relation with the People's Republic of China was not Europe, because continents do not have legal personality, but each and one of the EU member states, in their individual relations (or lack of it) with the PRC before the creation of the EU. The predecessor of the PRC regarding its relation with the EU was the Republic of China (1912-1949) and before 1912, Imperial China.

Regarding the symmetry-symmetry of the EU-China relations, before the PRC, the above-mentioned elements had the following situation:

- a) Territory: the territories of European countries changed considerably in the last century. On the times of the Opium Wars and the rest of the XIX century and till the proclamation of the PRC, the Chinese territory was very unstable, first of all due to its own changes, and second due to the invasions

by Western countries, which represented an effective deprivation of sovereignty for China.

- b) Population: China is the most populated country in the world. Its population has increased hugely.⁴²⁷
- c) Political organization: during the XIX century and the first half of the XX century, European countries suffered many changes, but China, during that period suffered a complete lack of leadership, and Western countries took advantage of this circumstance. Western countries were the uncontested hegemony in their relations with China. Undoubtedly, on those days there was an evident asymmetry between both sides, in favor of the Western States. Nowadays tables have turned, in favor of China.

Since the proclamation of the People's Republic of China, the situation of the said three elements of a State has been as follows:

- a) Territory: The area of the EU and China are very different:
 - EU: 4.238.213 km² ⁴²⁸
 - PRC: 9.388.211 km² ⁴²⁹

The PRC area is more than twice the one of the EU.

- b) Population: this factor has gone through migrations and fast population growth. Nowadays, it may well have effects regarding the EU-China relations. The population of the EU is roughly 510,100,000 inhabitants, while Chinese population is 1,384,898,932.⁴³⁰ The difference in population is huge.
- c) Political organization: the People's Republic of China was proclaimed on October 1st 1949. On December 13th 2007 was signed the Treaty on European Union (TEU) which in its Article 47 explicitly recognises the legal personality of the European Union, making it an independent entity in

⁴²⁷ Issues and Trends in China's Demographic History, 2009 Asia for Educators, Columbia University, available at <http://afe.easia.columbia.edu>, last visited on 25/03/2017. "[China's] population has doubled over the past 50 years [...]".

⁴²⁸ Land area of the European Union, Trading Economics, 2016, available at <https://tradingeconomics.com/european-union/land-area-sq-km-wb-data.html>, last visited on 07/06/2019.

⁴²⁹ Land area of China, Trading Economics, 2016, available at <https://tradingeconomics.com/china/land-area-sq-km-wb-data.html>, last visited on 07/06/2019.

⁴³⁰ Worldometers, Population of China, available at <http://www.worldometers.info/world-population/china-population/>, last visited on 27/03/2017.

its own right: “The Union shall have legal personality.”⁴³¹ There is an evident asymmetry regarding this point: while the PRC has only one President, one Government and the rest of national institutions are unified, in the EU there is an obvious lack of integration, and it only recently gained legal personality. Its leadership is founded on three institutions: the Commission, the Council and the Parliament.

International society is a social group in which political power is individually distributed; the State is the depositary of that decentralized body.

The Judge Max Huber, in the “Island of Palmas” arbitration award (1928) maintained that “Territorial sovereignty, as has already been said, involves the exclusive right to display the activities of a State.”⁴³² This way, sovereignty becomes a main quality of the State and a constitutional principle of the international order. Hence, three important conclusions can be withdrawn:

- a) Regarding its content, sovereignty is exclusive, within the competence of the State.
- b) Limitations to the State competences cannot be presumed. The Permanent Court of International Justice decided so in the Lotus case (1927); in an *obiturn dictum* about the function of International Law, stated that

“International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed”.⁴³³

- c) The idea of sovereignty has an important corollary: it established the duty of the sovereign State to avoid that from its territory occur damages towards a

⁴³¹ Consolidated Version Of The Treaty On European Union, Official Journal of the European Union, C/202, 7.6.2016, p. 41, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12016M/TXT&from=EN>, last visited on 18/09/2019.

⁴³² Quotation by RODRÍGUEZ CARRIÓN, A., op. cit., p. 73. Reports of International Arbitral Awards, Island of Palmas case (Netherlands, USA), 4 April 1928, Volume II pp. 829-871, available at http://legal.un.org/riaa/cases/vol_II/829-871.pdf, last visited on 27/03/2017.

⁴³³ Permanent Court of International Justice, SS Lotus Case, Judgement of September 7th, 1927, Series A.-No. 10 September 7th, 1927, p. 18, available at https://www.icj-cij.org/files/permanent-court-of-international-justice/serie_A/A_10/30_Lotus_Arret.pdf, last visited on 27/03/2017. Quotation by Alejandro Rodríguez Carrión, p. 73.

third State. In this regard the Court emitted the famous sentence in the case called The Strait of Corfú (1949).⁴³⁴

Independence, as a basic element of the international order, is the origin of two fundamental principles in current International Law:

1. In a positive abstraction, the principle of equal rights and self-determination of peoples.
2. In a negative abstraction, the principle related to the duty not to intervene in businesses which fall within the internal jurisdiction of other States.

According to the first principle, as it was expressed in the Statement contained in the Resolution adopted by the General Assembly of the United Nations 2625 (XXV):

“[...] all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.”⁴³⁵

A corollary of the said principle is the interdiction of interfering in other countries' internal businesses. This interdiction was exhaustively enunciated by the International Court of Justice in the above-mentioned case called the Strait of Corfú (1949).

Although such an interdiction is not expressly mentioned in the United Nations Charter but as an interdiction for the UN itself, it has been subject of subsequent mentions, which are outspoken, leaving no room for misinterpretation: the above-mentioned interdiction is a core element of the international legal order. The Resolution 2131 (XX) of the General Assembly of the United Nations, dated December 21st 1965, incorporating the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty.⁴³⁶ An even more exhaustive wording is contained in the Resolution 2625 (XXV), which in this regard establishes that

⁴³⁴ Permanent Court of International Justice, Corfu Channel case, Judgment of April 9th, 1949, I.C.J. Reports 1949, p. 4, available at <https://www.icj-cij.org/files/case-related/1/001-19490409-JUD-01-00-EN.pdf>, last visited on 27/03/2017.

⁴³⁵ Original text in English obtained from UN Documents, Gathering a body of global agreements, United Nations, A/RES/25/2625, General Assembly, Distr: General, 24 October 1970, Twenty-fifth Session, Agenda item 85, Resolution adopted by the General Assembly [Adopted on a Report from the Sixth Committee (A/8082)], available at <http://www.un-documents.net/a25r2625.htm>, last visited on 27/03/2017. Quotation by RODRÍGUEZ CARRIÓN, A., op. cit., p. 74.

⁴³⁶ UN Documents, Gathering a body of global agreements, United Nations A/RES/20/2131 General Assembly, Distr: General 21 December 1965 Twentieth session Agenda item 107, available at <http://www.un-documents.net/a20r2131.htm>, last visited on 27/03/2017.

“No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as reflecting the relevant provisions of the Charter relating to the maintenance of international peace and security.”⁴³⁷

In this respect, there is another exhaustive position adopted by the ICJ, about the issue regarding the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (1986). The ICJ not only maintained that Nicaragua had the right to establish its own inner policy, but, as a consequence, the choice of its own foreign policy or the level and aims of its defense policy:

“3. The principle of non-intervention (paras. 202 to 209)

The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference. Expressions of an *opinio juris* of States regarding the existence of this principle are numerous. The Court notes that this principle, stated in its own jurisprudence, has been reflected in numerous declarations and resolutions adopted by international organizations and conferences in which the United States and Nicaragua have participated. The text thereof testifies to the acceptance by the United States and Nicaragua of a customary principle which has universal application. As to the content of the principle in customary law, the Court defines the constitutive elements which appear relevant in this case: a prohibited intervention must be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely (for example the choice of a political, economic, social and cultural system, and formulation of foreign policy). Intervention is wrongful when it uses, in regard to such choices, methods of coercion,

⁴³⁷ UN Documents Gathering a body of global agreements, United Nations, A/RES/25/2625, General Assembly, Distr: General, 24 October 1970, Twenty-fifth session, Agenda item 85, Resolution adopted by the General Assembly [Adopted on a Report from the Sixth Committee (A/8082)], available at <http://www.un-documents.net/a25r2625.htm>, last visited on 27/03/2017.

particularly force, either in the direct form of military action or in the indirect form of support for subversive activities in another State.”

“4. Collective counter-measures in response to conduct not amounting to armed attack (paras. 210 and 211) The Court then considers the question whether, if one State acts towards another in breach of the principle of non-intervention, a third State may lawfully take action by way of counter-measures which would amount to an intervention in the first State's internal affairs. This would be analogous to the right of self-defence in the case of armed attack, but the act giving rise to the reaction would be less grave, not amounting to armed attack. In the view of the Court, under international law in force today, States do not have a right of ‘collective’ armed response to acts which do not constitute an ‘armed attack’.”⁴³⁸

Recently a new tendency has emerged in the theory and practice of International Law trying to limit the interdiction of interfering in the inner affairs of other States. We analyze this issue in this work.

There is a sector of scholars which considers that nowadays the global order is in the process of changing from multipolarity to multilateralism. Such authors, as Jakob Vestergaard or Robert Wade, consider that multilateralism is already installed in political institutions, but it will take longer to be accepted in economic institutions:

“The transition from the waning to the emerging global order is clearly proving tricky. In terms of the multipolar governance dilemma, economic multipolarity, particularly at a time of economic slump, is generating more demands for interstate cooperation; but the supply response in the form of political multilateralism lags far behind. The G20 and the Bretton Woods organizations continue to show more ‘hegemonic incorporation’ and ‘Westphalian assertion’ than ‘multilateral cooperation.’”⁴³⁹

There is a difference between multipolarity and multilateralism. According to the Collins Dictionary, the meaning of multipolarity is:

“2. a distribution of power between three or more countries, alliances, parties, etc.”⁴⁴⁰

Meanwhile, multilateralism means

⁴³⁸ Quotation by Alejandro Rodríguez Carrión, op. cit., p. 74. Original text in English obtained from the International Court of Justice: Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Summary of the Judgment of 27 June 1986, Case concerning the military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America) (Merits) Judgment of 27 June 1986, available at <http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3>, last visited on 27/03/2017.

⁴³⁹ VESTERGAARD, J. and WADE, R., “Establishing a New Global Economic Council: Governance Reform at the G20, the IMF and the World Bank”, *Global Policy*, Volume 3, September 2012 Issue 3, p. 365, available at http://media.library.ku.edu.tr/reserve/resfall16_17/Intl313_Ecir313_CBakir/6_Developing_countries.pdf, last visited on 23/04/2018.

⁴⁴⁰ Collins Dictionary, “Definición de Multipolarity”, available at <https://www.collinsdictionary.com/es/diccionario/ingles/multipolarity>, last visited on 23/04/2018.

“1. the practice or principle of nations or parties trading or forming agreements on a multilateral basis”⁴⁴¹

In the praxis, we can see an example of the transition from multipolarity to multilateralism, e.g. the quasi substitution of the G7 by the G20: “Stewart Patrick [...] of the US Council on Foreign Relations garlands the G20 as ‘the most significant advance in multilateral policy coordination since the end of the Cold War’”.⁴⁴²

Caterina García-Segura maintains that multilateralism, as an institutional form of international order, is in a process of transformation. Asian emerging powers are not necessarily to blame. The emergence of Asian powers is regarded as a threat for international institutions, but in fact institutions have their own ills, previous to the said emergence. Both China and the USA differ from the EU’s attitude, but some EU member States also differ from the EU.⁴⁴³

Caterina García-Segura considers that, given China’s engagement in multilateral bodies, it can be said that China’s notion of multilateralism is “flexible, instrumental and strategic”.⁴⁴⁴ Furthermore, we could add another characteristic: it is also adaptable. The reason for this thought is that the above-mentioned author states that China does not have a single model, but it adapts different behaviors and levels of engagement depending on circumstances.

Caterina García-Segura states that China opts for a vision of multilateralism which, actually, is regionalism. Therefore, regional multilateral bodies have multiplied, being supported by China. Caterina García-Segura maintains that the above-mentioned bodies don’t hinder global multilateralism, but are the result of a convenient variety.⁴⁴⁵

Originally, in times of bipolarity, China regarded multilateralism as a way by which the United States controlled international organisms. But, due to the change in attitude from the United States regarding China, and also due to Deng Xiaoping’s economic reform, China changed its view of multilateralism. It

⁴⁴¹ Collins Dictionary, “Definición de Multilateralism”, available at <https://www.collinsdictionary.com/es/diccionario/ingles/multilateralism>, last visited on 23/04/2018.

⁴⁴² VESTERGAARD, J. and WADE, R., op. cit., p. 260.

⁴⁴³ GARCÍA-SEGURA, C., op. cit., “Westfalia, Worldfalia, Eastfalia. El impacto de...”, p. 69.

⁴⁴⁴ Id., p. 61.

⁴⁴⁵ Ibid.

evolved from mistrust to cautious participation and, nowadays, it holds the leadership.⁴⁴⁶

Caterina García-Segura submits that, regarding the qualitative aspect, Eastphalian multilateralism differs from the Westphalian one, at least partially, because it is not revolutionary-subversive, but *pro status quo*.⁴⁴⁷

Caterina García-Segura regards China's activity in multilateral organizations as increasingly collaborative and in general is seen by analysts as efficient. In a subtle and effective way, China is gaining the sympathy of international organizations, in issues in which China and the United States disagree. In order to advance the said way, China is adopting small, symbolic gestures when appropriate, as e.g. not devaluating the currency in the midst of the financial crisis or the taking of actions which differ from Western ones, as non-conditional government aids and investments.⁴⁴⁸

Caterina García-Segura maintains that China, as a leader, may act in three different appearances:⁴⁴⁹

1. Active-assertive: it acts as an active *pro status quo* power, giving up its previous low profile and appears openly, i.e. taking an active role in the peace operations, playing in favor of the human rights system.
2. Elusive: it acts as an active revisionist power, with a position outside the sphere of Western-controlled multilateral systems developing, among others, its non-conditional government aids policy, opposing norms of the Development Assistance Committee/the Organization for Economic Cooperation and Development (OECD) or creating the Shanghai Cooperation Organization (SCO).
3. When it plays its role as shaper, it can play both roles:
 - Active *pro-status quo*
 - Revisionist-active: it is reflected in its preference for non-conventional fora, as e.g. G20, BRICS Summits, or the creation of parallel institutions to those already existing, as the Asian Investment and Infrastructure Bank

⁴⁴⁶ Ibid.

⁴⁴⁷ Id., p. 62.

⁴⁴⁸ Id., p. 63.

⁴⁴⁹ Ibid.

In a nutshell, the Chinese multilateralism deployed in the last decades is marked by its deep engagement, assertiveness and maturity, which are reflected in a higher efficiency and a growing influence in international organizations; an active and constructive role which, occasionally, alternate with a defensive one.

China has adopted multilateralism as a dimension of its foreign policy, in order to attain stability.

The report on EU-China relations by the Elcano Royal Institute states that the EU should promote the revitalization of the international global order, aiming to consolidate an effective and inclusive multilateralism, allowing the most possible players, especially such as China. However, the said Institute considers that the above-mentioned inclusive stance does not mean an acritical attitude in every field, but a reminder that there are realms in which both the EU and China could cooperate not only in favour of both sides, but also as a way to promote an effective international world order.⁴⁵⁰

II.2 Legal framework

II.2.1 The legal framework along the recent EU-China relations

Given that this thesis deepens in the international relations between the European Union and the People's Republic of China, we will study the legal framework regarding such relations.

EU-China relations started in 1975, but are governed by the 1985 Trade and Cooperation Agreement⁴⁵¹ and seven other binding agreements.⁴⁵² Finn Laursen states that “the current relations between the EU and the PRC go back to 1975, when the European Community (EC) established official relations with the PRC. This happened on the occasion of a visit to Peking [sic] by EC Commission Vice-President Sir Christopher Soames”.⁴⁵³ In other words, 1975 was the turning point

⁴⁵⁰ ESTEBAN, M. (coordinator), op. cit., p. 126.

⁴⁵¹ Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China, 21.5.1985, Treaties Office, Database, available at <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?redirect=true&treatyId=341>, last visited on 28/03/2017.

⁴⁵² European Union Factsheet, European Union-China Summit, Beijing, 14 February 2012, European Union Relations with China, available at <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?redirect=true&treatyId=341>, last visited on 28/03/2017.

⁴⁵³ LAURSEN, F., The European Union's Strategic Partnerships: The Case of European Union-China Relations, Department of Political Science and European Union Centre of Excellence Dalhousie University Halifax, Nova Scotia, Canada, available at [http://www.finnlaursen.com/index.php/component/dms/European](http://www.finnlaursen.com/index.php/component/dms/European%20Unionce-papers-halifax/the-)

for the EU-China relations, and it was completed by the 1985 Trade and Cooperation Agreement. Since then, the said bilateral relations have evolved, spinning around that basis.

According to Stepan and Oostermann, “mutual trade interests were openly presented as a foundation for establishing diplomatic relations, and the relationship has evolved ever since”.⁴⁵⁴

Kanecka submits that, before 1975, relations were only held by the individual member states.⁴⁵⁵

Regarding the analytical framework, Zhang Xiaotong⁴⁵⁶ establishes his starting assumption for any study regarding international relations: cooperation is complicated, and hence the normal situation is chaos. The possibility of cooperation between the EU and China depends, according to the said author, on three variables, namely “strategic foundation, reciprocity and institutions”.⁴⁵⁷

According to Zhang Xiaotong, the EU-China trade relations can be divided in four historical periods, i.e. 1975-1988, 1989-2004, 2005-2008 and 2009-2014. We consider the same can also apply to the recent EU-China relations as a whole). Another period could be added: 2015-2019.

European Union-s-strategic-partnerships-the-case-of-European Union-china-relations?Itemid=579, last visited on 28/03/2017.

⁴⁵⁴ STEPAN, M. and OSTERMANN, F., “European Union-China relations Strategic or pragmatic, the future or already the past?”, Researchgate, p. 2, available at https://www.researchgate.net/publication/278677073_EU-China_relations_strategic_or_pragmatic_the_future_or_already_the_past, last visited on 28/03/2017.

⁴⁵⁵ KANECKA, D., “European Union-China Trade Relations The Analysis of the European Union’s Code and Practice Relating to Trade Defense Instruments in Disputes with China within the WTO framework”, *College of Europe – Collège d’Europe*, p. 10, available at <https://www.coleurope.eu/research-paper/eu-china-trade-relations-analysis-european-unions-code-and-practice-relating-trade>, last visited on 28/03/2017.

⁴⁵⁶ ZHANG, X., op. cit., p. 2. The said article is about European Union-China Trade Relations, but as the base of European Union-China relations is the trade between both sides, we apply the ideas of this author to the said bilateral relations in general.

⁴⁵⁷ Id., pp. 2-3. According to Zhang, “‘Strategic foundation’ refers to what International Relations scholars often call ‘the structure of the international system’, and decision-makers’ perceptions of each other’s position in the international system. The structure of the international system designates a set of constraining conditions, in which states interact. It provides a systemic environment for inter-state relationships. There is a Chinese equivalent, shi (势), which is used to denote the overall configuration of world politics and economics. It is believed in China that a good foreign policy derives from a sound understanding of shi. ‘Reciprocity’ is one of the most important strategies for achieving cooperation among states. In today’s trade relationships, “reciprocity” is the buzz word, the lack of which may disrupt long-term cooperative trading relationship. A trade deficit is usually seen as a lack of reciprocity. ‘Institutions’ refer to agreements or contracts that function to reduce uncertainty, lower transaction costs, and solve problems arising from collective actions. They provide information, enforcement mechanisms, and other devices that allow states to realize joint gains. Institutions are employed as strategies to mitigate a range of opportunistic incentives that states will otherwise respond to under conditions of anarchy. In the European Union-China context, ‘institutions’ refer to all formal official documents such as agreements, treaties, policy papers, and dialogue mechanisms.”

The first phase of the legal framework (1975-1988) began when the relations between the EU and China restarted after Maoist Revolution and finished at the time of the Tiananmen protests. Strategic vision marked the EU-China relations since its restoration. In 1946 (short after the end of the Second World War) President Mao established the road-book which China should follow. Such system lasted until 1974 (just before re-establishing the EEC-China relations). It consisted of the “Middle Zone” and the “Three Worlds” theories. Europe, Zhang states, was considered by the Chinese as the second “Middle Zone”, just after the developing countries. In the 1970s, during the Cold War, the situation between the United States, the Soviet Union and China was very tense. Zhang maintains that China believed that Europe was eager to be released by the United States, but he also states that Europe feared the powerful URSS and that in this situation China was the ideal partner for Europe.⁴⁵⁸ Deng Xiaoping was a determined supporter of reaching a partnership with Europe. Further, the EEC was suffering an economic recession. Moreover, the United States and Japan had already been established in the Chinese market for a time and had already gained a quote of the Chinese market, and hence Europe risked losing its potential percentage of such a “cake”. Eventually, Christopher Soames, the then vice President of the European Commission in charge of external relations, paid a visit to China in May 1975, and so paved the way for the future bilateral relations. After Mr. Soames declared that the EU was not going to establish any official relations with Taiwan, he was warmly welcomed in the PRC. Economic reciprocity was essential for the first years of the new relations. In 1975 the EU and China started to hold talks regarding the Trade Agreement, but it was in 1978 when the mentioned Agreement actually came into force and, consequently, the European Community granted China the most-favored nation status. The China-EEC Textiles Agreement, which took effect in 1980, led the EEC to increase the Chinese textiles exports quota to Europe by 100% (from 20,000 to 40,000 tons). Another essential economic agreement was the 1985 China-EC Trade and Economic Cooperation Agreement,⁴⁵⁹ which allowed a wider scope of relations. The value of bilateral trades in this period increased more than 600% (from US\$2.4 billion in 1975 to US\$12.87 billion in 1988). European exports to China

⁴⁵⁸ Id., p. 24.

⁴⁵⁹ Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China, 21.5.1985, Treaties Office, Database, available at <http://ec.europa.eu/world/agreements/preparedCreateTreatiesWorkspace/treatiesGeneralData.do?redirect=true&treatyId=341>, last visited on 28/03/2017.

increased by nearly 300% (from US\$27.7 in 1981 to US\$81.5 in 1988). In this period, the institutions of these bilateral relations were innovated.⁴⁶⁰

The second phase started in 1989 and finished in 2004. In June 4th 1989 occurred the Tiananmen incident. In the Historical Precedents we also pay attention to the said situation. The mentioned incident completely blocked the EU-China relations. It was during Deng Xiaoping's term. As a result, the then called European Economic Community (EEC), gathered at the end of June 1989 in Madrid, under the Spanish rotating Presidency, adopted a firm condemnation and imposed sanctions on China: "interruption by the Member states of the Community of military cooperation and an embargo on trade in arms with China", as well as an interruption of the economic cooperation and the high-level meetings.⁴⁶¹ The arms embargo is still in force. On June 27th 1989, at a meeting held in Madrid, the European Council issued a declaration in this regard. However, Spain maintained the Joint Commission on Economic Affairs, as well as the credit lines offered by the Development Aid Fund, and the EEC partners reacting disregarding Spain. Moreover, Francisco Fernández Ordóñez, in 1990, was the first EEC Foreign Affairs Minister to pay a visit to China after such events; Felipe González was the first President of a Government to pay a visit to China and King Juan Carlos, for its part, the first head of state to do so. The reason why Spain supported Deng, according to Bregolat, was that Spain understood that the Chinese President was besieged by the conservatives, and sanctions would only support them, and under such circumstances, Deng and his reforms would collapse.⁴⁶²

For his part, German chancellor Helmut Schmidt, according to Bregolat, in his memories "Retired" has the same opinion: "In 1990 I flew to Beijing [...] Isolation on China would only worsen the situation. I managed to convince my

⁴⁶⁰ ZHANG, X., op. cit., p. 7. According to Zhang, "The trade agreements and the textiles Agreement as well as their updates provided a predictable legal framework. The 1978 Trade Agreement established the Joint Commission for trade and economic cooperation between China and the EEC, which provided the platform for annual consultations. Today, the level of the Joint Commission has been lifted from the director general level to full ministerial level and continues to play an important role in managing bilateral trade."

⁴⁶¹ Specific [sic] restrictive measures in relation to the events at the Tiananmen Square protests of 1989, The restrictive measures of this regime are described in a political Declaration of European Council made in Madrid, 27 June 1989 in relation to the events at the Tiananmen Square protests of 1989, available at <https://sanctionsmap.eu/#/main/details/10/?search=%7B%22value%22:%22china%22,%22searchType%22:%22id%22:1,%22title%22:%22regimes,%20persons,%20entities%22%7D%7D>, last visited on 18/07/2019.

⁴⁶² BREGOLAT, E., op. cit., *En torno al renacimiento*..., p. 236. Note that at the time of the events, the author of the said book was the Spanish Ambassador in Beijing, what confers him the quality of a special witness.

colleagues in the International Action Council (which consists of former heads of government) and we decided to oppose the trend to isolate China.”⁴⁶³ However, all the said actions didn’t succeed in obtaining from the Chinese authorities a change of attitude regarding human rights, maintains Zhang.⁴⁶⁴ Due to objections made by Germany, the decision was reduced to unilateral non-binding commitments. Zhang submits that most of the sanctions were lifted by the end of 1991. Hence, we must admit that the linkage strategy held by the EC was a fiasco; according to such a strategy, using trade sanctions as a mean should improve human rights in China, but it did not succeed. By 1992 the EC and its member states started to re-pitch its relations with China. Hence, the EC started disconnecting trade sanctions and the enhancement of human rights in China, in a bi-univocal way.⁴⁶⁵ There are several scholars supporting the constructive criticism, as Zhang Xuetong⁴⁶⁶ or as expressed by the Elcano Royal Institute.⁴⁶⁷

The EC had to admit that China was going to be a long-term partner, and therefore in 1993 it started building a long-term action with China. The EC realized that only by supporting China through international relations, could it succeed in integrating it into the international community.

According to Zhang, “the guiding principle for China's diplomacy evolved from the ‘Middle Zone’ and the ‘Three Worlds’ theories into ‘building a multipolar world’ and ‘promoting democratization of international relations’”.⁴⁶⁸

On the European side, as the EU enhanced its integration, it gained momentum in its role as a world player and therefore China regarded the EU as a suitable partner in order to improve multipolarity. Zhang states that Chinese multipolarity matches with European multilateralism. We find that Zhang is right in his view regarding the common point of view of several European countries and China about their rejection of unilateralism, and this puts a solid foundation for the EU-China relationship. During this period, the EU-China relations experienced a boost.⁴⁶⁹

⁴⁶³ Id., p. 236.

⁴⁶⁴ ZHANG, X., op. cit., pp. 7-8.

⁴⁶⁵ Id., p. 8.

⁴⁶⁶ Id., p. 13.

⁴⁶⁷ ESTEBAN, M. (coordinator), op. cit., p. 25.

⁴⁶⁸ ZHANG, X., op. cit., p. 2. The said article is about the EU-China Trade Relations, but as the base of EU-China relations is the trade between both sides, we apply the ideas of this author to the said bilateral relations in general.

⁴⁶⁹ Zhang, id, p. 9: “During this period, China-European Union relationship made big strides from ‘constructive partnership’ to ‘comprehensive partnership’ and finally to a ‘comprehensive strategic

A key point for these bilateral relations was China's determination to resume its status in the GATT and later join the WTO. And it was just the EU one of China's first negotiating parties with the said purpose. Finally, China joined the WTO in 2001, and the EU-China relations were held on a reciprocal basis.

One of the essential aspects of this period was the institutional innovation. Both sides issued non-binding policy papers regarding each other. On one side, as precedents binding trade agreements were signed in the 1970s and 1980s, and on the other side, the above-mentioned policy papers were essential in order to prepare a proper environment for the said relations. Zhang states that "from 1995 to 2003, the European Union published altogether four policy papers on China to which China responded in 2003 with its first EU policy paper".⁴⁷⁰ Such a situation gave the EU the opportunity to improve its internal coherence, its integration, and its single voice regarding China.

In October 1995, the European Commission, inspired on a German precedent, issued the Communication on China - "A Long-Term Policy for Relations between China and Europe."⁴⁷¹ This Communication aimed three goals: to foster China's aggregation to the international community, to support reforms inside China and to enhance links between the European Union and China. In order to reach the said objectives, the EU used the engagement, i.e. try to induce the Asian giant to undertake reforms through its integration in the international community, including its accession to the WTO.

Only three years after the first China Communication, the Commission issued a new one in March 1998 - "Building a Comprehensive Partnership with China".⁴⁷² This policy paper emphasized that "the analytical foundations of the 1995 Communication still hold true, and it therefore remains the platform on which the EU's policy towards China is built".⁴⁷³ This Communication proposed

partnership', achieving the so-called 'hop, skip and jump' in the European Union-China relationship."

⁴⁷⁰ China's EU Policy Paper, October 2003, 2003/10/13, Ministry of Foreign Affairs of the People's Republic of China, available at https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/xos_664404/dqzzywt_664812/t27708.shtml, last visited on 04/05/2019.

⁴⁷¹ Communication on China - A Long-Term Policy for Relations between China and European Union, ISSN 0378-6986 Official Journal C200 Volume 40 30 June 1997 of the European Communities, available at http://www.eeas.europa.eu/archives/docs/china/docs/com95_279_en.pdf, last visited on 29/03/2017.

⁴⁷² Communication on China - "Building a Comprehensive Partnership with China", Commission of the European Communities, Brussels, 25.03.1998 COM(1998) 181 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51998DC0181&from=EN>, last visited on 29/03/2017.

⁴⁷³ Zhang, X., op. cit., p.12.

to upgrade the EU-China dialogue to an annual Summit mechanism. In 1998 was finally established the annual EU-China Summit, which meant that finally the EU-China issues should be dealt with at a single field. This new situation meant a whole change for the EU-China relations, i.e. a “new culture” for these bilateral relations.

Just two years after the Prodi Commission mandate started, in June 2001, the Commission published its third Communication on China, under the title “EU Strategy towards China: Implementation of the 1998 Communication and Future Steps for a more Effective EU Policy”.⁴⁷⁴ The Communication had two main features: on one hand, it was consistent regarding the consensus of the existing policy towards China; on the other hand, it confirmed the EU’s long-standing strategy towards China. The 2001-2004 period accelerated these bilateral negotiations and represented a flourishing era for the EU-China relations, so much that Zhang states that “Compared with the previous ‘constructive partnership’ period, this era featured a fast expanding agenda of the EU-China dialogues, coordination and cooperation, which contributed to upgrading the EU-China constructive partnership to a comprehensive partnership in 2001 and later to a comprehensive strategic partnership in 2003.”⁴⁷⁵

In September 2003, the fourth Commission’s China policy paper, a Communication entitled “A maturing partnership - shared interests and challenges in EU-China relations”,⁴⁷⁶ was published. This policy paper had a main feature: cooperation fields between China and the EU were enlarged, covering many areas, as Zhang maintains, “ranging from global challenges such as the environment and illegal migration, through the field of basic and applied research and technological co-operation, to the regulatory framework in key sectors of the economy.”⁴⁷⁷ The above-mentioned policies have transformed the EU-China relations, because they have matured them, and hence they became more coordinated.

⁴⁷⁴ Commission of the European Communities, Brussels, 15.5.2001 COM(2001) 265 final, Communication from the Commission to the Council and the European Parliament, EU Strategy towards China: Implementation of the 1998 Communication and Future Steps for a more Effective EU Policy, available at [http://www.europarl.europa.eu/meetdocs/committees/afet/20020122/com\(01\)0265_en.pdf](http://www.europarl.europa.eu/meetdocs/committees/afet/20020122/com(01)0265_en.pdf), last visited on 29/03/2017.

⁴⁷⁵ ZHANG, X., op. cit., p. 2.

⁴⁷⁶ Commission of the European Communities, Brussels, 10.9.2003, COM(2003) 533 final, Commission Policy Paper for Transmission to the Council and the European Parliament, A maturing partnership - shared interests and challenges in EU-China relations, (Updating the European Commission’s Communications on EU-China relations of 1998 and 2001), available at http://trade.ec.europa.eu/doclib/docs/2005/september/tradoc_124565.pdf, last visited on 29/03/2017.

⁴⁷⁷ ZHANG, X., op. cit., p. 2.

Finally, we would like to highlight a sentence submitted by Zhang: “History has proven that the EU, as a normative power, has gained more benefits from China through soft and institutionalized means than through hard means, such as those the EC employed during and subsequent to the 1989 Tiananmen Square Incident.”⁴⁷⁸ In other words, the author believes that, regarding China, the European Union should always implement the “engagement strategy” (as it is doing nowadays) instead of the “linkage strategy” (as it did after the “Tiananmen Square Incident”). A possible reason for such an attitude might be the asymmetric dimension of the EU-China relations.

The third phase (2005-2008) was an agitated era for the EU, including a political crisis and considerable commercial controversies. The world went through major changes, with a huge impact on the European Union-China relations, as China experienced a boost in its economy and general power, while the European Union suffered an intense economic predicament. Furthermore, the EU was divided on how to deal with globalization, China’s rise and the EU internal coherence.

To cap it all, in 2005, the European Constitutional Treaty encountered serious setbacks, which endangered the integration of the European Union.

Just after the Iraq War finished, a new generation of European leaders took office and tried to enhance the transatlantic cooperation, which led China to change its view of the EU.

China’s role as a world power was increasing and its link with the rest of the world was changing, and these factors had an effect on Chinese leaders: they thought it was high time to rebalance the power relationships worldwide. We believe this point is linked to the symmetrical-asymmetrical factor, as China demands that the pitch of international relations, due to the said issues, should be readjusted. Zhang states that “as Song Zhe, the then Chinese Ambassador to the EU once commented, ‘the European perceptions of China lagged behind the world changes and China’s development, and therefore needed to make further efforts in adapting to and catching up with the changing realities’”.⁴⁷⁹

In 2007 and 2008 occurred two crises about the Dalai Lama, as he was granted official meetings with, respectively, German Chancellor Angela Merkel and French President Nicolas Sarkozy. China reacted by cancelling the

⁴⁷⁸ Id., p. 13.

⁴⁷⁹ Id., p. 14.

forthcoming EU-China Summit. Regarding economics, in 2005 broke out the textiles crisis, which was regarded as a bench mark in the EU-China relations. All the said points seriously endangered the EU-China relations. In 2006 and 2007 the menace was posed by the trade deficit. The tension between both sides escalated and 2007 was the highest point in the strain of the bilateral relations. Zhang maintains that “China was blamed as the scapegoat for the economic setbacks affecting the European Union.”⁴⁸⁰ Regarding institutions, there was a mélange of signs. Both sides accepted to set going the Partnership and Cooperation Agreement (PCA) negotiations and also the dealings for updating the 1985 China-EEC Trade and Economic Cooperation Agreement.⁴⁸¹

During the fourth phase (2009-2014) two opposite trends developed simultaneously: the powerful surge of China and the decline of the EU, due to the Euro Debt Crisis. The result was a change in the worldwide dominance balance.⁴⁸² Montserrat Pintado Lobato, quoting Ian Clark, submits that China’s rise and United States’ decline are not two independent issues, but they are parts of a phenomenon, which represents a profound restructuration of the international system; it is a matter of fact that, observing China’s rise, there will be a hegemonic succession.⁴⁸³ Ian Clark quotes Chan, stating that the transitions affecting the said succession “apparently refer to nothing beyond ‘a contest for world primacy.’”⁴⁸⁴

In spite of all the quarrels on trade, institutional cooperation often pushed these bilateral relations ahead and hence favored the trade relationship. Thus, institutional dealings have thoroughly proved that they are a key element in the EU-China affairs. A new concept for the EU-China relations was created at the 10th EU-China Summit: the HED, which nowadays is in full use,⁴⁸⁵ which stands for “High-Level Economic Dialogue”. It is an innovative vice-premier level economic and strategic trade dialogue. The motives for its establishment were two: firstly, because the previous mechanism through which the EU-China relations were dealt with did not cope with its current dimension. Secondly, because in 2006 the United States and China introduced a strategic economic dialogue (SED)

⁴⁸⁰ Id., p. 17.

⁴⁸¹ Ibid., p. 17.

⁴⁸² Id, p. 18.

⁴⁸³ PINTADO LOBATO, M., “Reformulaciones teóricas en torno a...”, op. cit., p. 15.

⁴⁸⁴ CLARK, I., “China and the United States: a succession of hegemonies?”, *International Affairs*, no 1, 2011, pp. 13-28.

⁴⁸⁵ European Commission, EU and China discuss economic and trade relations at the 7th High-level Economic and Trade Dialogue, Brussels, 25 June 2018, available at http://europa.eu/rapid/press-release_IP-18-4281_en.htm, last visited on 07/06/2019.

which was an achievement and hence made the EU to envy the USA for the SED, who was eager to establish a similar relational system with the USA. Therefore was created the HED, which reached a certain degree of success for the EU-China relations. The HED has been a great achievement, as four HED sessions were satisfactorily maintained between 2008 and 2013. A key factor for the success of the HED was that it actually maximized the scope of the EU-China relations: economics, finance, trade and investments, attaining agreements in a good quantity of fields, which was particularly important in a quagmire era, especially for the European Union.⁴⁸⁶

In the fifth phase (2015-2019) the world has gone through major changes. We analyze two big groups of changes: the economic ones and the political ones.

Apparently, the world economic crisis reached its critical point, and now the world economy is recovering from one of the most damaging crisis ever. According to Eurostat, “[T]he EU trade deficit with China, which persisted over the whole period, reached its peak in 2015 (-€180 bn) before decreasing slightly in 2016 (down to -€175 bn).”⁴⁸⁷

Eurostat also maintains that “In 2016, China was the third most important EU partner in services, after the United States and Switzerland. It accounted for slightly more than 4% of total extra-EU trade in services. EU exports of services to China almost doubled between 2010 and 2016, from less than €20 bn to €38 bn, while imports increased more moderately, from slightly more than €17 bn in 2010 to €27 bn in 2016. As a result, the EU surplus in trade in services with China grew by €9 bn over this time period, from €2 bn in 2010 to €11 bn last year.”⁴⁸⁸ However, in 2018 the EU exported goods to China amounting to 209.9 billion Euro; meanwhile, the EU imported goods from China amounted to 304.7 bn €; hence, there was a negative balance for the EU amounting to 184.8 bn €. ⁴⁸⁹

Several international political events are having a great influence on the EU-China relations, but perhaps it is still too early to determine the effects of such events on the above-mentioned relations. The first one is the Brexit (which

⁴⁸⁶ ZHANG, X., op. cit., p. 23.

⁴⁸⁷ Eurostat, European Union – China economic relations, available at <http://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/EDN-20170601-1>, last visited on 26/10/2017.

⁴⁸⁸ European Union – China economic relations, Eurostat, available at <http://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/EDN-20170601-1>, last visited on 26/10/2017.

⁴⁸⁹ China-goods China-EU - international trade in goods statistics, Eurostat, available at https://ec.europa.eu/eurostat/statistics-explained/index.php?title=China-EU_-_international_trade_in_goods_statistics, last visited on 08/06/2019.

referendum took place on June 23rd 2016), in which the United Kingdom decided to leave the EU. Prima facie, the EU would lose power, but if we deepen into this issue, we will see that as the saying goes, every cloud has a silver lining: the EU, despite losing power, will gain some coherence, as the United Kingdom was a discordant member State. The Brexit could be noxious, because obviously it would increase the asymmetry between the EU and China, but it could also increase enormously the asymmetry between the EU and the United Kingdom, let alone between the United Kingdom and China. However, as of today (04/05/2019) it is still not clear whether the Brexit will come in force.⁴⁹⁰

The second international political event was the election of Donald Trump, which took place on November 8th 2016. The disengagement from the Trans-Pacific Partnership, or TPP, was a sign of the Trump era. The USA left a “void”, and China was ready to “replenish” it. Mireya Solís submits that

“[...] removing the U.S. from the TPP increases uncertainty among U.S. allies about the reliability of the U.S. across a range of foreign and economic matters, and marks the first time the U.S. has withdrawn from an agreement it championed.”⁴⁹¹

Carrie Gracie argues that “In any zero sum view of the great power game in Asia, the USA retreat from TPP is in China's strategic interest, and not just because of the loss of an American-backed trade deal or a pillar of its strategic pivot to Asia.”⁴⁹²

In this regard, let us review one of the oldest principles of Physics: more than two millennia ago, Greek scholars discussed the concept of *vacuum*. Niels Marquardt states that Leukippos (5th century B.C.) and then his pupil Demokritos studied this phenomenon. Aristotle (384-322 B.C.) was “who claimed that nature is afraid of total emptiness and that there is an insurmountable ‘horror vacui’”.⁴⁹³

According to Gianrocco Tucci

“Aristotle is also due, in opposition to the meccanicism of the atomists, the theory of ‘horror vacui’ (fear of emptiness) which argues, as the medieval alchemists say, that

⁴⁹⁰ SUMMERS, T., “Brexit: Implications for EU–China Relations”, *Research Paper*, Chatham House, Asia Programme, May 2017, available at <https://www.chathamhouse.org/sites/default/files/publications/research/2017-05-11-brexit-eu-china-summers-final.pdf>, last visited on 26/10/2017.

⁴⁹¹ SOLÍS, M., “Trump withdrawing from the Trans-Pacific Partnership”, *Brookings Unpacked*, available at <https://www.brookings.edu/blog/unpacked/2017/03/24/trump-withdrawing-from-the-trans-pacific-partnership/>, last visited on 26/10/2017.

⁴⁹² GRACIE, C., “US leaving TPP: A great news day for China”, BBC News, China, available at <http://www.bbc.com/news/world-asia-china-38060980>, last visited on 26/10/2017.

⁴⁹³ MARQUARDT, N., *Introduction To The Principles Of Vacuum Physics*, Institute for Accelerator Physics and Synchrotron Radiation, University of Dortmund, CERN Document Server, p. 1, available at <https://cds.cern.ch/record/582156/files/p1.pdf>, last visited on 08/05/2019.

‘Natura abhorret Vacuum:’ the Nature shuns emptiness’ and it takes action finalistically to prevent its formation filling every space.”⁴⁹⁴

Modern Physics have evolved in this respect. However, somehow, the above-mentioned theory represents what has happened with the TPP: a space used to be occupied by one “body”, but it was left void (vacuum) and it has been replenished by another “body”. In this respect, this is an accurate opinion, regarding Africa and Middle East: “Given the lack of interest shown by the US to consolidate their presence in places like Africa or Middle East [...] Chinese are taking advantage of the vacuum of power to improve its position in the region.”⁴⁹⁵

Apart from the said two kinds of changes, in this period of time (between 2015 and 2019) several summits between the European Union and China have taken place. We would like to highlight a specific EU-China Summit: the Paris Agreement on Climate Change,⁴⁹⁶ held on April 22nd 2016. Trump quitted the said agreement, and this would have been the ideal situation for a shift in the EU-China relations. But hopes vanished, as a trade dispute between both sides impeded the signature of the formal statement:

“The European Union and China warned U.S. President Donald Trump on Friday he was making a major error by withdrawing from the Paris climate pact, but the pair failed to agree a formal climate statement because of divisions over trade.”⁴⁹⁷

The result of this summit shows the hindrances that the EU and China encounter when they try to enhance their mutual cooperation, the reason being the lack of symmetry between them. In this case, the polemic arose regarding the interpretation of article 15 of the China’s Accession Protocol to the WTO.

⁴⁹⁴ TUCCI, R., “Why is vacuum to be analyzed rationally by physics and not philosophy?”, Research Gate, question asked on 6th Jun, 2015, available at https://www.researchgate.net/post/Why_is_vacuum_to_be_analyzed_rationally_by_physics_and_not_philosophy, last visited on 08/05/2019.

⁴⁹⁵ “China in Africa”, *The searcher of Radio 5* (Unofficial translation. Original text: “China en África”, El Buscador de Radio 5), 07/06/2018, Transcription of a radio programme, available at <http://www.rtve.es/alacarta/audios/el-buscador-de-r5/buscador-china-africa-07-06-18/4626809/>, last visited on 19/06/2018. “Ante el desinterés de Estados Unidos de afianzar su presencia en lugares como África u Oriente Medio [...] los chinos está aprovechando este vacío de poder para situarse ellos.”

⁴⁹⁶ United Nations Treaty Collection, Status as at : 26-10-2017 07:30:34 Edt, Chapter XXVII, Environment, 7. d Paris Agreement, Paris, 12 December 2015, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&lang=_en&clang=_en, last visited on 27/10/2017.

⁴⁹⁷ BLENKINSOP, P., and EMMOTT, R., EU, China trade spat blocks climate statement, Reuters available at <https://www.reuters.com/article/us-EuropeanUnion-china/EuropeanUnion-china-trade-spat-blocks-climate-statement-idUSKBN18T0FW>, last visited on 27/10/2017.

Summing up all the phases in the legal framework of the EU-China relations, there is a change in the model of relations, as a result of the above-mentioned phases: from diplomatic and trade relations to privileged partners.

II.2.2 Actual status of the legal framework; strategic papers. The policy framework for the EU engagement with China

The policy framework for the EU's engagement with China over the coming years consists of the document named Council Conclusions EU Strategy on China (the Conclusions) and the High Representative's and European Commission's Joint Communication "Elements for a new EU Strategy on China" (the Joint Communication), according to the above-mentioned Conclusions.⁴⁹⁸

The Delegation of the European Union to China, in the document named China and the EU, states that

"The Strategy reflects the fundamental premises of the EU's engagement: the promotion of democracy, the rule of law, human rights, and respect for the UN Charter's principles and international law, with the search for reciprocal benefits in political and economic relations."⁴⁹⁹

The Council Conclusions EU Strategy on China is not divided into chapters or parts, but consists of 23 points. As early as in the Point 2, the Conclusions state that

"The Council sees major opportunities for cooperation with China, in particular contributing to creating jobs and growth in the European Union, engaging China in its reform process in a way which ensures openness, a level playing field, and genuine mutual benefits."⁵⁰⁰

As well as in the Joint Communication, in the Conclusions we also observe the importance the EU attaches to the above-mentioned three aspects, out of which perhaps the most concrete and relevant, is the "level playing field". It refers

⁴⁹⁸ Council Conclusions EU Strategy on China, 18 July 2016, Council of the European Union, Brussels, 18 July 2016 (OR. en), 11252/16, p. 2, available at https://eeas.europa.eu/sites/eeas/files/council_conclusions_eu_strategy_on_china.pdf, last visited on 3/04/2018.

⁴⁹⁹ China and the EU, Delegation of the European Union to China, 11/05/2016 - 15:52, EU relations with Country, p. 1, available at https://eeas.europa.eu/delegations/china_en/15394/China%20and%20the%20EU, last visited on 6/04/2018.

⁵⁰⁰ Council Conclusions EU Strategy on China, 18 July 2016, Council of the European Union, Brussels, 18 July 2016 (OR. en), 11252/16, p. 2, available at https://eeas.europa.eu/sites/eeas/files/council_conclusions_eu_strategy_on_china.pdf, last visited on 3/04/2018.

to the fact that, according to the EU, European companies cannot operate in China as easily as Chinese companies do in the EU.

According to the EU-China 2020 Strategic Agenda for Cooperation “[r]elations between the EU and China have developed fast since diplomatic ties were established in 1975. In particular, the creation of the EU-China Comprehensive Strategic Partnership in 2003 has deepened and broadened cooperation in a wide range of areas, and the EU and China have become highly interdependent as a result.”⁵⁰¹

Point no. 5 is dedicated to the promotion of human rights and the rule of law. We deal with this issue in the fifth dimension of our work.

The EU supports the EU’s “One China” policy as well as the “One Country, Two Systems” principle in both Hong Kong and Macao (point 6).

Point 7 is about rebalancing the EU-China relations. Therefore, the document intends to conclude a Comprehensive Agreement on Investment. The recurrent “level playing field” is also mentioned here, among other goals aiming to rebalance the trade deficit against the EU. A Free Trade Agreement is also mentioned in this point. It could be guessed it is wishful thinking, given the current circumstances. Perhaps, it could be attained in the long term. An agreement on geographical indications is also included in this point.

Each other’s investments are referred to in point 8, where special attention is paid to the fact that Chinese investments in the EU must abide EU law and policies. This point also refers to the EU investments in China.

Overcapacity in certain sectors of Chinese industry, especially in the steel industry, is dealt with in point 9. Overcapacities, according to this point, should be cut.

The Council, according to point 10, is in favor of the research and innovation cooperation. Here the level playing field is mentioned again. Intellectual property has to be protected, including the cyberspace. In spite of limitations, there is at least some reason for optimism, as China’s transport industry will be liberalized in 2022.⁵⁰²

⁵⁰¹ EU-China 2020 Strategic Agenda for Cooperation, p. 2, available at http://eeas.europa.eu/archives/docs/china/docs/eu-china_2020_strategic_agenda_en.pdf, last visited on 5/04/2018. EU-China relations were established in 1975. The most important milestone since then was the establishment in 2003 of the EU-China Comprehensive Strategic Partnership. Since then, both sides have enhanced their cooperation. The said document is organized in four parts: peace and security, prosperity, sustainable development and people-to-people exchanges.

⁵⁰² ESTEBAN, M. (coordinator), op. cit., p. 86.

Point 11 expresses the Council's wish for an operational EU-China Connectivity Platform. The same should apply to the OBOR initiative.

People-to-people relations in many fields are mentioned in Point 12.

The EU will seek, according to point 13, a broader foreign policy agenda for cooperation with China.

Point 14 regards the cooperation between the EU and China in order to guarantee that China's activities in Eastern and Southern Europe, as well as in Central Asia, are according to "rules-based governance, sustainable development and regional security."

Point 15 considers that a full approach to the Asia-Pacific region should include the EU policy on China which, in turn, should reach a thorough policy for the whole area.

According to Point 16

"The European Union and its Member States, as contracting parties to the United Nations Convention on the Law of the Sea (UNCLOS), acknowledge the Award rendered by the Arbitral Tribunal, being committed to maintaining a legal order of the seas and oceans based upon the principles of international law, UNCLOS, and to the peaceful settlement of disputes. The EU does not take a position on sovereignty aspects relating to claims. It expresses the need for the parties to the dispute to resolve it through peaceful means, to clarify their claims and pursue them in respect and in accordance with international law, including the work in the framework of UNCLOS."⁵⁰³

The first paragraph above is a statement in favor of "the Award rendered by the Arbitral Tribunal", according to UNCLOS.

In the second paragraph, the EU expresses that it does not make any statement regarding sovereignty. This aspect is essential in the EU-China relations, as sovereignty is an untouchable aspect, as China requires.

Point 17 is about a desire by the Council to enhance several aspects of the peace and security policy.

Point 18 regards improvements in secure and defense cooperation.

⁵⁰³ Council Conclusions EU Strategy on China, 18 July 2016, Council of the European Union, Brussels, 18 July 2016 (OR. en), 11252/16, p. 6, available at https://eeas.europa.eu/sites/eeas/files/council_conclusions_eu_strategy_on_china.pdf, last visited on 19/04/2019.

In Point 19, the Council welcomes China's improvements about several global issues, such as sustainable development and climate change.

In Point 20, the EU encourages China to enhance its contribution to international initiatives to tackle the refugee and migration crisis.

In Point 21, the EU, taking advantage of the outcome of China's G20 strategy, will cooperate with China in issues such as the enforcement of the G20's growth strategy, and other global aspects.

In Point 22, the EU expresses its wish to enhance its internal cohesion towards China.

And finally, in Point 23 the Council calls upon the High Representative and the Commission to enforce the priorities fixed in the Joint Communication as well as in the Conclusions.

The High Representative of the European Union for Foreign Affairs and Security Policy (the High Representative) and the European Commission have issued a joint communication to the European Parliament and the Council named "Elements for a new EU Strategy on China"⁵⁰⁴ (the Joint Communication) Brussels, 22.6.2016, JOIN(2016) 30 final⁵⁰⁵. This document outlines the vision of the Juncker Commission about the future of the said relations. In the part of this thesis dedicated to the legal framework we have treated the precedents of this document. In other words, we take the said joint communication as one of the basis for the analysis of the current situation of the EU-China bilateral relations and as a reference for the new trends the EU (via its High Representative) wishes for the said bilateral relations. The other basis is the document named Council Conclusions EU Strategy on China.

The European Union and China are two main worldwide economic powers; both have gone through major changes in the last ten years, when the Commission

⁵⁰⁴ European Commission High representative of the union for Foreign affairs and Security policy Brussels, 2.6.2016 Join (2016) 30 final Joint communication to the European Parliament and the Council, Elements for a new EU strategy on China, available at http://eeas.europa.eu/archives/docs/china/docs/joint_communication_to_the_european_parliament_and_the_council_-_elements_for_a_new_eu_strategy_on_china.pdf, last visited on 5/04/2018.

⁵⁰⁵ Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China, op. cit., 30 final.

issued its previous Communication regarding China⁵⁰⁶. And they still are in the process of enormous transformations.

1. Propositions posed by the Communication:

The EU should⁵⁰⁷:

- Develop much further its links to China⁵⁰⁸
- Encourage China to delve its reforms, with the result of mutual benefit for both parties in several areas
- Enhance reciprocal relations on equal terms and compete on the basis of fair play on all fields
- Fulfil a Comprehensive Agreement on Investment and developing new market chances⁵⁰⁹
- Improve infrastructure, trading⁵¹⁰, digital and people-to-people links⁵¹¹ between Europe and China
- Develop global public goods, sustainable development and international security⁵¹² according to each sides UN and G20 responsibilities⁵¹³
- Encourage China to respect the rule of law and human rights⁵¹⁴, both nationally and internationally
- Enhance EU internal coherence and practicality regarding its negotiations with China

2. Situation in China

China is going through an era of major dilemmas: the Joint Communication considers its old socio-economic pattern “unsustainable”,⁵¹⁵ and has set itself a

⁵⁰⁶ European Commission Communication, October 2006: “European Union-China: closer partners, growing responsibilities”, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:r14208>, last visited on 29/03/2017.

⁵⁰⁷ Note that several of these matters were already dealt with by the EU-China 2020 Strategic Agenda for Cooperation. This means that the pace of progress in the EU-China negotiations is very slow, and therefore the matters subject to dealings have to be repeated in the documents such as this Agenda.

⁵⁰⁸ This point is included in the second chapter, key initiative no. one, of the EU-China 2020 Strategic Agenda for Cooperation, available at http://eeas.europa.eu/archives/docs/china/docs/eu-china_2020_strategic_agenda_en.pdf, last visited on 29/03/2017.

⁵⁰⁹ This point is related to the second chapter of the EU-China 2020 Strategic Agenda for Cooperation.

⁵¹⁰ This proposition is analogous to the Chapter II, key initiative I of the EU-China 2020 Strategic Agenda for Cooperation.

⁵¹¹ See Chapter IV of the EU-China 2020 Strategic Agenda for Cooperation.

⁵¹² See Chapter I of the EU-China 2020 Strategic Agenda for Cooperation.

⁵¹³ This proposition is very similar to the first Chapter of the EU-China 2020 Strategic Agenda for Cooperation.

⁵¹⁴ See Chapter I, key initiative 8 of the EU-China 2020 Strategic Agenda for Cooperation.

new target: to move towards a more balanced model of development which is heavily dependent on the State propulsion, in order to reach a market-led economy. National reforms in China have worldwide impact, and thus the EU is affected by any changes in China.

There are several evolving aspects of which the EU will have to take care:

- The Chinese level of implication in globalization is increasing
- Chinese globalization trend implies that it requires to play a stronger role as a major economic player
- China is suffering an economic deceleration which will have to be confronted both internally and worldwide. A desirable trend towards sustainability⁵¹⁶ is not trouble-free and will produce quite a few frictions within and outside China. This challenge is tightly related to the following point
- The current Five Year Plan (FYP) aims to enhance economic, social and environmental restructuration as well as a transition to a growing consumption-oriented economy, and a shift to a law-based system as well as a durable campaign against corruption
- The EU is concerned by the slowdown in the shift towards a market-open economy⁵¹⁷ in several fields affecting the EU. Lately

⁵¹⁵ Joint Communication..., p. 3.

⁵¹⁶ The 13th Five Year Plan, National Economic and Social Development, Central People's Government of the People's Republic of China. Unofficial translation. Original text: 中华人民共和国国民经济和社会发展第十三个五年规划纲要, 中华人民共和国中央人民政府, available at http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm, last visited on 29/03/2017. The 13th Five Year Plan, in its first Article, among others, under the title of "Environmental development" expressly declares that "the introduction of an environmental culture yields new progresses...a sustained reduction of pollution is paramount, and an evident increase of an energy-saving and environmentally-friendly level" (unofficial translation): Original version: "第一章 发展环境.....生态文明建设取得新进展, ...主要污染物排放持续减少, 节能环保水平明显提升。" The terms "consumption" and "urban migration" appear several times in the 13th FYP. China Business Review, the Magazine of the US-China Business Council. "13th Five Year Plan [FYP] Stresses Economic Restructuring". According to this Review, China declared a "War on Pollution" in 2013. But the new economic trend is implemented through "a transition to a service- and consumption-based economy." Furthermore, "the 13th FYP clearly anticipates a continuation of urban migration". Probably, it will be troublesome to coordinate both goals: one, to sustainability and another one, to a society based on economy-growth, and last but not least, in a country with a population of 1.4 billion. However, China has proved to be fairly adaptable. Available at <http://www.chinabusinessreview.com/13th-five-year-plan-stresses-economic-restructuring/>, last visited on 29/03/2017.

⁵¹⁷ Constitution of the People's Republic of China (Full text after amendment on March 14, 2004). (Official Site of the National People's Congress of the People's Republic of China), available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372963.htm, last visited on 29/03/2017. Regarding the "efforts to build up an open market economy" in China, it is remarkable that the Chinese Constitution, in its Article 15, declares (official translation): "Article 15 The State practices socialist market economy.

The State strengthens economic legislation, improves macro-regulation and control. The State prohibits in accordance with law any organization or individual from disturbing the socio-

several norms have been launched to tighten up the operations of foreign companies in China, which affect the equal treatment of companies and means a handicap to improve China markets. This affects what in the Joint Communication is called as “the level playing field”⁵¹⁸

- Simultaneously China’s response to internal discrepancy is affecting the shift to a law-based society

3. Principles of engagement

As a matter of fact, both the EU and China have changed considerably in the last decade. Therefore, it is high time to refurnish the principles serving as a basis for the relationship.

The EU has high hopes that the EU-China relations are in reciprocal interest both in political and economic fields. The EU expects the Chinese slogan of the win-win cooperation to be carried out. Given that China obtains advantages from the rules-based international order, the EU expects that it will act reciprocally.

It is well known that one of the feeble points of the EU is its lack of internal coherence and united external voice,⁵¹⁹ in spite of the existence of the High Representative. Regarding China, a united, solid and distinct voice should be

economic order.” Original version: “第十五条 国家实行社会主义市场经济。国家加强经济立法，完善宏观调控。国家依法禁止任何组织或者个人扰乱社会经济秩序。” 中华人民共和国宪法 (Official Site of the Chinese Government). Available at http://www.gov.cn/gongbao/content/2004/content_62714.htm, last visited on 29/03/2017. Furthermore, in the preamble of the Chinese Constitution, seventh paragraph, second phrase, it is introduced the concept of “socialist market economy” in the fifth line of the following paragraph: “Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of Three Represents, the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve socialist institutions, develop the socialist market economy, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize the country’s industry, agriculture, national defence and science and technology step by step and promote the coordinated development of the material, political and spiritual civilizations, to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced.” Constitution of the People’s Republic of China (Full text after amendment on March 14, 2004), available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372963.htm, last visited on 29/03/2017. Original version: “中国各族人民将继续在中国共产党领导下，在马克思列宁主义、毛泽东思想、邓小平理论和“三个代表”重要思想指引下，坚持人民民主专政，坚持社会主义道路，坚持改革开放，不断完善社会主义的各项制度，发展社会主义市场经济，发展社会主义民主，健全社会主义法制，自力更生，艰苦奋斗，逐步实现工业、农业、国防和科学技术的现代化，推动物质文明、政治文明和精神文明协调发展，把我国建设成为富强、民主、文明的社会主义国家。” Original version: 中华人民共和国宪法, available at http://www.gov.cn/gongbao/content/2004/content_62714.htm, last visited on 29/03/2017.

⁵¹⁸ “The level playing field” is referred to in the Joint Communication ten times. This shows the paramount importance that the EU attaches to this aspect.

⁵¹⁹ The issue of the EU’s lacking cohesion regarding China is dealt with several times along this thesis.

expressed by the EU. Furthermore, when Member states hold negotiations with China, they should be tightly coordinated with the EU institutions.

The principles guiding the EU's external actions are also the ones serving as basis for its own creation: democracy, rule of law, human rights and respect for the principles of the UN Charter and international law. According to the Joint Communication, these principles are stated in the Chinese constitution⁵²⁰ as well as in the international instruments signed by China. The EU will persevere in the protection of human rights as one the basic guidelines of the EU relationship with China.

⁵²⁰ Chinese Constitution expressly declares some of the above-mentioned principles in the following points:

- “Democracy” is referred to twice in the preamble:
 - In the second paragraph of the preamble: “After 1840, feudal China was gradually turned into a semi-colonial and semi-feudal country. The Chinese people waged many successive heroic struggles for national independence and liberation and for democracy and freedom.” Original version: “一八四〇年以后, 封建的中国逐渐变成半殖民地、半封建的国家。中国人民为国家独立、民族解放和民主自由进行了前仆后继的英勇奋斗。”
 - In the second sentence of the sixth paragraph of the preamble, in the fifth line of the following paragraph, where it is referred to as “socialist democracy”; however note that in the third line of the paragraph it declares the “people’s democratic dictatorship”: “Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of Three Represents, the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve socialist institutions, develop the socialist market economy, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize the country’s industry, agriculture, national defence and science and technology step by step and promote the coordinated development of the material, political and spiritual civilizations, to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced.” Original version: “中国各族人民将继续在中国共产党领导下, 在马克思列宁主义、毛泽东思想、邓小平理论和“三个代表”重要思想指引下, 坚持人民民主专政, 坚持社会主义道路, 坚持改革开放, 不断完善社会主义的各项制度, 发展社会主义市场经济, 发展社会主义民主, 健全社会主义法制, 自力更生, 艰苦奋斗, 逐步实现工业、农业、国防 和科学技术的现代化, 推动物质文明、政治文明和精神文明协调发展, 把我国建设成为富强、民主、文明的社会主义国家。”
- “Rule of law” is declared in Article 5:
“Article 5 The People’s Republic of China governs the country according to law and makes it a socialist country under rule of law.” Original version: “第五条 中华人民共和国实行依法治国, 建设社会主义法治国家。”
- “Human rights” is expressed In Article 33:
“Article 33 ...The State respects and preserves human rights.” Original version: “第三十三条.....国家尊重和保障人权。”

About the principles of the UN Charter and international law, China is one of the signatories of the UN Charter.

English version: Constitution of the People's Republic of China (Full text after amendment on March 14, 2004), available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372963.htm, last visited on 29/03/2017. Original version: 中华人民共和国宪法, available at http://www.gov.cn/gongbao/content/2004/content_62714.htm, last visited on 29/03/2017.

However, there are certain experts warning of doing too much pressure on China.⁵²¹ For instance, the Elcano Royal Institute, in its Report on Spain-China's relations, considers that, in issues which the Chinese population maintains a position which is solid and opposed to the one promoted abroad, keeping an intense and conspicuous stance only creates more opposition by the Chinese authorities. The EU, according to the said report, should better develop a discrete, constructive and coherent position. Even though with such an attitude the EU does not manage to advance considerably, but at least the opposed positions between both sides are not radicalized.⁵²²

The EU is concerned by China's approach to recent human rights issues. According to the Joint Communication, "[t]he EU is particularly worried that China's newly promulgated Law on the Management of Foreign Non-Governmental Organizations' Activities⁵²³ could hamper the development of civil society in China and have a negative impact on people-to-people exchanges between the EU and China."⁵²⁴

The EU, according to the Joint Communication, will keep on working with China and its people in order to promote human rights and the rule of law.⁵²⁵

The EU corroborates its "One China" policy.⁵²⁶ The reason for this position is because this way the EU expects to enhance its relations with, on one hand, Hong Kong and Macao and, on the other hand, Taiwan. In this regard we would like to highlight the Chinese regional administration system. According to the Chinese Government, "currently China is organized in 34 provincial

⁵²¹ DE JONQUIÈRES, G., "The European Union's China Policy: Priorities and Strategies for the New Commission", *Policy Brief*, no. 3/2015, p. 4, available at <https://ecipe.org/wp-content/uploads/2015/04/The-European-Union%E2%80%99s-China-Policy.pdf>, last visited on 11/06/2019. "[...] foreign attempts to pressure China into acting against its will face an uphill struggle that may ultimately be counter-productive. But it also means that progress can be made on those issues that China has identified as clearly serving its own interests. Those are where the EU should concentrate its attention."

⁵²² ESTEBAN, M. (coordinator), op. cit., p. 25.

⁵²³ The Law on the Management of Foreign Non-Governmental Organizations' Activities (English version) declares: "Article 7: Within the scope of their professional duties, the public security organs and relevant departments of people's governments at the county level or above carry out supervision and management of the activities of foreign NGOs within mainland China, and provide services." Available at <http://chinalawtranslate.com/2016-foreign-ngo-law/?lang=en>, last visited on 29/03/2017. Original version: "《中华人民共和国境外非政府组织境内活动管理法》" "第七条 县级以上人民政府公安机关和有关部门在各自职责范围内对境外非政府组织在中国境内开展活动依法实施监督管理、提供服务。" available at <http://politics.people.com.cn/n1/2016/0429/c1001-28313123.html>, last visited on 29/03/2017.

⁵²⁴ Joint Communication, p. 4, Title II. "Principles of engagement", fifth paragraph, available at [http://www.ipex.European Union/IPEXL-WEB/dossier/document/JOIN20160030.do](http://www.ipex.European%20Union/IPEXL-WEB/dossier/document/JOIN20160030.do), last visited on 29/03/2017.

⁵²⁵ Joint Communication, p. 4.

⁵²⁶ This concept was already included in the "Trade for All" Strategy developed by the European Commission.

administrations, which include: 23 provinces, 5 autonomous provinces, 4 direct-administered cities and 2 Special Administrative Regions.” One of the 23 provinces is Taiwan, as is seen in the site of the PRC Government.⁵²⁷ This point is basic to understand the position of the PRC about Taiwan.

According to the Joint Communication,⁵²⁸ the EU is engaged to maintain its close relation with Hong Kong and Macao and to promoting respect for the Basic Law⁵²⁹ and the “One Country, Two Systems” principle.⁵³⁰ Regarding this principle, Paloma García Picazo maintains that

“Nixon, the first US President to pay a visit to the PRC, in February 1972, engaged himself to withdraw contingents of troops from Taiwan and he also admitted that the island was an integral part of ‘China’.¹⁶ The current role of China in the international scene is literally determined by this event. It is paramount in its internal politics, but it is even more in the world politics regarding the determination of the prevailing balance of forces and the possibility of alliances between the major international players.”⁵³¹

Hence, one of the first actions taken by Donald Trump after having been elected as President of the United States was conspicuous. According to Reuters, “U.S. President-elect Donald Trump on Saturday left open the possibility of

⁵²⁷ Central People’s Government of the People’s Republic of China, available at http://www.gov.cn/test/2005-06/15/content_18253.htm, last visited on 29/03/2017. Original version: “目前中国有 34 个省级行政区, 包括 23 个省、5 个自治区、4 个直辖市、2 个特别行政区。” “中华人民共和国中央人民政府” (Site of the Central People’s Government of the People’s Republic of China). “中华人民共和国行政区划” (Political administration of the PRC). In the site of the Taiwan Affairs Office of the State Council PRC we find the following declaration: “Taiwan is the largest island in China”. Original version: “台湾是中国的第一大岛,.....” “中共中央台湾工作办公室 - 国务院台湾事务办公室”, available at http://www.gwytb.gov.cn/bttw/201101/t20110131_1740202.htm, Last visited on 29/03/2017.

⁵²⁸ Joint Communication, p. 4, 8th paragraph.

⁵²⁹ Official site of the Hong Kong Government, available at http://www.basiclaw.gov.hk/en/basiclawtext/chapter_1.html, last visited on 29/03/2017. We have extracted only two articles of the said Hong Kong’s Basic Law, in order to show the potential conflicts ahead, as, according to the said Law, the Hong Kong way of life shall remain unchanged for 50 years, i.e. there are still more than 30 years left. “Article 4 - The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of the Hong Kong Special Administrative Region and of other persons in the Region in accordance with law. Article 5 - The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.”

⁵³⁰ According to the Central People’s Government of the People’s Republic of China, in its page “Altogether in peace, one country two systems”(unofficial translation): “Chinese Mainland and Taiwan people, Hong Kong and Macao compatriots as well as Chinese residing abroad, Chinese people, all of us cannot wait till we are united”. Original text: “和平统一·一国两制” “海峡两岸的中国人、港澳同胞以及海外侨胞、华人, 都殷切期望两岸携手合作”, available at <http://www.scio.gov.cn/zfbps/dfwtbps/Document/1435187/1435187.htm>, last visited on 29/03/2017.

Site of the Hong Kong Government, available at <http://www.info.gov.hk/info/sar5/c12.htm>, last visited on 29/03/2017. This Principle is still thoroughly supported by the Honk Kong Government: Unofficial translation: “In a nutshell, we still think that the ‘One country, two systems’ concept is perfectly embodied in Hong Kong”. Original text: 總括而言, 我們仍然認為“一國兩制”的概念已在香港充分體現。

⁵³¹ GARCÍA PICAZO, P., “Módulo II: Situación Geopolítica,...”, p. 168.

meeting with Taiwan's president if she visits the United States after he is sworn in on Jan. 20 [2017] [...]"⁵³²

The Joint Communication maintains that it will support Taiwan and its values as well as the development of cross-strait relations, i.e. the relations between Taiwan and Mainland China.

The Joint Communication states that the EU relations with China should be developed in a wider perspective of the Asia-Pacific region, keeping in mind the EU relations to its close partners in the region, as Japan, Korea, the ASEAN countries and Australia among others.

Another essential strategic paper in the EU-China relationship is the Prosperity and Reform Agenda. In the occasion of China's Party Plenum in 2013, President Xi Jinping made public an extensive reform of China's socio-economic model by 2020.⁵³³ The Joint Communication considers that "Chinese priorities create opportunities for the EU".⁵³⁴ However, probably such a statement is not accurate because, e.g., one of the key policies of nowadays China, the Chinese "opening up" concept (改革开放 *gaige kaifang*)⁵³⁵ is logically intended for the development and benefit of Chinese companies, and to ease the Chinese go abroad (下海 *xia hai*).⁵³⁶ The very Joint Communication considers that "'opening up' is focussed more on helping Chinese companies go abroad than improving access to China's market".⁵³⁷ China expects its State-owned Enterprises (SOEs) shall establish abroad as world aces. So, the EU wishes do not fully dovetail with the ones of China; Chinese companies operate freely in Europe (according to the view of the EU, expressed in the Joint Communication), while EU companies

⁵³² "Trump leaves open possible Taiwan meet [...]" Reuters, Edition: United States, Sat Dec 31, 2016 | 10:29pm EST, available at <http://www.reuters.com/article/us-usa-trump-idUSKBN14L0PP>, last visited on 08/06/2019.

⁵³³ Communiqué of the Third Plenary Session of the 18th Central Committee of the Communist Party of China: "The plenum required that by 2020 decisive results will have been achieved in the reform of important areas and crucial segments, and institutions and systems that are structurally complete, scientifically standardized and effective in operation are to be formed, to ensure that institutions in all areas become more mature and complete." Site of China.org.cn. China.org.cn is "The authorized government portal site to China, China.org.cn is published under the auspices of the State Council Information Office and the China International Publishing Group (CIPG) in Beijing." Available at http://www.china.org.cn/china/third_plenary_session/2014-01/15/content_31203056.htm, last visited on 10/09/2019.

⁵³⁴ Joint Communication, p. 4, Title II. "Principles of engagement", fifth paragraph.

⁵³⁵ The "opening up" concept is expressed in Chinese with the word "改革开放" which has two meanings: "To reform and open to the outside world", which "Refers to Deng Xiaoping's policies from around 1980", Pleco, op. cit. As stated in the Joint Communication, "opening up" basically means that China goes out to the world, not the other way round.

⁵³⁶ "下海" is a common Chinese expression, which has several meanings, being the two first ones as follows: "go or put out to sea"; "change one's occupation to enter the market economy" These two meanings could apply to the Chinese 2020 Agenda, Pleco, op. cit.

⁵³⁷ Joint Communication, pg. 5.

(according to the view expressed by the EU) still find hindrances when trying to make business in China. Thus, the EU encourages China to make all necessary reforms in order to improve an economic “level playing field”.⁵³⁸

Regarding the EU as a partner in China’s reforms, the prosperity within the EU depends on the “sustainable growth in China”.⁵³⁹ The EU is “China’s biggest trading partner”, representing roughly 15% of China’s trade and therefore, China depends on the EU as well.

China is undergoing a hard structural reform, aiming to attain lower but more sustainable growth rates. The EU fully supports this shift, based on a higher domestic consumption, a stronger service sector and a more open market for foreign companies. The priorities of China’s 13th Five Year Plan (FYP),⁵⁴⁰ according to the Joint Communication, can mostly match with the EU capabilities: “innovation, services, green growth and balancing urban and rural development”.⁵⁴¹

The Joint Communication stresses two points which, in our view, intend to gain what this text calls the “level playing field”⁵⁴² (which somehow is a euphemism for an “economic fair play”):

“It is in the EU’s interest to support China’s transition to a more sustainable and inclusive social and economic model by promoting core labor standards and decent work, welfare reform, and a shared commitment to responsible global supply chains.”⁵⁴³

The above-mentioned paragraph lets us know the interest of the EU regarding China. Eugenio d’Ors had his opinion about similar situations.⁵⁴⁴ Those allegations made by one the EU major authorities about aspects which could improve the life standard in China, and thus are apparently declared in favor of the Chinese population, are not in the interest of Chinese people and workers, but “in the EU’s interest”. The key question is: why? Maybe because those labor

⁵³⁸ Ibid.

⁵³⁹ Id., pp. 5-6.

⁵⁴⁰ According to China’s 13th Five Year Plan (FYP) (unofficial translation): “Chapter Two. Implementation of a development strategy towards a shift for creativity. Set the cardinal point of development on innovation, and having innovation technology as its core.” Original text: “第二篇 实施创新驱动发展战略 - 把发展基点放在创新上, 以科技创新为核心.....”, 中华人民共和国国民经济和社会发展 (China’s economic and social deveopment), 第十三个五年规划纲要 (Outline of the FYP), available at http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm, last visited on 29/03/2017.

⁵⁴¹ Joint Communication, p. 6.

⁵⁴² Id., p. 5.

⁵⁴³ Id., p. 6.

⁵⁴⁴ “The instinctive drives of the unconscious domain of the human psyche”, which Eugenio d’Ors called “larvae”. “Lletra”, Catalan Literature online, available at <http://www.lletra.net/en/author/eugeni-dors/detail>, last visited on 29/03/2017.

standards and welfare reform would directly affect the competitiveness of both sides' enterprises? For this very reason perhaps those reforms and improvements are in the EU's interest. For this very reason, short after the above-mentioned document states that "it is important for the EU to work with China to promote open and fair competition in each other's markets and to discourage China from underwriting its companies' competitiveness through subsidization or the protection of domestic markets". This is just another way to try and improve the said "level playing field".

Concerning the push up of trade and investment, the EU's paramount urgency, with a view to delve and re-establish its relations with China, is a Comprehensive Agreement on Investment. In this point, the main aim is that China liberalizes its economy and to create "a level-playing field for business". The EU would welcome a possible Free Trade Agreement (FTA) and would also like to take advantage of this situation and start broader dealings on investment with Hong Kong and Taiwan and deepen in integrated regional supply chains.⁵⁴⁵

The EU promotes also, among others, the following aspects:⁵⁴⁶

- The protection of geographical indications. We consider that this point may well aim to the protection of falsification of geographical indications
- Improving cooperation on customs and trade facilitation, with a basis on the WTO Trade Facilitation Agreement, which should be beneficial for both sides
- The EU wishes to become productive Chinese investments in Europe in the condition that they fulfil the EU laws, and expect reciprocity in China
- A key point to China's economic transformation is to reform China's financial system
- "Industrial over-capacity" in several industrial sectors in China, especially the steel industry. The EU remarks it is worried for this reason and, in case the problem is not solved, the EU might impose

⁵⁴⁵ This point refers to the concept of "one China" policy, expressed in the Joint Communication, p. 4, and analysed in the part of this thesis dedicated to the analysis of the said Joint Communication.

⁵⁴⁶ Joint Communication, pp. 7 and 8.

“trade defence [sic] measures”, extending to other industries such as “aluminium, ceramics and wood-based products”. Chinese “industrial over-capacity” is yet another example of asymmetry

- China, in line with its WTO commitments, should notify subsidies, mainly those granted to the steel industry. In the medium term, China should reform its SOEs-based economy and open up the market to the private sector. As several provisions in China’s Protocol of Accession to the WTO have expired, the EU considered to change the treatment of China regarding anti-dumping investigations after December 2016
- Reform of the legal system and reinforce the rule of law in China are previous requisites for the thorough completion of the reforms in China. The independency and clarity of the legal system is a key point of the institutional basis for a liberalized economy
- The EU should keep on pursuing dialogues with China on standards, regulation and conformity assessment procedures in essential industries

In respect of research, innovation and the digital economy, China is making a rapid shift “towards a knowledge-based and innovation-driven economy”.⁵⁴⁷ As one of the worldwide champions in this sector, the EU is deeply engaged with its cooperation with China to attain EU targets in accord with the Digital Single Market strategy.

Pushing drives as “Made-in-China 2025”⁵⁴⁸ and “Internet +” schemes highlight the value China attaches to the “digital economy” as well as its inherent capability of transforming quite a few key sectors as, for example, manufacturing. European information and communications technology operators suffer hindrances when trying to compete in the Chinese market, including, among

⁵⁴⁷ Id., p. 8.

⁵⁴⁸ “Made-in-China 2025”(中 国 制 造 2025), available at <http://www.miit.gov.cn/n11293472/n11293877/n16553775/n16553792/16729700.html>, last visited on 29/03/2017. Unofficial translation: “A determined promotion of the innovative development in the manufacturing sector, a positive advance in the information technology...” Original text: “大力推动制造业创新发展，积极推进信息技术.....”

others, “closed public procurement”.⁵⁴⁹ The EU, for the sake of EU companies, should enhance the access to the Chinese market.

The safeguard and enactment of intellectual property rights (IPR) are key questions for the promotion of innovation.

Regarding research and innovation, the EU firmly advocates for teamwork with China in order to develop knowledge and technology, helping to develop China’s great source of talent, trying to attract research and innovation to the EU, and cooperating with a view to solve common social and environmental problems. EU’s Horizon 2020 and EU programmes should help to attain the said aims as well as to reach the reciprocal fair play for enterprises (what, in terms of the EU, is called a “level playing field”).

II.2.3 EU’s legal instruments regarding EU-China relations

Basic Framework (Strategy)

Name	Date	Details
'Elements for a new EU Strategy on China' (aka 'Joint Communication')	2016	Constitutes the China dimension, implementing the Juncker Commission's political guidelines. Launched by the High Representative and the Commission
'Council Conclusions EU Strategy on China'	2016	Complements the above document. Launched by the Council
'EU-China 2020	2013	Covers the areas of: peace and

⁵⁴⁹ Joint Communication, p. 9.

“Public procurement”, Transparency International, available at http://www.transparency.org/topic/detail/public_procurement, last visited on 29/03/2017. But how open are public procurement procedures in the European Union? According to Transparency International, the said procedures are not too clear and fair: “Trillions of dollars are spent each year buying goods and services for public projects. From schools and hospitals, to power plants and dams, this means big budgets and complex plans. It also means ideal opportunities for corruption. Contracts to suppliers can be awarded without fair competition. This allows companies with political connections to triumph over their rivals. Or companies within the same industry can rig their bids, so each gets a piece of the pie. This increases the cost of services to the public. We’ve found that corruption can add as much as 50 per cent to a project’s costs. But corruption in public procurement isn’t just about money. It also reduces the quality of work or services. And it can cost lives. People in many countries have paid a terrible personal price for collapsed buildings and counterfeit medicines. The end result? Our trust in our leaders is eroded.”

Strategic Agenda for Cooperation'		security, prosperity, sustainable development, and people-to-people exchanges. Bilateral relations are conducted at the highest level through the annual EU-China Summit. Jointly signed by the EU and China

Political relations

Name	Date	Details
Strategic Dialogue	Annual meetings between the EU and China	Discuss bilateral relations with a focus on foreign and security policy

Human rights

Name	Date	Details
Charter of Fundamental Rights of the European Union	2000	The EU is committed to promoting the universality of human rights and to improve the human rights situation in China
Human Rights Dialogue	Since 1995, and meeting regularly ever since	The rule of law, freedom of expression, freedom of religion and belief, freedom of assembly and association, the death penalty, prevention of torture, the situation of human rights defenders, the rights of persons belonging to ethnic and religious minorities, Social integration and other issues relating to social, cultural, civil and political rights
European Instrument for Democracy and Human Rights	2014	Promote the universal values of human rights in China

Economic relations

Name	Date	Details
HED	Annually	Chaired by a Vice President on the EU side and a Vice-Premier on the Chinese side
The Joint Committee	Annually	At Commissioner/Minister level
Trade and Investment Policy Dialogue (TIPD) and the Economic Trade Working Group (ETWG)	Annually	At Technical level

Research and innovation

Name	Date	Details
Agreement for Scientific and Technological Cooperation	1998	Research and innovation are central to the EU-China strategic partnership
Horizon 2020	2014	EU's Framework Programme for Research and Innovation
EU Delegation in Beijing	1988	Promoting dialogue on research and innovation between the EU Member States' embassies in China, raising awareness of EU policies and programmes, and supporting the coordination and development of joint activities and approaches vis-a-vis China
Co-funding mechanism covering selected thematic areas	2015	Fully open to international participation in all fields and are
Partnership Instrument	2007	This is one of the funding instruments that enable the EU to take part in shaping

		global change and promote its core values
EU-China Innovation Cooperation Dialogue	2013	EU Policy towards building an Innovation Union and the Chinese policy towards innovation driven development
EURAXESS china.euraxess.org	2013	EU networking tool for European researchers working outside Europe and for non-European researchers that wish to collaborate and/or pursue a research career in Europe

Environment, energy and climate change

Name	Date	Details
Climate Change Partnership	2005	Provide a high-level framework for cooperation and dialogue on climate change policies, to exchange views on key issues in the international climate change negotiations and encourage low carbon technology development and uptake
joint statement	2015	The two sides expressed their commitment to low-carbon development and to cooperating in the context of the UN climate conventions
7th Environmental Action Programme	2013	The EU is working towards green growth
Environment Policy Dialogue (EPD)	2003	Contribute to green growth
principles_for_technical_cooperation.pdf	2017	Obligations of operators who place timber and timber products on the market
China-Europe Water Platform (CEWP)	2012	Encourage an integrated approach to water management in China
EU-China Energy	2016	New step ahead in the long-standing

Cooperation Roadmap		energy cooperation between the European Union and China

Food safety and consumer protection

Name	Date	Details
"RAPEX-CHINA" system	2006	International cooperation on product safety
Trilateral cooperation: EU-US-China Initiative	2008	Product safety is a focal area of concern for the three parties and, in the past years, all have made significant efforts
tri-lateral discussions	2008	To build up mutual trust and to develop a coordinated response to the challenges related to product safety

Communications Networks, Content and Technology

Name	Date	Details
Digital Single Market	-	Is the second of the 10 political priorities for the Juncker Commission. Closer cooperation between the EU and China in this key sector is mutually beneficial
Joint Declaration on strategic cooperation in 5G	2015	The European Commission signed a Joint Declaration on strategic cooperation in 5G mobile networks with China's Ministry of Industry and Information Technology (MIIT)
Dialogue on Information Technology, Telecommunications and Informatisation	Since 2009, annually	The European Commission's Directorate-General for Communications Networks, Content & Technology (DG CONNECT) has also maintained an annual Dialogue on Information Technology, Telecommunications and Informatisation with the MIIT since 2009
EU-China Trade Project	2000	The EU Delegation also deals with issues around Internet governance as well as

		academic research cooperation in the sector, ranging from the Internet of Things to Smart Cities
European Union Chamber of Commerce in China	2000	Its goal is to establish a common voice for the various business sectors of the European Union and European businesses operating in China. It is a members-driven, non-profit, fee-based organisation with a core structure of 24 Working Groups and 7 Fora representing European business in China

Development cooperation

Name	Date	Details
The EU-China Cooperation Portfolio	-	EU projects have focussed on areas of importance for sustainable and inclusive development in China, and where the EU considers it has important policy experiences to share

Partnership Instrument

Name	Date	Details
Partnership Instrument	2014	Managed by the EU Service for Foreign Policy Instruments The instrument has four main objectives: • offering policy support and responding to global challenges; • projecting the international dimension of Europe 2020; • enhancing market access and boosting trade, investment and business opportunities for EU companies; • promoting public diplomacy and academic cooperation

Source for all the above-mentioned charts: Compilation developed by the author of the thesis, based on the site https://eeas.europa.eu/headquarters/headquarters-homepage/15394/china-and-eu_en

The following website provides information about the **Chronology of EU-China Relations**: https://eeas.europa.eu/sites/eeas/files/eu-china_chronology_0.pdf.

The following website provides information about the **EU-China Dialogue Architecture**: https://eeas.europa.eu/sites/eeas/files/2015_november_eu-china_dialogue_architecture.jpg

The following websites provide information about the **Multilateral treaties in which both the EU and China are parties**: <https://treaties.un.org/pages/historicalinfo.aspx#EuropeanUnion> and <http://ec.europa.eu/world/agreements/searchByType.do?id=2>

II.3 Conclusions

To sum up, from the legal dimension (Chapter II) we have drawn several conclusions. To start from the basic principles, the EU and China differ in the very definition of International Law. China's main stream considers that such concept has to be realistic and practical, opposed to idealistic, as it is considered the Western view of International Law. There are two main aspects regarding this issue. The first one is the notion of sovereignty, which is probably the first hurdle for the EU-China relations, generating asymmetry. For China, sovereignty is paramount hence there is nothing which can disturb its exercise. The second aspect is the influence of the Western vision of International Law in the rest of the world, including China. Now Chinese and even Western scholars advocate the influence goes the other way round. They maintain that the West should also receive the influence from the Chinese concept of International Law as, e.g., the Responsible Protection and Tianxia (天下).

Another huge gap between both sides is that the EU has an expansive view of sovereignty, while China considers that sovereignty shouldn't be ceded, but it shouldn't be expanded either. Notwithstanding the huge gap regarding the respective notion of sovereignty, it does not impede cooperation between both sides. However, both sides could contribute to a multipolar world (China's vision)

or a multilateral one (EU's vision), e. g. China, the New Silk Road and the Asia Infrastructure Investment Bank (AIIB), among other institutions. The drawback for the EU is that the said institutions are China-based, and EU projects such as the TRACECA don't seem to be so successful nowadays. The probable causes for this asymmetry might be the difference in investment capability and the lack of cohesion of the EU.

An accurate vision, sustained by a certain stream, maintains that the EU privileges the transaction, while China privileges the relations.

The theory of international relations could break in fragments, unless the international society starts rebuilding it, but under the influence of different parts of the world.

Regarding sovereignty and its evolution, the EU and China still have a further asymmetry: the EU has the tightest association degree of all international organizations. On its part, China is the most relevant "sovereignist" state in the world.

Concerning the evolution of *ius cogens*, there is a great variety of opinions. We summarize the main features: it is doubtful whether it could be implemented in case of jurisdictional immunity; its application is not unlimited and should always regard its purpose; it is unclear whether human rights can be implemented both internationally and domestically; the State is not to be prosecuted; it was conceived as a tool for poor and weak states; *ius cogens* is applicable beyond the law of treaties. As we see, among the scholarship there are opposed opinions regarding *jus cogens*.

As for *ius cogens*, there are several civil claims against China which have been dismissed by foreign courts in cases regarding *jus cogens*.

The responsibility to protect (R2P) is a special case, in which we can see the evolution of the asymmetry between both sides: first, the EU fully adhered to the idea, while China didn't. At a later stage, China conceived its own concept, named Responsible Protection. It is based on the first two pillars of R2P. The three pillars of the R2P are: first, the State is responsible to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing; second, the international community, which bears the responsibility to assist states to uphold the responsibility to protect; third, the international community has the responsibility to protect populations in diplomatic ways or with the use of force,

according to the UN Charter, if a State is unwilling or unable to protect it. This third pillar is the one which China, in its Responsible Protection, applies in a much more restrictive way. China suspects that the West, via Human Rights, might tend to interfere in third states' home affairs.

Comparing the EU and China, we had to find a lowest common denominator between both sides. As China is a unitary state, and the EU is an association of states with a trend to become a federation, the parameter for this analysis could be the state. We analyze the constituent elements of the State: territory, population and political organization. The most relevant is the territory, which is under the direct effect of sovereignty; hence China attaches special relevance to it. Naturally, population is the other essential element of the comparison. China's area is more than twice the area of the EU, but it is the population what really makes the asymmetry, as China's population is more than two times and a half the one of the EU. The political organization also represents a big asymmetry between both political organizations, mostly mirrored in the EU faint leadership and lack of cohesion. Furthermore, in China there is a single party system, while in the EU member States the number of parties is open.

III. ECONOMIC DIMENSION

III.1 Trade imbalance deepens asymmetrical relations

III.1.1 Commerce between the European Union and China: an increase in the asymmetry

One of the key elements in the EU-China relations is trade. Hence, one of the major asymmetrical factors in the EU-China relations is trade, due to the huge trade imbalance.⁵⁵⁰

According to Graham Allison

“In a single generation, a nation that did not appear on any of the international league tables has vaulted into the top ranks. In 1980, China’s economy was smaller than that of the Netherlands. Last year [2015], the increment of growth in China’s GDP was roughly equal to the entire Dutch economy.”⁵⁵¹

According to the European Parliament, the EU exports to China 113.100 million euros, while China sells us 281.900 million euros, this is to say, China exports to the EU nearly 250% of what the latter exports to China.⁵⁵²

Eugenio Bregolat states that China tailored its own economic system, which allowed it to progress. Furthermore, Chinese leadership showed its capability for self-criticism, what happened to be essential for the survival of the Asian giant. Probably, Europe lacks such an attitude.⁵⁵³

Alfredo Pastor and David Gosset argue that in 2003 the EU suffered a deficit in the balance of payments amounting to 55.000 million euros, the highest bilateral trade deficit of the EU.⁵⁵⁴ Trade deficit also affects the EU regarding

⁵⁵⁰ GARCÍA WEIL, A., “La COVID-19 y sus efectos en la asimetría de las relaciones UE-China: ¿hacia un nuevo paradigma económico?”, *Araucaria. Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, año 22, nº 45, Tercer cuatrimestre de 2020, pp. 406-407, available at <https://revistascientificas.us.es/index.php/araucaria/article/view/13502>, last visited on 24/12/2020.

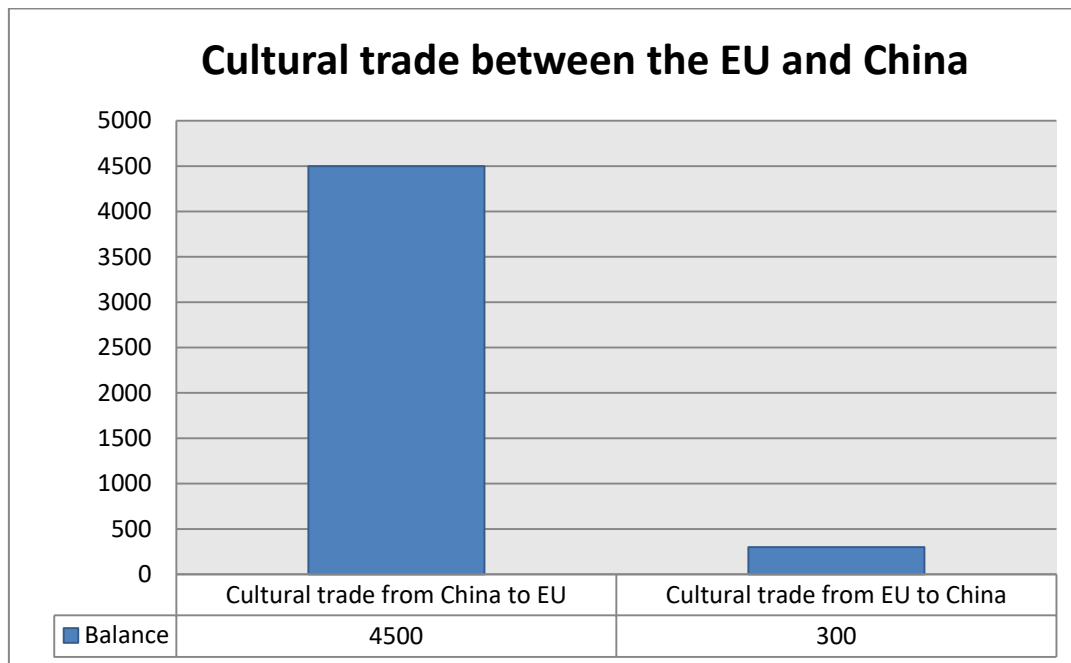
⁵⁵¹ ALLISON, G., “The Thucydides Trap: Are the U.S. and China Headed for War?”, *The Atlantic*, available at <https://www.theatlantic.com/international/archive/2015/09/united-states-china-war-thucydides-trap/406756/>, last visited on 01/03/2017.

⁵⁵² “Equilibrando la economía mundial: déficit comercial de la UE con China”, *En portada*, Parlamento Europeo, available at <http://www.europarl.europa.eu/news/es/news-room/20111017STO29445/Equilibrando-la-econom%C3%ADa-mundial-d%C3%A9ficit-comercial-de-la-UE-con-China>, last visited on 01/03/2017.

⁵⁵³ BREGOLAT, E., “Honoris causa”, Investiture as Doctor honoris causa of Eugenio Bregolat, Universitat de Lleida, p. 19, available at http://www.udl.cat/export/sites/universitat-lleida/ca/organs/secretaria/.galleries/docs/honoris/Honoris_Bregolat.pdf, last visited on 04/06/2019.

⁵⁵⁴ PASTOR, A. and GOSSET, D., “The European Union-China relations: a key for the XXI century world order”, *Real Instituto Elcano*, Área: Europa/Asia-Pacífico, 2005, no. 142, p. 4. Unofficial translation. Original text: “Las relaciones entre la Unión Europea y China: una clave del orden mundial del siglo XXI”, *Real Instituto Elcano*, Área: Europa/Asia-Pacífico, 2005, no. 142, p. 4, available at <http://www.realinstitutoelcano.org/wps/wcm/connect/2b3248004f01876ebd0dfd3170baead1/ARI-142-2005-E.pdf?MOD=AJPERES&CACHEID=2b3248004f01876ebd0dfd3170baead1>, last visited on 08/06/2019.

cultural industries as, according to Eurostat, the EU imported from China cultural produces amounting 4.500 million Euros/year, i.e. China was EU's major supplier in the said field. Meanwhile, China imports from the EU 300 million Euros, hence cultural trade imbalance is overwhelmingly in favor of China.⁵⁵⁵



SOURCE: Graphic made by the author, using data from “Informe Elcano – Relaciones España-China”, coordinated by M. Esteban.

Moreover, China has 3.2 trillion American dollars in foreign exchange, which implies that those sovereign issuers depend on China and, likewise, this Asian country has interests on those countries.⁵⁵⁶

According to José María Beneyto, Xinning Song and Chun Ding, Europe feels aggrieved by several factors which can be considered essential for Chinese and European “competitiveness” respectively, in the worldwide markets, such as certain unfair competition practices both in labour and safety fields, as well as regarding the protection of intellectual property rights. In addition, European leaders are gradually more worried for the increasing deficit in the balance of payments.⁵⁵⁷

Chengyuan Guan (former Chinese ambassador for the EU) believes that

⁵⁵⁵ ESTEBAN, M. (coordinator), op. cit., p. 116.

⁵⁵⁶ “China to keep investing in euro zone debt: China central bank”, Reuters, available at <http://www.reuters.com/article/us-china-europe-idUSTRE81E07J20120215>, last visited on 31/03/2016.

⁵⁵⁷ DELAGE, F., and ABAD, G., “China’s foreign policy: A European perspective” in BENEYTO, J. M., SONG, X. and DING, C. (Eds.) *China and the European Union: future directions*, Madrid, CEU Instituto Interuniversitario de Estudios Europeos, 2013, no. 7, p. 121, available at <http://www.idee.ceu.es/Portals/0/Publicaciones/Ebook%20n%C2%BA%207.pdf>, last visited on 31/03/2016.

“[...] there are certain difficult issues between China and the EU due to their historical and cultural differences, the different social system and degrees of development. These issues range from human rights, Tibet and anti-dumping policies against China.”⁵⁵⁸

On the other hand, Chengyuan Guan also states that the EU has withdrawn “the label imposed on China accusing it for not being a market economy and has rectified its anti-dumping policies towards China.”⁵⁵⁹ Such attitudes help reaching an atmosphere based on mutual understanding and cooperation.

As a matter of fact, economy is one of the main factors of asymmetry in the EU-China relations.

Lucas Papademos, ex-Vice-President of the ECB, on 11 September 2008 held a speech. He was straightforward, arguing that the EU-China trade relationship is featured by some “asymmetries”. Later in his speech, Papademos connected the above-mentioned “asymmetries” with the “imbalance in the European-Chinese trade”. He stated that the main reasons for the said trade imbalance are, on one hand, the different strength of economies and, on the other, the non-tariff barriers in China and the exchange rate between the euro and the Chinese currency, the renminbi (RMB).⁵⁶⁰

⁵⁵⁸ GUAN, C., op. cit. p. 141.

⁵⁵⁹ *Ibid.*, p. 145.

⁵⁶⁰ European Central Bank - Eurosystem, available at <https://www.ecb.europa.eu/press/key/date/2008/html/sp080911.en.html>, last visited on 13/8/2017. Speech held by Lucas Papademos, ex-Vice-President of the ECB, on 11 September 2008, titled “China and the European Union: global economic challenges and policy responses”, at the Hamburg Summit (“China meets Europe”). “So, why do we Europeans occasionally express concern about the expanding trade and, more generally, the economic ties between the EU and China? I think that there are many bad and some good reasons. The main reason, in my view, is that Europe can not yet reap the full potential benefits of free trade owing to certain “asymmetries” characterising the EU-China trade relationship. Let me first illustrate this with some figures. While China is the EU’s main import partner, it is only its fourth largest export partner. In 2007, the value of EU imports from China was 231 billion euro, almost four times higher than the imports from Japan. The EU’s exports to China amounted to almost 72 billion euro, that is, less than one third of the imports from China. The EU currently exports more to Switzerland, a country with only 7.5 million inhabitants, than to China! As a result of this asymmetry, the EU’s trade deficit with China was 160 billion euro in 2007, accounting for 86% of the EU total trade deficit. To put it differently, the total trade deficit of the EU of 186 billion euro very much reflects the sizeable imbalance in the European-Chinese trade. There are several explanations for the EU-China trade imbalance. A significant part of it is, of course, the natural outcome of market forces. For instance, the large Chinese trade surpluses in the textiles and IT sectors can be explained by China’s competitive advantage and specialisation in labour-intensive production. In addition, due to its increasing role as an “assembling hub”, China has become an export platform in Asia, meaning that several goods that were previously exported directly from other Asian countries are now exported from China. At the same time, while Europe has a comparative advantage in the production of high value-added goods, such as pharmaceuticals and machinery, we do not observe significant surpluses in the trade of any of these products. Why does Europe not export more of the products where it has a comparative advantage to China? And, more generally, what other factors can explain the observed asymmetries in the EU-China economic relationship? One possible explanation is that European firms are not able to successfully export high-tech goods to China due to difficulties in accessing its domestic market. According to the European Commission, non-tariff barriers in China are indeed estimated to result in a loss of European exports estimated at 20

Regarding the said main reasons alleged by Mr. Papademos as causes for the trade imbalance that, on one hand, the strength of economies. The European Commission recognizes that the EU has a trade deficit with China, but it takes comfort in stating that “Although the EU currently has a trade deficit with China, this is compensated by European exports to other destinations; in fact, the EU's overall trade balance is positive.”⁵⁶¹ Actually, according to the European Commission, there is huge deficit in the EU-China trade. However, the trade deficit is in favour of China only regarding trade in goods, and the trade in services is clearly in favor of the EU:⁵⁶²

EU-China: Trade in goods

Trade in goods 2014-2016, € billions			
Year	EU imports	EU exports	Balance
2014	302.1	164.6	-137.5
2015	350.6	170.4	-180.3
2016	344.6	170.1	-174.5

EU-China: Trade in services

Trade in services 2013-2015, € billions			
Year	EU imports	EU exports	Balance
2013	21.0	27.5	6.4
2014	22.9	29.6	6.8
2015	26.4	37.3	10.9

SOURCE: Graphic made by the author, using data from Trade-Countries and Regions-China, European Commission, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>

Note that the deficit in goods (in favour of China) is 16 times the surplus in services (in favour of the EU) or, in other terms, the surplus in services (in favour of the EU) is only the 6.24% of the deficit in the trade in goods (in favour of China). From this difference, we can draw a conclusion: the advantage of China is

billion euro, or 30% of total trade. Another likely reason relates to the exchange rate between the euro and the Chinese renminbi. While the bilateral exchange rate is only one factor affecting the growing trade deficit, it is difficult to argue that it has had a negligible impact over the years 2002-07: in that period, the Chinese trade surplus with the euro area almost tripled while the Chinese renminbi depreciated vis-à-vis the euro by a cumulative 30%. In 2008, however, the renminbi has so far appreciated against the euro by 9.4%, a welcome development for the balancing of our trade relationship.”

⁵⁶¹ Countries and regions – China, European Commission – Trade, available at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>, last visited on 13/8/2017.

⁵⁶² Trade-Countries and Regions-China, European Commission, available at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>, last visited on 24/8/2017. N.B. Note that for the calculations to compare the surplus in the trade in services and the deficit in the trade in goods, we have taken the figures of the respective last years shown in the statistics.

mainly due to its cheap labor and industrial organisation, and the advantage of the EU is based on its qualified labour.

We can delve into the analysis of the deficit in the trade in goods, and if we compare the individual deficits of each Member State of the EU, we can clearly observe that the stronger a high quality industrial sector an EU Member State has, the lower the deficit in the trade in goods, i.e. the deficit of Germany with China is much lower than the deficit supported by Eastern EU Member States.⁵⁶³

We can draw a further conclusion: the common factor of the said advantage of Germany regarding the trade in goods and the trade in services is the know-how. Therefore, the EU should enhance its investment not only in research, development and innovation, but also in specific educational fields, adapted to nowadays world.⁵⁶⁴

However, in respect of the said surplus in favour of the EU regarding the trade in services, China is improving its educational standards, and this will affect the said facts, and probably will turn tables.

Regarding the words by Papademos, the non-tariff barriers in China and the exchange rate between the euro and the Chinese currency, the Delegations of the Federal republic of Germany in the Popular Republic of China state that one of the reasons for the trade imbalance is the non-tariff barriers.⁵⁶⁵ In this respect, John Fox and François Godement maintain that “European firms in China continue to face a myriad of non-tariff barriers and arbitrary decisions at a local

⁵⁶³ What are the real reasons for trade imbalances? Representations of the Federal Republic of Germany in the Popular Republic of China, p. 1. Unofficial translation. Original text: Vertretungen der Bundesrepublik Deutschland in der Volksrepublik China, available at <http://www.china.diplo.de/contentblob/5044200/Daten/7499678/170406ftchinesedd.pdf>, last visited on 24/8/2017.

⁵⁶⁴ GARCÍA WEIL, A., “La Unión Europea ante China en la era COVID-19”, *Extoikos*, 23, 2020, p. 6, available at <https://dialnet.unirioja.es/servlet/articulo?codigo=7568265>, last visited on 24/12/2020.

⁵⁶⁵ What are the real reasons for trade imbalances? pp. 1-2, Vertretungen der Bundesrepublik Deutschland in der Volksrepublik China. Unofficial translation: Representations of the Federal Republic of Germany in the Popular Republic of China, available at <http://www.china.diplo.de/contentblob/5044200/Daten/7499678/170406ftchinesedd.pdf>, last visited on 24/8/2017. According to the above-mentioned Delegations, “China has not significantly lowered its non-tariff import barriers in recent years. In crucial fields it is even raising them. Food imports are maybe the most strident example. The government is relentlessly pressing ahead with a food certification system that will cover not just risk foods such as meat and fresh milk but -all- foods. Against WTO recommendations and a chorus of protests by all its trading partners, that this would, in many cases, make food exports to China prohibitively expensive, China insists on demanding “food safety” certification for every chocolate bar, every noodle and every juice bottle in the future. This threatens to set back China’s trade relations with all its European partners, especially those that want to redress extreme imbalances in their trade with China in Eastern and Southern Europe. This will hurt independent farmers and jobs in those countries. The infrastructure projects pushed and financed by China can hardly compensate for these losses and will likely further increase the trade imbalance.”

level.” In order to rebalance the EU-PRC economic relationship, the said authors, among others, make the following proposition: “offer to grant China market economy status. In exchange, China should remove specified non-tariff trade and investment barriers such as ‘local content’ requirements for manufacturing, demonstrably improve the enforcement of IPR protection, and secure better legal protection for European firms and managers.”⁵⁶⁶

And both sides are still dealing in the said terms. The key elements for the trade relations between both sides are the following respective requirements: obtaining market economic status, demanded by China, and the level playing field, demanded by the European Union.

According to Lee Branstetter and Nicholas Lardy, the imbalance supported by the US regarding China is even more conspicuous than the one suffered by the EU and Japan.⁵⁶⁷

III.1.2 Free-market and Industrial Property

The flagship of modern China, the New Silk Road, also known as BRI or OBOR, has an essential point: the free-market. The reason is that the Chinese industry is competitive, albeit China is criticized for the above-mentioned currency dispute and the non-tariff barriers. Jonathan Holslag states that “If China had pursued defensive mercantilism for a time the New Silk Road confirms the shift towards offensive mercantilism.”⁵⁶⁸

While China is undertaking such a huge enterprise as the New Silk Road, the European Union is much less active, and this might well be due to the lack of cohesion, but also to the lack of competitiveness. Some EU member countries are competitive, but what counts is the capability of the EU as a whole, as otherwise the weakness of the EU as an entity would be too evident.

⁵⁶⁶ FOX, J. and GODEMENT, F., “A Power Audit of EU-China Relations”, *Policy Report*, European Council on Foreign Relations, 2009, no. 55, p. 11, available at http://www.centreasia.eu/sites/default/files/publications_pdf/a_power_audit_of_eu_china_relations_full_text_0.pdf, last visited on 29/8/2017.

⁵⁶⁷ BRANSTETTER, L., and LARDY, N., “China’s Embrace of Globalization”, Contribution to the volume *China’s Economic Transition: Origins, Mechanisms, Consequences*, p. 46, available at https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/2056/Branstetter_Lardy_6_15_2005.pdf, last visited on 24/12/2017.

⁵⁶⁸ HOLSLAG, J., “How China’s New Silk Road Threatens European Trade”, *The International Spectator*, Vol. 52, 2017, no. 1, pp. 46-60, p. 53, available at <https://doi.org/10.1080/03932729.2017.1261517>, last visited on 24/12/2017.

The EU repeatedly argues that there should be a level playing field for each other side regarding market access. In other words, the market access is asymmetrical, due to the lack of reciprocity, the EU argues, because China does not open its market to the EU companies as much as the EU market is open to the Chinese companies. According to Ikenberry, state power underpins on steady economic growth. China has gained consciousness that it has to be an insider of the worldwide capitalist system; therefore, it accessed the WTO. Furthermore,

“The WTO’s multilateral trade principles and dispute-settlement mechanisms, for example, offer China tools to defend against the threats of discrimination and protectionism that rising economic powers often confront.”⁵⁶⁹

The main reason for the above-mentioned situation is that, within the EU, Chinese top companies compete on equal terms with EU companies in high specialised domains. Nowadays China is concerned about the future openness of EU markets. Those sectors are mainly dependant on political criteria or are regulated by the States. Such sectors are: “energy, infrastructure, public utilities, airport management, telecommunications, etc.”⁵⁷⁰ Moreover, it is not only that there should be reciprocity in market access, but given that market access is based on BITs their wording should be improved, in order to avoid interpretation issues.

Michał Król guesses if there are ways “for the two sides to improve policy conditions for economic integration in order to avoid new tensions and the risk of protectionism escalating [...]”⁵⁷¹

He replies to this question that, lacking other ways to improve a policy, an investment agreement is the best way to ease the EU accesses the Chinese market and “resolve sources of tension”.⁵⁷² Król considers that someone in the EU could fear that a common BIT would damage the protection granted to EU member States in their current BITs. However Król maintains that a common BIT would enhance protection and market accessibility, improving the results of 27 BITs.⁵⁷³

⁵⁶⁹ IKENBERRY, J., “The Rise of China and the Future of the West – Can the Liberal System Survive?”, *Foreign Affairs*, Vol. 8, January/February 2008, no. 1, Changing China, pp. 23-37, p. 32.

⁵⁷⁰ KRÓL, M., “The Case for an EU - China investment agreement”, *ECIPE Bulletin*, 2013, no. 6, p. 2, available at <http://ecipe.org/app/uploads/2013/10/ECIPE-Bulletin-6-FINAL.pdf>, last visited on 09/05/2017.

⁵⁷¹ Id., p. 1.

⁵⁷² Ibid.

⁵⁷³ Ibid.

Carolinn Hjälmlroth and Stefan Westerberg maintain that such a move would reduce distortions between EU investors in countries outside the EU.⁵⁷⁴

The statement above on “EU member states BITs” clearly reflects the lack of cohesion of the EU. A transformation in favor of the EU BITs seems desirable. According to the EU Commission and the High Representative of the Union for Foreign Affairs and Security Policy:

“Neither the EU nor any of its Member States can effectively achieve their aims with China without full unity. In cooperating with China, all Member States, individually and within sub-regional cooperation frameworks, such as the 16+1 format, have a responsibility to ensure consistency with EU law, rules and policies.”⁵⁷⁵

Unity and cohesion are essential for the success of the EU in its relations with China.

As stated by Michal Król, market access is a crucial point in the EU-China negotiations.⁵⁷⁶ Hence, it is clear that market access is another asymmetrical point in the EU-China relations. The solution which Król proposes is not to reduce Europe’s openness, but to enhance China’s market access.⁵⁷⁷

Commercial EU-China relations are currently undergoing a predicament. Król submits that a free trade agreement is not projected. The idea of renovating the Partnership and Cooperation Agreement is not gaining momentum and the High-level Trade and Economic Dialogue has proved it is not the proper way to ease business quarrels. EU-China summits develop more in quantity than in effectiveness. According to Król, a new investment agreement could be an ideal way to ease “bilateral policy cooperation”.

The 12th meeting of the EU-China investment dealings took place in Brussels from the 26th to the 30th September 2016. Such round focused mainly on

⁵⁷⁴ HJÄLMROTH, C., and WESTERBERG, S., “Part 1-A common investment policy for the EU” in *The contribution of trade to a new EU growth strategy -Ideas for a more open European economy*, Kommerskollegium (National Board of Trade), pp. 21-29, p. 21, available at <http://kommerskollegium.se/upload/Analysarkiv/In%20English/Analyses/LS%20Investments.pdf>, last visited on 19/06/2019.

⁵⁷⁵ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint communication to the European Parliament, the European Council and the Council, EU-China – A strategic outlook, Strasbourg, 12.3.2019 join(2019) 5 final, 12/03/2019, p. 2, available at <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>, last visited on 19/09/2019.

⁵⁷⁶ KRÓL, M., op. cit., p. 1.

⁵⁷⁷ Ibid.

agreeing about basic terms and their wording. As a result, they explored “points of convergence”.⁵⁷⁸

Another aspect affecting the level playing field is the devalued RMB. The EU has hardened its position regarding this point. For example, former Commissary Almunia expressed such point in a speech held on the 18.09.2007 at the Qinghua University (清华大学) in Beijing, demanding that China should relax its currency policy.⁵⁷⁹

The European Union and China differ in quite a few aspects. The defense of Industrial Property is a typical case in which the asymmetry between both sides is most evident. Maiza submits that one of the main features of the EU economy is that it invests in creativity, research, design and quality.⁵⁸⁰

And therefore, EU economy is more sensible to the violations of IP. He also considers that counterfeiting does not only affect the companies which created the original produces, but also and more seriously, it endangers the health and security of consumers, as expressed by Maiza.⁵⁸¹

In this point, we would like to highlight the case of phthalates in toys and children articles. Since the late nineties and during the first years of the XXI century the EU made great efforts to ban phthalates in toys and children articles. Phthalates are chemicals which, according to the Council Directive 76/769/EEC, “could potentially present risks related to the health of children.”⁵⁸² If toys and other children produces are original, they have to meet the said requirements, but

⁵⁷⁸ European Commission, Directorate-General for Trade, Directorate B - Services and Investment, Intellectual Property and Public Procurement Investment, Brussels, Trade/B2/AK – NOTE TO THE FILE, Subject: EU-China Investment Agreement: Report of the 12th Round of negotiations, Brussels 26-30 September 2016, p. 1, available at http://trade.ec.europa.eu/doclib/docs/2016/october/tradoc_155061.pdf, last visited on 09/05/2017.

⁵⁷⁹ ALMUNIA, J., The European Economy and China – Common Challenges and Shared Solutions, SPEECH/07/543, Speech at Qinghua University, Beijing, 18 September 2007, p. 5, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwib_L_9q9riAhVPXR0KHfEpD7AQFjAAegQIABAC&url=http%3A%2F%2Feuropa.eu%2Frapid%2Fpress-release_SPEECH-07-543_en.pdf&usg=AOvVaw21XkCPC8oKOfzF9EAeUuQ5, last visited on 19/05/2017. Original text: “In addition, a more flexible exchange rate policy would allow the central bank to raise interest rates and curb investment – in the long run this would help China to rely less on exports and more on consumption and investment geared towards the domestic market.” Quoted by MAIZA LARRARTE, J., op. cit., p. 240.

⁵⁸⁰ MAIZA LARRARTE, J., op. cit., p. 225.

⁵⁸¹ Ibid. Unofficial translation.

⁵⁸² Directive 2005/84/EC of the European Parliament and of the Council, of 14 December 2005 amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0084>, last visited on 11/05/2017.

if they are faked, they might contain the above-mentioned forbidden potentially risky phthalates. This is one of many cases in which counterfeits not only damage the companies making the original produces, but also the health and security of consumers. The EU undertakes a tough activity in order to tackle counterfeiting.

According to a study by Paul Ranjard and Benoît Misonne carried out in 2005, there are huge differences between the legislation in the EU and in China. In China, counterfeit will be considered a criminal offence only if it amounts above 150,000 RMB. Under the said amount, it will be considered just an administrative offence.⁵⁸³

Ranjard considers that China has made great efforts in the fight against counterfeiting. However, Paul Ranjard and Benoît Misonne maintain that “IP violations in the PRC have been worsening in recent years.” The said study was issued in 2007.⁵⁸⁴

Maiza states that the PRC has improved the IP protection system but the European Commission is not satisfied with the effectiveness of the improvements. Maiza submits that the European authorities seem to opt for a tougher and less conciliatory attitude. For instance, Maiza considers that the EU has taken the decision to hire an expert in the protection of IPR for its Beijing delegation. Such an expert should have a double task: on one hand, to promote cooperation with China; on the other hand, to do a more comprehensive daily follow up in the sectoral dialogue committees.

III.1.3 The EU and China: business as usual?

Ten years before the mentioned Joint Communication, Benita Ferrero-Waldner and Peter Mandelson, in a letter published by the International Herald Tribune and the New York Times, expressed a subtle caveat, demanding from China reciprocity regarding the openness of the markets. If the EU companies have difficulties accessing the Chinese markets, the EU could apply “defensiveness and protectionism”.⁵⁸⁵ But the “Joint Communication to the

⁵⁸³ RANJARD, P. and MISONNE, B., “Study on the Future Opportunities and Challenges of EU-China Trade and Investment Relations”, Study 12: Exploring China’s IP Environment-Strategies and Policies, UNIFAB Beijing, 2007. pp. 11-12, available at http://trade.ec.europa.eu/doclib/docs/2007/february/tradoc_133314.pdf, last visited on 15/05/2017. Quoted by MAIZA LARRARTE, J., op. cit., p. 228.

⁵⁸⁴ Id., p. 2. Quoted by MAIZA LARRARTE, J., op. cit., p. 228.

⁵⁸⁵ FERRERO-WALDNER, B. and MANDELSON, P., New York Times, 22.10.2006, available at <https://mobile.nytimes.com/2006/10/22/opinion/22iht-edmandel.3246894.html>, last visited on

European Parliament and the Council, Elements for a new EU strategy on China”, demand repeatedly (10 times) a “level playing field” regarding the openness for the EU’s companies in China. Reportedly, there is no reciprocity to the openness Chinese companies find when they enter the European market, but the lack of it when companies coming from the EU try to penetrate the Chinese market. Hence, we are afraid that the above-mentioned letter published in the New York Times was not effective. This case leads us to a permanent question in the EU-China relations: does it pay to maintain a tough position? Zhang Xiaotong maintains that soft and institutionalized means have proven along History to be much more effective than tough means.⁵⁸⁶

Since the first contacts between Europeans and Chinese, their economic relations were asymmetric, as we analysed in Chapter I, mostly in favour of Europeans and, with the exception of some short periods, such status lasted till the reforms introduced by Deng Xiaoping boosted the economy of the Asian country. In between there was a very short period of symmetry in these economic relations, which actually was the crossing moment between the two asymmetric situations, i.e. the change from the long standing asymmetry in favour of Europe till the recent (since the 90’s) asymmetrical situation in favour of China. Given the said precedents, we can deduct that the current status will not necessarily last in the long run, although it seems steady.

Maiza Larrarte states that, according to Krugman, it is logic that, after the inherited chaos from previous times, reforms led to a swift economic recovery. However, according to Maiza, China’s economic surge will not last for long.⁵⁸⁷

Hence, China should benefit from the window of opportunity and adopt measures in order to be able to react to hidden problems.⁵⁸⁸

According to Maiza, since the 90’s, the productivity growth rate is low in the EU, lower not only than in China and India, but also than in the USA, due to the lack of adaptability.⁵⁸⁹

17/05/2017. “China, for its part, should reinforce these efforts by strengthening its commitment to economic openness and market reform. It should improve legal protection for foreign companies and reject anticompetitive trading practices and policies. We will only be able to maintain the case for openness in Europe if China shares reciprocal openness and readiness to play by the rules of trade. If not, we could see in Europe the growing defensiveness and protectionism that is becoming evident in some quarters in the United States.” Quoted by MAIZA LARRARTE, J., op. cit., p. 239.

⁵⁸⁶ ZHANG, X., “EU-China Trade Relations: A Concise History (1975-2014)”, *Wuhan University Center for Economic Diplomacy*, p. 13., available at <http://www.whuced.com/show/?id=205&page=1&siteid=3>, last visited on 27/03/2017.

⁵⁸⁷ MAIZA LARRARTE, J., op. cit. p. 30.

⁵⁸⁸ Ibid.

According to Wang Li:

“From the information of balance of payments for the current account, before 1990 the EU enjoyed surplus of the current account (excluding a little trade deficit from 1980-1983), which peaked in 1985 with a US\$2.3 billion surplus. The accumulated surplus of the EU from 1990 to 1995 was S\$11.8 billion. The turning point appeared in 1996, in which China enjoyed a US\$1.5 billion trade surplus and from then until 2002, increased it every single year. From 1996 to 2002, China’s total trade surplus with the EU reached US\$54.8 billion.”⁵⁹⁰

But Denise Prevost, Leïla Choukroune, Rogier Creemers and Jean-François Huchet consider that the turning point happened in 1997. However they specify that the trade deficit was in goods.⁵⁹¹

Trade balance between the European Union and China is possible, as shown in the above-mentioned paragraph, but it lasted for roughly a year. An exact trade balance is not demandable, and actually it is not a common occurrence, but some approximate balance might be convenient, in order to avoid frictions. However, it is only a wishful thinking, but nothing enforceable.

Maiza considers that there is a new orientation in the EU policies regarding China, which is more vindictory. He submits that the EU authorities are no longer afraid of the reactions of the PRC, and discrepancies are expressed in public. According to the said author, in October 2006 the European Commission issued a strategy called “UE-China: closer partners, growing responsibilities” [...]. The said strategy demands a more balanced and reciprocal benefit, in other words, a win-win cooperation.⁵⁹²

In this point, perhaps the EU’s policies are not adequate to the high competitiveness of developing countries. According to Maiza, perhaps this is the

⁵⁸⁹ Id., p. 254.

⁵⁹⁰ WANG, L., *Economic Relations between the European Union and China and Evaluation of Impact of China’s Tariff Change on both Economies with a Computable General Equilibrium Model*, thesis, Universität Oldenburg, KII Informatik, Wirtschafts-und Rechtswissenschaften, p. 39, <http://oops.uni-oldenburg.de/157/2/waneco05.pdf>, last visited on 24/12/2017.

⁵⁹¹ PREVOST, D. CHOUKROUNE, L., CREEMERS, R., and HUCHET, J.-F., “EU-China Trade Relations”, EXPO/B/INTA/ FWC 2009-01/Lot7-14 July 2011, PE 433.861 EN Directorate-General For External Policies Of The Union, Directorate B Policy Department Study, p. 7, available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/433861/EXPO-INTA_ET\(2011\)433861_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/433861/EXPO-INTA_ET(2011)433861_EN.pdf), last visited on 24/12/2017.

⁵⁹² MAIZA LARRARTE, J., op. cit. p. 38. Commission of the European Communities, Brussels, 24.10.2006, COM(2006) 631 final, Communication from the Commission to the Council and the European Parliament, EU – China: Closer partners, growing responsibilities, {COM(2006) 632 final}, available at http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130875.pdf, last visited on 15/05/2017.

reason why there is a growing tension in the economic relations between the EU and China.⁵⁹³

According to Maiza, the main concerns of the EU in this regard are trade imbalance, market accessibility and IPR.⁵⁹⁴

Regarding the economic activities of China in the EU, there is a new trend of Chinese investments in the EU: China is not buying public debt as it has been doing in the last years, but lately it is rather investing in European companies with two main aims: the first, to enter the European market; the second, to try and obtain access to the know-how.⁵⁹⁵ We consider that this trend could be boosted by a new educational policy in China: a shift for creativity and innovation.⁵⁹⁶ This policy will be a key element regarding the development of China in the medium and long term. This change could be the one from learning how to do similar things as others do, to create and innovate, which represents a leap forward for the economy of a nation.

A relevant aspect in the comparison between the EU and China regarding economics is the feasibility of business in both sides. This point has a direct impact in what the “Joint Communication to the European Parliament and the Council, Elements for a new EU strategy on China” refers to as a “level playing field”, i.e. the openness Chinese companies find when they enter the European market, but the lack of it when companies coming from the EU try to penetrate the Chinese market.⁵⁹⁷ The EU attaches importance to this fact, because the above-mentioned Joint Communication requires 10 times a “level playing field” in the EU-China relations.

⁵⁹³ MAIZA LARRARTE, J., op. cit., p. 239.

⁵⁹⁴ Id., p. 240. “[...] la preocupación por el desequilibrio comercial, el acceso a los mercados y los DPI constituyen algunas de las principales reivindicaciones de la UE.”

⁵⁹⁵ GINÉ DAVÍ, J., op. cit., “Las relaciones de la UE con...”, p. 9.

⁵⁹⁶ ADAMS, J. and SARGENT, T., “Curriculum Transformation in China: Trends In Student Perceptions of Classroom Practice and Engagement”, *Gansu Survey of Children and Families Papers*, Gansu Survey of Children and Families, 2012, University of Pennsylvania Scholarly Commons, pp. 19-20, available at http://repository.upenn.edu/cgi/viewcontent.cgi?article=1032&context=gansu_papers, last visited on 01/06/2017. “In recent decades, the quest to make schooling more student-centered has emerged in many nations. Perhaps most surprisingly, the more collectively-oriented and examination dominated educational systems in East Asian nations such as China, Korea, and Japan have embraced the belief that schools need to provide students with more than exam skills to prepare them for the future. Each of these nations have implemented new curriculum policies emphasizing student autonomy, creativity, and problem-solving with the hopes of reducing rote memorization and exam pressure while developing creativity, initiative, and innovation. Educational policies promoting inquiry-based, research-based, and problem-based learning have been promoted as a way to develop citizens who are ready to compete internationally in the knowledge economy.”

⁵⁹⁷ Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China, op. cit., 30 final.

While Chinese companies are top investors in the EU, doing business in China is increasingly complex for European companies, according to the EU. China, according to Jaume Giné Daví, ranks 90th among the 189 States in the “Doing Business 2015” ranking, published by the World Bank.⁵⁹⁸ Its position, compared to Singapur (which ranks 1st) or Hong Kong (3rd) is meaningful.⁵⁹⁹ Jaume Giné Daví, in his quoted article, compares the figures of the year 2015 between China, Singapur and Hong Kong. We would like to gain more perspective, and try to delve into the prospective. Therefore we regard the data about China not only in the year 2015, but also in 2016, 2017, 2018 and 2019. If we take a look at the tendencies, we have a deeper idea of the future. China is improving considerably its position.⁶⁰⁰

In the said rankings there are no average data about the EU, but as an example we may well take the leading EU country, Germany, with the biggest GDP within the EU.⁶⁰¹ Note that in the “Doing Business” rankings, the lower the better. The country holding number one is where doing business is the easiest.

⁵⁹⁸ Doing Business 2015, 12th edition, Going Beyond Efficiency, Comparing Business regulations for domestic firms in 189 economies, A World Bank Group Flagship Report, p. 4, available at <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB15-Full-Report.pdf>, last visited on 05/06/2017.

Jaume Giné Daví, “Las relaciones de la UE con...”, p. 9.

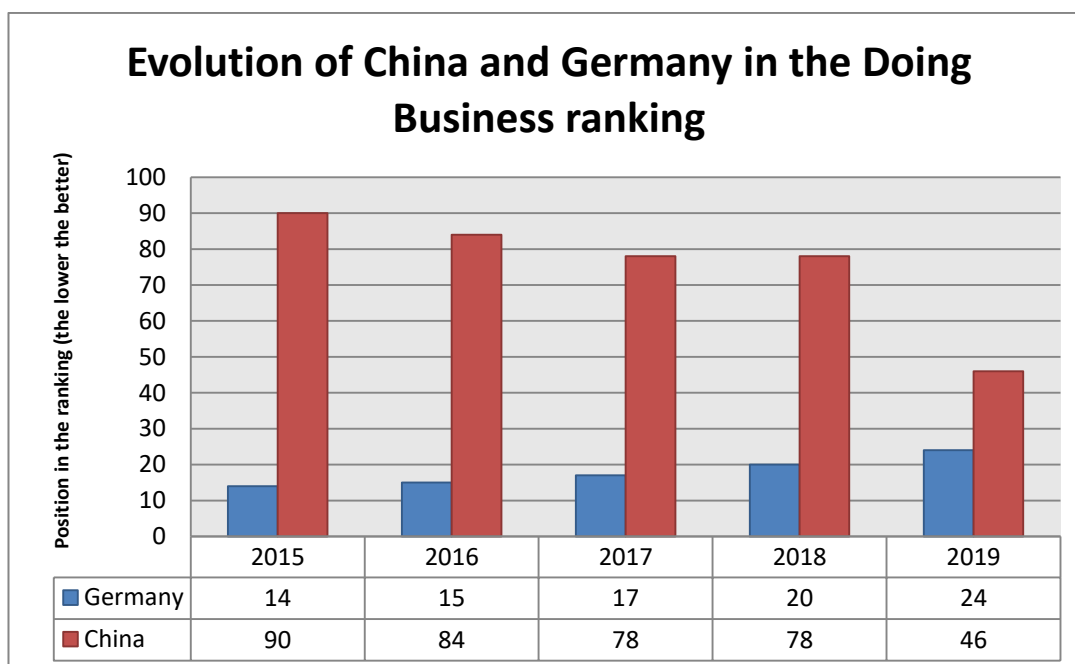
⁶⁰⁰ Doing Business 2016, 13th edition, Measuring Regulatory Quality and Efficiency, Comparing Business regulation for domestic firms in 189 economies, World Bank Group, p. 5, available at <http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB16-Full-Report.pdf>, last visited on 05/06/2017.

Doing Business 2017, 14th edition, Equal Opportunity for All, Comparing Business Regulation for Domestic Firms in 190 Economies, A World Bank Group Flagship Report, p. 7, available at <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>, last visited on 05/06/2017.

Doing Business 2018, 15th edition, Reforming to Create Jobs, Comparing Business Regulation for Domestic Firms in 190 Economies, A World Bank Group Flagship Report, p. 4, available at <http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2018-Full-Report.pdf>, last visited on 05/06/2017.

Doing Business 2019, 16th edition, Training for Reform, Comparing Business Regulation for Domestic Firms in 190 Economies, A World Bank Group Flagship Report, p. 5, available at http://espanol.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf, last visited on 05/06/2017.

⁶⁰¹ List of European countries by GDP, Statistics Times, Source: International Monetary Fund World Economic Outlook (October - 2016), available at <http://statisticstimes.com/economy/european-countries-by-gdp.php>, last visited on 05/06/2017.



SOURCE: Graphic made by the author, using data from Doing Business 2015, Doing Business 2016, Doing Business 2017, Doing Business 2018 and Doing Business 2019.

Where is the asymmetry in the above-mentioned facts? It is obvious that, according to the “Doing Business” ranking for the year 2015, there was a huge gap between Germany and China. But there is an evolution in 2016, 2017, 2018 and 2019. This reflects an evident asymmetry between both sides. China is improving and Germany is worsening, but there is another asymmetrical point: China is improving four times faster than Germany is worsening. Germany and China are approaching each other. Comparing the respective trends of the mentioned countries, if tendencies keep on going the way they do nowadays, in just a few years China might overtake Germany in the said ranking.⁶⁰² It could be said that, at least in this issue, both countries are not diverging, but converging. That’s right, but only in case both countries stop their respective developments in the year both hold the same position, but there is no reason to think so; after coinciding on the same position, they could still keep their trends, which would mean another case of divergence or asymmetry, but in a reverse way as the one they had in the previous years. Furthermore, the difference between such countries is even narrower in specific aspects reflected in the Doing Business rankings.

⁶⁰² Given the above-mentioned data, in just few years China might overtake Germany in the said ranking. In fact, it has already overtaken Italy. The said trends give us an idea of the changes.

On 2/06/2017⁶⁰³ a Summit between the European Union and China was held in Brussels. Many hopes rested on this Summit, given the situation previous to it: the USA, under the Trump Administration, had quitted the 2015 Paris Climate Agreement. According to the BBC News, “Opponents say withdrawing from the accord is an abdication of US leadership on a key global challenge”⁶⁰⁴ and “America's difficulty is China's opportunity”.⁶⁰⁵ Hence, many in the EU, and most probably in China, thought that it was high time for both parties to take the world leadership in issues such as climate change.

Furthermore, the EU-China 2020 Strategic Agenda for Cooperation highlights that it is important to

“[...] strengthen coordination and cooperation, working for just, reasonable, and effective rules in key fields, such as international trade and investment, finance, environment and climate change, the Internet and a new generation of wireless communication technology.”⁶⁰⁶

The said Strategic Agenda keeps “climate change” at the same level as relevant aspects such as “international trade and investment, finance” or “the Internet and a new generation of wireless communication technology”, and all of them are considered as “key fields”. “Climate change” is classified by the Agenda within Chapter III, called Sustainable Development.

The EU is satisfied with the results of the Summit:

“The 19th Summit between the European Union and the People's Republic of China held today in Brussels has brought a number of important developments to the bilateral relationship, as well as providing fresh impetus to a partnership that has a global impact.”⁶⁰⁷

However, opinions vary. Some argue that there was more of a disagreement between the parties involved: the EU member States did not accept to support part

⁶⁰³ EU-China Summit: moving forward with our global partnership. European Commission - Press release database, Brussels, 2 June 2017, available at http://europa.eu/rapid/press-release_IP-17-1524_en.htm, last visited on 10/06/2017.

⁶⁰⁴ Paris climate deal: Trump pulls US out of 2015 accord, BBC News, available at <http://www.bbc.com/news/world-us-canada-40127326>, last visited on 07/06/2017.

⁶⁰⁵ McGRATH, M., “Five effects of US pullout from Paris climate deal”, BBC News, available at <http://www.bbc.com/news/science-environment-40120770>, last visited on 07/06/2017.

⁶⁰⁶ European Union External Action Service, EU-China 2020 Strategic Agenda for Cooperation, p. 3, available at http://eeas.europa.eu/china/docs/20131123_agenda_2020_en.pdf, last visited on 29/03/2017. Quoted by MISIĄGIEWICZ, J. and MISIĄGIEWICZ, M., “China's ‘One Belt, One Road’ Initiative – the Perspective of the European Union”, *Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia*, Vol. XXIII, 1 Sectio K 2016, Faculty of Political Science, Maria Curie-Skłodowska University in Lublin, Poland, p. 40, available at <https://journals.umcs.pl/k/article/download/3494/3628>, last visited on 31/05/2017.

⁶⁰⁷ EU-China Summit: moving forward with our global partnership, European Commission - Press release database, Brussels, 2 June 2017, available at http://europa.eu/rapid/press-release_IP-17-1524_en.htm, last visited on 10/06/2017.

of China's flagship project, i.e. the One Belt One Road (OBOR) due the lack of protection of social and environmental sustainability and transparency.⁶⁰⁸

The OBOR might well serve as a test bench to all the current and future aspects of the EU-China relations. In the 19th EU-China Summit, China did not spoil the chance to spotlight its crown jewel project, the OBOR. However, the member states of the EU would only support the said project if it included commitments about "social and environmental sustainability and transparency". This allegation could make us think that the EM States would not only like to enjoy the proposed communication infrastructures linking the EU with Central Asia and China, but they also would like to have the chance to bid and take part in the building works of the said infrastructures. Obviously, the basis for bidding is the transparency in the public tender. The EU has its reservations about EU companies competing for Government Procurement in China, and apparently this situation has had some influence in the above-mentioned EU position regarding the OBOR, finally "backing away":

"China's reform of the public procurement system is relatively new compared to that of the EU. In a command economy, there is sometimes little distinction between government and the market. Prior to reform, government procurement in China occurred in arbitrary, unregulated and a self-administered basis, with little or no structured policy or model."⁶⁰⁹

Apparently, the above-mentioned paragraph could be one of the main reasons to what is claimed by the EU as "a level playing field",⁶¹⁰ plus the difficulties which, allegedly, European companies encounter when trying to enter the Chinese market.

But there is another important aspect of the above-mentioned disagreement between the EU and China: for the first time in a long period, the EU had a united response, highlighting that the BRI's success depends on transparency and co-ownership.⁶¹¹

⁶⁰⁸ PHILLIPS, T., "EU backs away from trade statement in blow to China's 'modern Silk Road' plan", The Guardian, Monday 15 May 2017 15.58 BST, available at <https://www.theguardian.com/world/2017/may/15/eu-china-summit-beijing-xi-jinping-belt-and-road>, last visited on 10/06/2017.

⁶⁰⁹ Trade Sustainability Impact Assessment For The Negotiations Of A Partnership And Cooperation Agreement Between The EU And China. Horizontal Study 1 of 2: Government Procurement August 2008, EU-China trade SIA, A project implemented by Emerging Markets Group / Development Solutions, p. 8, available at http://trade.ec.europa.eu/doclib/docs/2008/september/tradoc_140585.pdf, last visited on 10/06/2017.

⁶¹⁰ Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China, op. cit., 30 final.

⁶¹¹ PHILLIPS, T., op. cit., EU backs away from trade statement in ...

Strange enough, cases like this one still give some hope, regarding the future of the EU-China relations, as the EU has to strive to have a united response in its relations with other international players.

How far should the EU go in its relations not only with China, but with any other major player? Should it keep a tough position or be more flexible, in order to obtain little advantages, rather than obtaining no advantages at all? It depends on each one's weltanschauung.

Since ancient times, EU-China relations had a worldwide dimension, as those were held along what most probably was the first great intercontinental trade connection: the Silk Road, both by land and by sea. Nowadays that old trade route is reactivated, not only by the very busy sea route, but also by land, specifically by train (the trans-Eurasian railway), linking China and Western Europe.⁶¹²

Men Jing claims that the European perspective is closely related to the Chinese view of the international politics situation, as well as with Chinese trends in foreign politics.⁶¹³

As international politics change, the Chinese have a different perception of their relations with world powers. For example, in the post-Cold War era, as a result of the development of globalization, market-opening and socio-constructivist measures rule Chinese foreign relations and, hence, also the Sino-European ones.⁶¹⁴

Guan Chengyuan argues that China and the EU have a common view, and regarding globalization, there is a situation of total imbalance between rich and poor countries, to the extent that poor countries hardly benefit from it. Therefore, both parties agree that such imbalance should be reversed.⁶¹⁵ In this point, as we have already stated, trade balance in the long term is sought-after by both sides.

Both China and the EU promote the globalisation, as they also benefit from it. Globalisation has asymmetrical effects regarding benefits and costs. The European Commission, according to Maiza, doesn't forget the asymmetrical nature of the benefits and costs of globalization, and it proposes a special

⁶¹² CHEN, X., "China & Europe: Reconnecting Across a New Silk Road", *East by Southeast*, 2016, available at <http://www.eastbysoutheast.com/tag/trade/>, last visited on 24/09/2017.

⁶¹³ MEN, J., "Chinese Perceptions of the European Union: A Review of Leading Chinese Journals", *European Law Journal*, vol. 12, 6, 2006, p. 789.

⁶¹⁴ Id., p. 789.

⁶¹⁵ GUAN, C., op. cit., p. 147.

consideration regarding the sectors most vulnerable to international concurrence. The Commission takes the responsibility to guarantee that the positive effects of trade openness reach all citizens and not only certain lobby groups.⁶¹⁶

Globalization, as we see, is basic for the EU-China relations. And it is an asymmetrical phenomenon. Hence, the effects of asymmetry will also be asymmetrical. The effects of globalization, Maiza submits, are asymmetrical, regarding both regions and sectors. Benefits are relevant for the economy as a whole, but they are not evident and will not be received on the short term, while costs are just the opposite: they will be evident and focused on specific areas and segments.

Have the EU-China relations always been asymmetrical? According to John Fox and François Godement, till the 80's, there was a surplus in favour of the EU, but since then tables turned and nowadays the surplus is clearly in favour of China.⁶¹⁷ Obviously, between both periods of respective surpluses, there was a transition. Such transitional phase was a time of symmetry, which didn't last for long.

Regarding the conflict reflected by the Market Economy Status on one side, and the "level playing field" on the other, apparently none of the parties involved will be able to come out clearly on top. It is a confrontation between two world giants, and although the relations between them are asymmetrical, none will come out with a clear victory (note that both sides have the support of third parties), hence it is a catch twenty-two between the MES and the "level playing field". The final decision of the legal dispute on this issue is not clear either.

III.1.4 Granting Market Economic Status (MES) to China: a legal dispute

On 11 December 2001 China became a member of the WTO.⁶¹⁸ But China accessed the WTO on certain conditions, as stated in the Accession Protocol.⁶¹⁹

⁶¹⁶ MAIZA LARRARTE, J., op. cit. p. 338.

⁶¹⁷ FOX, J. and GODEMENT, F., op. cit., p. 11.

⁶¹⁸ China and the WTO – World Trade Organization, available at https://www.wto.org/english/thewto_e/countries_e/china_e.htm, last visited on 04/09/2017.

⁶¹⁹ World Trade Organization, WT/L/432 23 November 2001 (01-5996), Accession of the People's Republic of China, Decision of 10 November 2001, p. 9, 15th provision: Price Comparability in Determining Subsidies and Dumping, available at <https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3A%2Fwt%2F1%2F432.doc>, last visited on 09/06/2019. "(a)[...](ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry

According to the said Accession Protocol, two special procedures for calculating the “normal price”, regarding antidumping, were applicable to China during 15 years after the accession date. The first of them consisted of considering the price in the Chinese domestic prices as normal price, provided that the concrete Chinese manufacturer shows that the economy status quo corresponds to that of a market economy. In a nutshell, China was conceded the antidumping procedure proper of economies to which were granted the MES. But the second way to calculate the normal price establishes that when the company cannot demonstrate that its industry is in an environment of free market, the importer will be allowed to “use the methodology involving [sic] comparing the prices offered with prices used in third-country markets.”⁶²⁰

According to the above-mentioned accession protocol (article 15d):

“In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession.”⁶²¹

The said subparagraph refers to the second procedure of calculating the “normal price”. However the accession protocol does not establish that on that day the market economy status has to be granted to China, but it will be done the day a WTO member State maintains that China, according to the definition of the said country for a MES, can be considered as such. In case China would have obtained the MES, then the whole above-mentioned transitory system would have

producing the like product with regard to manufacture, production and sale of that product[...] (d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”

⁶²⁰ JAKÓBOWSKI, J. and KACZMARSKI, M., “The EU on granting China market economy status: a compromise or a dodge?” Commentary - OSW (Centre for Eastern Studies), Number 221, 05.08.2016, pp. 1-2, available at https://www.osw.waw.pl/sites/default/files/commentary_221.pdf, last visited on 28/08/2017.

⁶²¹ World Trade Organization, WT/L/432 23 November 2001 (01-5996), accession of the People's Republic of China, Decision of 10 November 2001, p. 9, available at <https://docs.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3A%2Fwt%2F1%2F432.doc>, last visited on 17/09/2017. 15th provision: Price Comparability in Determining Subsidies and Dumping “(a)[...](ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product[...]

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”

been revoked, and China would have become a member of the WTO on equal terms as the rest of WTO member states.

Such 15 years period already elapsed on 11th December 2016, and since then there is a recurring issue on the interpretation of such conditions. During a considerable time, according to Jakob Jakóbowski and Marcin Kaczmariski, China has opted for “hard automatism”, i.e., in its official statements, it has claimed that the EU “needs to fulfill its promises” and highlighted that the EU committed itself to grant China the market economy status, and to support its claim it wielded the above-mentioned Accession Protocol.⁶²²

In 1955, the GATT 1947 was modified due to the addendum to article VI of GATT,⁶²³ which incorporated the ideas of dumping and non-market economies. These concepts were put into practice especially in the field of anti-dumping investigation.⁶²⁴ But the wording of the addendum was flexible.

China’s WTO accession protocol introduced, regarding China’s exporting companies, a legal restriction in comparison with the above-mentioned addendum. The addendum, according to Laura Puccio, has two legal consequences regarding China’s NME. Primarily, it establishes the presumption that NME rules can be applied to China. And the second consequence is that 15(d) determines the procedure for China to access MES.⁶²⁵

⁶²² JAKÓBOWSKI, J. and KACZMARSKI, M., op. cit., p.1.

⁶²³ Addendum to article VI of GATT, World Trade Organization, available at https://www.wto.org/english/docs_e/legal_e/gatt47_03_e.htm, last visited on 24/09/2017. “Ad Article VI, Paragraph 1

1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

2. It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.”

⁶²⁴ PUCCIO, L., “Granting market Economy Status to China - An analysis of WTO law and of selected WTO members’ policy”, *EPRS, European Parliamentary Research Service*, Members’ Research Service November 2015—PE571.325 EN, pp. 1-28, available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/571325/EPRS_IDA\(2015\)571325_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/571325/EPRS_IDA(2015)571325_EN.pdf), last visited on 24/09/2017.

⁶²⁵ Id., p. 5. “The introduction of the specific rules in the accession protocol has two fundamental consequences for the non-market economy status of China. Firstly, the protocol creates a presumption that NME status can be applied to China. Contrary to the addendum, the burden of proving market economy characteristics falls on China or Chinese firms. Secondly, under section 15(d) the protocol sets the procedure for granting China economy-wide market economy status and the subsequent lifting of the NME presumption, following the importing country’s legal definition of non-market economy, instead of using the more restrictive NME definition contained in the Addendum.”

According to Rao Weijia

“Because of the expiry of subparagraph 15(a)(ii), the Chinese producers no longer bear the burden of proving prevailing market economy conditions.”⁶²⁶

The expiry date was 2016. The said author also considers that, once the said subparagraph has expired, the whole section is also expired. There are other authors supporting the same opinion, as e.g. Edwin Vermulst, Juhi Dion Sud and Simon J. Evenett who maintain that according to section 15 as a whole, from 11 December 2016, in any case, “...a methodology that is not based on a strict comparison with domestic prices or costs...’ of Chinese producers can no longer be used by any WTO Member.”⁶²⁷

Bjorn Delbeecke, for his part, states that “Otherwise, the remaining parts in the chapeau of paragraph 15(a) would become inutile, which would go against the rules of treaty interpretation.”⁶²⁸

The MES is exclusively granted to States not practicing dumping (Article VI of the GATT defines the concept of dumping;⁶²⁹ the Agreement on Implementation of Article VI of the GATT 1994 also determines what is antidumping;⁶³⁰ and finally, there is a definition of dumping included in the COUNCIL REGULATION (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European

⁶²⁶ RAO, W., “China’s Market Economy Status Under WTO Antidumping Law After 2016”, *Tsinghua China Law Review*, Vol. 5, 2013, no. 151, p. 165, available at http://www.tsinghuachinalawreview.org/articles/PDF/TCLR_0502_RAO.pdf, last visited on 24/09/2017. Quoted by PUCCIO, L., op. cit., p. 6.

⁶²⁷ VERMULST, E., SUD, J. and EVENETT, S., “Normal Value in Anti-Dumping Proceedings against China Post-2016: Are Some Animals Less Equal Than Others?”, *Global Trade and Customs Journal*, Vol. 11, 2016, no. 5, p. 212-229, p. 216, available at <http://www.vvgb-law.com/wp-content/uploads/2016/05/2016-11-5-GTCJ-Vermulst-Sud-Evenett-China-MES.pdf>, last visited on 27/09/2017.

⁶²⁸ DELBEECKE, B., *The Great European Wall - Why the EU will not recognize China’s Market Economy Status*, LLM Paper, University of Ghent - Faculty of Law, Academic Year 2015-16 Exam Session 1, p. 54, available at https://lib.ugent.be/fulltxt/RUG01/002/272/390/RUG01-002272390_2016_0001_AC.pdf, last visited on 27/09/2017.

⁶²⁹ ARTICLE VI, ANTI-DUMPING AND COUNTERVAILING DUTIES, World Trade Organization, p. 220, available at https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art6_e.pdf, last visited on 15/09/2017. Original text: “[...] dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products [...]”

⁶³⁰ AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994, p. 145, available at https://www.wto.org/english/docs_e/legal_e/19-adp.pdf, last visited on 15/09/2017. “Article 2 - Determination of Dumping 2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.”

Community).⁶³¹ For States practicing dumping, also called NME, anti-dumping procedures will be applied, as their prices are considered to be under the distortion of the State intervention. Such procedures consist of establishing anti-dumping tariffs, thus the final price will be at the level of a market price. Tariffs are calculated in different ways. The prices in a NME will be considered as non-credible, as they are administratively calculated, and therefore, if an antidumping procedure is initiated, prices will be calculated by comparison with e.g. prices from third-country markets.⁶³²

In case of MES, the comparison on prices will be calculated on the basis of their domestic markets.

Apart from dumping, there is another aspect which the Accession Protocol takes into account: the subsidies.⁶³³ In this regard, a special controversy is about Chinese steel: the EU claims that China subsidizes its steel industry, and therefore it “imposes duties to counter Chinese steel subsidies.”⁶³⁴

The core issue of this conflict is: is China entitled, according to the accession protocol, to be automatically granted the MES?

⁶³¹ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), Official Journal of the European Union L343/51 (22.12.2009), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2009:343:FULL&from=DA>, last visited on 22/09/2017. “Article 1.2. A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.”

⁶³² JAKÓBOWSKI, J. and KACZMARSKI, M., op. cit., p. 8.

⁶³³ World Trade Organization, WT/L/432 23 November 2001, (01-5996), Accession of the People's Republic of China, Decision of 10 November 2001, 15th provision: Price Comparability in Determining Subsidies and Dumping, p. 9, available at <https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3A%2Fwt%2F1%2F432.doc>, last visited on 17/09/2017. “Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“Anti-Dumping Agreement”) and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following: [...]”

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES, World Trade Organization, p. 229, available at https://www.wto.org/english/docs_e/legal_e/24-scm.pdf, last visited on 17/09/2017. “PART I: GENERAL PROVISIONS Article 1 Definition of a Subsidy 1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if: (a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as “government”), i.e. where: (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees); (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits); (iii) a government provides goods or services other than general infrastructure, or purchases goods; (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; or (a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and (b) a benefit is thereby conferred.”

⁶³⁴ The European Commission imposes duties to counter Chinese steel subsidies, European Commission – Trade, Trade defence, Brussels, 9 June 2017, available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1669>, last visited on 17/09/2017.

According to Laura Puccio the NME status is still a major handicap for the trade relations between the EU and China.⁶³⁵

China urges the EU to grant it the market economic status,⁶³⁶ and meanwhile the EU requires a level playing field for EU companies in China and the cancellation of subsidies, which is a general concept including several factors. The European Commission, in the “Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China”, addressed to the European Parliament and the Council, requires several times that China establishes the conditions for such level playing field.⁶³⁷ The “level playing field” actually is a claim persistently made by the European Union, and it means that both sides, the EU and China, respect equal terms regarding their respective companies doing business on the other party’s territory or with its companies.

What would be the consequences of granting China the MES? First of all, this would tacitly start by canceling the consideration of China as a NME. And according to the United States GAO, cancelling the qualification of NME to China would imply to lower antidumping duties to several Chinese firms.⁶³⁸

But why should such cancelling imply to lower those duties only to several Chinese firms? According to the said GAO report, there will be a difference, depending on the fact that the Chinese firms collaborate in commerce investigations or not.

On certain occasions, this dispute has caused troubled effects in the relations between both parties. For instance, the 19th EU-China Summit, held on 2/06/2017

⁶³⁵ PUCCIO, L., op. cit., p. 4.

⁶³⁶ JAKÓBOWSKI, J. and KACZMARSKI, M., op. cit., p. 1.

⁶³⁷ Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China, op. cit., 30 final.

⁶³⁸ Eliminating Nonmarket Economy Methodology Would Lower Antidumping Duties for some Chinese Companies, U.S.-CHINA TRADE, GAO United States Government Accountability Office, Report to Congressional Committees, GAO-06-231 - January 2006, pp. 33-34, available at <http://www.gao.gov/assets/250/248916.pdf>, last visited on 24/09/2017. “On average, Commerce’s application of its NME methodology has produced AD duties on Chinese roducts that are substantially higher than those applied to the same products from market economy ountries. Changing China’s NME status—and thus eliminating the application of this methodology—would have a variety of impacts. The duty rates applied to companies that do not receive individual rates would likely decline. Chinese companies that cooperate in Commerce investigations may also receive comparatively low rates. However, the impact of these lower rates on overall China averages may be offset, to some extent, by application of adverse inferences to assign relatively high rates to individual Chinese companies that do not cooperate in Commerce investigations.”

in Brussels, did not end with a joint statement due to the current disagreement on the concession to China of the MES.⁶³⁹

After unsuccessfully requiring during several years that the EU had to grant the MES to China, the Asian giant has developed other strategies in order to obtain its yearned-for MES. During 2016, China's position has evolved. First, China considered the fulfilment of provision 15(d) of China's WTO accession protocol and the granting of the MES to China as two different matters. But as of summer 2016, Chinese leaders started to concentrate on the crux of the matter "[...] which involves revoking the methodology based on comparing Chinese export prices with third-country prices" thus considering Chinese traders equal to those from free-market economies.⁶⁴⁰

Beyond the above-mentioned China's WTO accession protocol, and the fulfilment of promises, China seems to consider that it should yet enhance the economy's features, so that it can meet the standards to obtain the MES. This is apparent at a glance of its reform agenda.⁶⁴¹

In July 2016, the European Parliament announced its position in the resolution of 12 May 2016 on China's MES,⁶⁴² to which China reacted in a negative way. The said resolution refers to the EU's anti-dumping legislation.⁶⁴³ "Whereas" B. states that in 2015, for the first time, China invested in the EU more than the EU in China. The key question regarding this matter is referred to by "Whereas" C., i.e. China's WTO Accession protocol, specifically Section 15. The next provision determines the stance of the EU:

⁶³⁹ EU, China joint statement founders on trade status, Deutsche Welle, available at <http://www.dw.com/en/eu-china-joint-statement-founders-on-trade-status/a-39099535>, last visited on 28/8/2017.

⁶⁴⁰ JAKÓBOWSKI, J. and KACZMARSKI, M., op. cit., p. 4.

⁶⁴¹ Ibid.

LIU, X., China pushes reform agenda - Supply-side restructuring key priority for economic work in 2017, Global Times. Published: 2016/12/16 23:58:39, available at <http://www.globaltimes.cn/content/1024195.shtml>, last visited on 19/09/2017. "The conference also called for strengthening the reform of SOEs and State-owned assets and speeding up the creation of a flexible and efficient market-oriented operation mechanism."

⁶⁴² China's market economy status, European Parliament resolution of 12 May 2016 on China's market economy status, (2016/2667(RSP), European Parliament 2014-2019, TEXTS ADOPTED, P8_TA (2016)0223, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0223+0+DOC+PDF+V0//EN>, last visited on 20/09/2017.

⁶⁴³ COUNCIL REGULATION (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), Official Journal of the European Union L343/51 (22.12.2009), OJ L 56, 6.3.1996, p. 1, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2009:343:FULL&from=DA>, last visited on 20/09/2017. Actually, as this regulation was launched, the Council Regulation (EC) No 384/96 of 22 December 1995, on protection against dumped imports from countries not members of the European Community had already been issued. But this Council Regulation had been deeply reformed, and thus needed codification, as stated in p. 51, "Whereas" (1).

“D. whereas any decision on how to deal with imports from China after December 2016 must ensure compliance of EU law with WTO rules;”⁶⁴⁴

This point is connected with the fact that the EU demands a new system to regulate the said situation. The European Parliament, in its above-mentioned Resolution, states that

“F. whereas, given the current level of state influence on the Chinese economy, firms’ decisions on prices, costs, outputs and inputs do not respond to market signals reflecting supply and demand;”⁶⁴⁵

The statement above is one of the reasons why the EU considers that China does not deserve to be granted the MES. And even more specifically, according to the Resolution

“G. whereas, in its Accession Protocol, China has committed, inter alia, to allowing all its prices to be determined by market forces, and whereas the EU must ensure that China complies fully with its WTO obligations;”⁶⁴⁶

In the China’s WTO accession protocol we find the foundation for the said statement:

“9. Price Controls

China shall, subject to paragraph 2 below, allow prices for traded goods and services in every sector to be determined by market forces, and multi-tier pricing practices for such goods and services shall be eliminated.”⁶⁴⁷

The stance of the European Commission aims to rebuild a whole system “for imposing anti-dumping and anti-subsidy tariffs.”⁶⁴⁸

⁶⁴⁴ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (codified version), p. 1, available at http://www.europarl.europa.eu/doceo/document/TA-8-2016-0223_EN.pdf, last visited on 19/09/2019.

Official Journal of the European Union L343/51 (22.12.2009). Actually, as this regulation was launched, it already existed the Council Regulation (EC) No 384/96 of 22 December 1995, on protection against dumped imports from countries not members of the European Community. But this Council Regulation had been deeply reformed, and thus needed codification, as stated in p. 51, “Whereas” (1). OJ L 56, 6.3.1996, p. 1, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2009:343:FULL&from=DA>, last visited on 20/09/2017.

⁶⁴⁵ China’s market economy status, European Parliament resolution of 12 May 2016 on China’s market economy status, (2016/2667(RSP), European Parliament 2014-2019, TEXTS ADOPTED, P8_TA (2016)0223, p. 2, available at http://www.europarl.europa.eu/doceo/document/TA-8-2016-0223_EN.pdf, last visited on 20/09/2017.

⁶⁴⁶ Ibid.

⁶⁴⁷ Accession Of The People’s Republic Of China, Decision of 10 November 2001, World Trade Organization, WT/L/432, 23 November 2001, (01-5996), p. 6, available at <https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename...doc&>, last visited on 06/05/2019.

⁶⁴⁸ JAKÓBOWSKI, J. and KACZMARSKI, M., op. cit., p. 4.

But it was understood as a strategy aiming not to take the Chinese claims into consideration. And the changes “in the methodology of imposing tariffs”⁶⁴⁹ were seen as if they were a gimmick to keep the situation untouched, i.e. “to discriminate against Chinese producers on the EU market.”⁶⁵⁰

According to the said accession protocol, regarding price comparability in determining Subsidies and Dumping:

“[...] the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules [...]”⁶⁵¹

The accession protocol refers to two rules, but the Provision 15 (d) determines that the second one (subparagraph (a)(ii)) “shall expire 15 years after the date of accession.” And the said 15 years have already elapsed. As a consequence

“Chinese prices or costs [shall be the key element] in determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement”.⁶⁵²

In this point of the analysis of the MES/NEM issue, the Chinese Constitution could be recalled, as it establishes the economy model of the PRC.⁶⁵³

⁶⁴⁹ Id., p. 1.

⁶⁵⁰ Ibid.

⁶⁵¹ Accession of the People's Republic of China, World Trade Organization, WT/L/432 23, November 2001, (01-5996), Decision of 10 November 2001, p. 8, available at https://www.wto.org/english/thewto_e/acc_e/a1_chine_e.htm, last visited on 24/12/2017.

⁶⁵² World Trade Organization, WT/L/432 23 November 2001, (01-5996), Accession of the People's Republic of China, Decision of 10 November 2001, p. 9. 15th provision: Price Comparability in Determining Subsidies and Dumping, available at <https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3A%2Fwt%2F1%2F432.doc>, last visited on 11/09/2019. “(a)[...](ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product [...] (d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”

⁶⁵³ World Trade Organization, WT/L/432 23 November 2001, (01-5996), accession of the People's Republic of China, Decision of 10 November 2001, available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372963.htm, last visited on 11/09/2019. Regarding the “efforts to build up an open market economy” in China, the Chinese Constitution, in its Article 15, marks its own way (official translation): “Article 15 The State practices socialist market economy. The State strengthens economic legislation, improves macro-regulation and control. The State prohibits in accordance with law any organization or individual from disturbing the socio-economic order.”

Constitution of the People's Republic of China (Full text after amendment on March 14, 2004). (Official Site of the National People's Congress of the People's Republic of China), available at http://www.gov.cn/gongbao/content/2004/content_62714.htm, last visited on 29/03/2017.. Original version: “第十五条 国家实行社会主义市场经济。国家加强经济立法，完善宏观调

According to Jakóbowski and Kaczmariski China was not able to prove that it was a free-market economy, according to the EU's verification procedure, applied in 2011, in which China did not comply with four of the five main EU's parameters of a market economy.⁶⁵⁴

Notwithstanding, Provision 15 (d) of China's WTO accession protocol remains intact, as it states that

"[...] in any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. [And this means that] the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability; [...]"⁶⁵⁵

There is no provision contained in the China's WTO accession protocol obligating to grant China the MES, but there are scholars who maintain that, if

控。国家依法禁止任何组织或者个人扰乱社会经济秩序。”中华人民共和国宪法 (Official Site of the Chinese Government). Furthermore, in the preamble of the Chinese Constitution, seventh paragraph, second phrase, it is introduced the concept of "socialist market economy" in the fifth line of the following paragraph: "Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of Three Represents, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve socialist institutions, develop the socialist market economy, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize the country's industry, agriculture, national defence and science and technology step by step and promote the coordinated development of the material, political and spiritual civilizations, to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced." Constitution of the People's Republic of China (Full text after amendment on March 14, 2004) http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372963.htm, last visited on 29/03/2017. Original version: "中国各族人民将继续在中国共产党领导下，在马克思列宁主义、毛泽东思想、邓小平理论和“三个代表”重要思想指引下，坚持人民民主专政，坚持社会主义道路，坚持改革开放，不断完善社会主义的各项制度，发展社会主义市场经济，发展社会主义民主，健全社会主义法制，自力更生，艰苦奋斗，逐步实现工业、农业、国防和科学技术的现代化，推动物质文明、政治文明和精神文明协调发展，把我国建设成为富强、民主、文明的社会主义国家。”

Original version: 中华人民共和国宪法, available at http://www.gov.cn/gongbao/content/2004/content_62714.htm, last visited on 29/03/2017.

⁶⁵⁴ JAKÓBOWSKI, J. and KACZMARSKI, M., op. cit., p. 1.

China's market economy status, European Parliament resolution of 12 May 2016 on China's market economy status, (2016/2667(RSP)), European Parliament 2014-2019, TEXTS ADOPTED, P8_TA (2016)0223, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0223+0+DOC+PDF+V0//EN>, last visited on 20/09/2017.

⁶⁵⁵ World Trade Organization WT/L/432 23 November 2001 (01-5996) Accession of the People's Republic of China, Decision of 10 November 2001, p. 9, 15th provision: Price Comparability in Determining Subsidies and Dumping, available at <https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3A%2Fwt%2F1%2F432.doc>, last visited on 11/09/2019. "(a)[...](ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product[...] (d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

there is no other way to calculate anti-dumping prices that Chinese prices, this implicitly means that de facto, China is a market economy state.

There is a legal controversy regarding the hermeneutics of section 15 (d): China states that in November 2016 should have ended the application of the NME status to itself, while others maintain that the consideration of MES exclusively depends on the national law of the importing countries.⁶⁵⁶

III.2 Comparative analysis of several components of trade in five cases

It is worthwhile to have a closer look at the evolution of trade and its development as well as its balance and imbalance along the centuries. In order to have a more accurate vision of the transformations undergone by trade, we will disassemble it, and this way we will be able to analyze it thoroughly. In order to do so, we will reply to the following essential questions and, this way, we will manage to disassemble the trade phenomena into its components:

Questions	Trade components
(Along) Where?	The land/maritime route
What?	The goods
How?	The means of transport
Who?	The traders
Why?	Demand and supply
What results?	Trade balance or unbalance

SOURCE: The author of the thesis

Now we will analyze the above-mentioned components in five different cases:

- The old Silk Road
- The Manila Galleon
- The reform and open up to the outside world policy (改革开放 gaige kaifang)
- The new Silk Road (OBOR). This part, as well as the next one, have some peculiarities, which determine their distinctive components
- The Chinese e-commerce

⁶⁵⁶ PUCCIO, L., op. cit., p. 5.

III.2.1 Several trade components of the old Silk Road

The old Silk Road has been the main Eurasian inner link for ages. Now we will analyze its components.

The exact starting date of the Silk Road has not yet been established. However, the launching time was necessarily after the domestication of pack animals.

According to Joshua Mark the Silk Road is actually a network of roads, which was started in 130 by the Han, when opened trade with the Western world, and collapsed in 1453, when the Ottomans stopped the trading with the west and cut the routes.⁶⁵⁷

However, there was a precedent of the Silk Road: the Persian Royal Road, which later on was included in the Silk Road. Persians took great care of the Road, and organized a postal network along the Road with fresh horses to rapidly forward messages along their empire.⁶⁵⁸ Persians were very interested in enhancing the efficiency of the Silk Road, and they even improved it.

A milestone event was around 200 BC, when the Han Dynasty took control over the Tarim region, particularly the Tarim basin (塔里木盆地 *talimu pendi*),⁶⁵⁹ because the Silkroad was controlled by China as a link to the West.⁶⁶⁰

Later on, during the Roman Empire, the Silk Road was controlled by several empires and peoples, hence no single trader travelled along the whole journey. The merchandises were handed over from caravan to caravan.⁶⁶¹ Mark Cartwright

⁶⁵⁷ MARK, J., op. cit., n. d.

⁶⁵⁸ Ibid. "The history of the Silk Road pre-dates the Han Dynasty in practice, however, as the Persian Royal Road, which would come to serve as one of the main arteries of the Silk Road, was established during the Achaemenid Empire (500-330 BCE). The Persian Royal Road ran from Susa, in north Persia (modern day Iran) to the Mediterranean Sea in Asia Minor (modern day Turkey) and featured postal stations along the route with fresh horses for envoys to quickly deliver messages throughout the empire. Herodotus, writing of the speed and efficiency of the Persian messengers, stated that: "There is nothing in the world that travels faster than these Persian couriers. Neither snow, nor rain, nor heat, nor darkness of night prevents these couriers from completing their designated stages with utmost speed." These lines, from his *Histories*, 8.98, would centuries later form the creed of the United States of America's post office. The Persians maintained the Royal Road carefully and, in time, expanded it through smaller side roads. These paths eventually crossed down into the Indian sub-continent, across Mesopotamia, and over into Egypt."

⁶⁵⁹ Tarim Basin, Encyclopaedia Britannica, available at <https://www.britannica.com/place/Tarim-Basin>, last visited on 23/11/2017.

⁶⁶⁰ The First Contact between Rome and China, Silkroad Foundation, available at <http://www.silk-road.com/artl/romanenvoy.shtml>, last visited on 23/11/2017.

⁶⁶¹ Ibid.

maintains this opinion.⁶⁶² Others maintain that middlemen were essential for the efficiency of the network.⁶⁶³

The logistics of the Silk Road relied on caravanserais. According to the UNESCO

“The role of caravanserais, as supports for trade, multi-purpose structures for meetings between peoples and channels for the transmission of knowledge, could again become just as important today as it was in the past. These intellectual and material trading posts symbolize and bear testimony to the history and the cultural diversity of the Silk Roads.”⁶⁶⁴

Hence, caravanserais had not just one function: on one side, they were commercial posts, but on the other side, they were meeting points, places to exchange ideas. Therefore, we submit that caravanserais were an ideal of people-to-people international relations.

The land route coexisted with the sea route, but this one boosted as a consequence of the decline of the land Silk Road. Western companies started controlling the sea trade route.

Summing up, we can conclude that China controlled the Chinese part of the land Silk Road. But regarding the sea Silk Road, with the exception of the times of Zheng He (郑和), i.e. from 1405 till 1433 (but this short period was thriving, as he undertook seven voyages, reaching as far as Africa's Swahili coast)⁶⁶⁵ Afterwards, China controlled its ports. China did not have a relevant maritime trading power regarding the West till late in the XX century. However Jung-pang Lo states that during three centuries China stretched its mastery to the sea, due to the Chinese appetite for spices as well as its demand for raw materials.⁶⁶⁶

⁶⁶² CARTWRIGHT, M., Achievements of the Han Dynasty, Ancient History Encyclopedia, available at <https://www.ancient.eu/article/1119/achievements-of-the-han-dynasty/>, last visited on 23/11/2017. “Goods were imported and exported via middlemen as no single trader ever travelled the length of the routes.”

⁶⁶³ Silk Road – trade route, Encyclopaedia Britannica, op. cit.

⁶⁶⁴ Inventory of caravanserais in Central Asia, Ecole d'Architecture Paris Val de Seine, EVCAU Research Team, 2004, United Nations, Educational, Scientific and Cultural Organization, available at <http://unesdoc.unesco.org/images/0015/001587/158758e.pdf>, last visited on 2/12/2017.

⁶⁶⁵ Voyages of Zheng He (1405-1433), Feature China's Great Armada, National Geographic Interactive Edition, Available at <http://ngm.nationalgeographic.com/ngm/0507/feature2/map.html>, last visited on 23/11/2017. “Voyages of Zheng He 1405-1433 The ships of Zheng's armada were as astonishing as its reach. Some accounts claim that the great baochuan, or treasure ships, had nine masts on 400-foot-long (122-meter-long) decks. The largest wooden ships ever built, they dwarfed those of Portuguese explorer Vasco da Gama. Hundreds of smaller cargo, war, and supply ships bore tens of thousands of men who brought China to a wider world.”

⁶⁶⁶ Jung-pang Lo, Zheng He Chinese explorer, Encyclopaedia Britannica, available at <https://www.britannica.com/biography/Zheng-He>, last visited on 23/11/2017. In spite of the critical views of some authors on Zheng He's legacy, we consider that he established a remarkable

Note that the said author maintains that China was interested in spices and the need for raw materials. Obviously, the first and second elements are mostly found in Southeast Asia and there are plenty of raw industrial materials in that region as well. The South China Sea has always been within reach of Chinese vessels. Hence, although the Silk Road was established by China (the Han Dynasty), sea trade between West and East has been dominated till the 1980's by the West, with the exception of the Manila Galleon. Several scholars maintain that sea trade thrived due to silver, conveyed by the Manila Galleon from Mexico to Manila and China.

Regarding the sea route, with the exception of the era of Zheng He and the Manila Galleon, China did not participate in the sea route till the reforming policy promoted by Deng Xiaoping.

Regarding goods, we should differentiate between the ones exported from China and the ones exported from Europe.

Goods exported from China to Europe, according to Joshua Mark, were, among others, silk, but silk was not so important for culture as other goods, such as paper, invented during the Han Dynasty, and gunpowder.⁶⁶⁷

Others consider that the goods traded goods along the Silk Road, from the West to China were “gold, silver, ivory, gems and glass” or foods (“pomegranates and carrots”). In the reverse way, came “lacquer ware, porcelain, jade, bronze, fur and, of course, silk”.⁶⁶⁸

Summing up, goods exported from Europe to China varied from wool to wood, between others, but the item in which the Chinese were more interested was the American silver, traded by Spain. The most exported goods from China were silk and porcelain.

Later on, during the British Empire,⁶⁶⁹ Britain, via the East India Company, introduced and traded opium in China; opium caused the Opium Wars and, subsequently, the Unequal Treaties.

precedent for the trade of nowadays China, but he had no successor, and hence this Chinese exploring era only lasted for several decades. Jung-pang Lo concurs with this opinion.

⁶⁶⁷ MARK, J., op. cit., n. d.

⁶⁶⁸ Items and Products of Trade, Silk Road Trade & Travel Encyclopedia, 丝绸之路网站（丝路网站），available at <http://www.silkroadencyclopedia.com/Orient/ItemsProductsTrade.htm>, last visited on 20/11/2017.

⁶⁶⁹ Chinese trade, British Museum, op. cit. “As a result of the high demand for tea, silk, and porcelain in Great Britain and the low demand for British commodities in China”

Concerning the means of transport, the domestication of pack animals was so important for the viability of the Silk Road that, only when it happened was the Silk Road feasible. Such a long and arduous voyage required a tough, resistant and *well equipped* by nature pack animals (mainly Bactrian camels or preferably Bactrian-dromedary hybrid camels).⁶⁷⁰

Regarding the maritime Silk Road, it is obvious that, since the start of this sea route, technological innovations improved the fluency of the maritime trade.

Briefly, regarding means of transport, there was a big difference between land and sea means of transport: relative importance of China in the first ones and little (with the exception of Zheng He and the Manila Galleon) in the sea trade along the maritime Silk Road. The same applies for traders.

However, regarding the sea Silk Road, it is just the opposite, as ships from the West travelled all the route and back to the West.

According to Derk Bodde, Arab traders were a key element for the expansion of Chinese inventions: “printing, gunpowder, and the mariner's compass”.⁶⁷¹

Hence, it can be understood that a big proportion of those *middlemen* were actually Arab merchants. And we know that, in general terms, middlemen play a key role in trade.

According to Ken Pomeranz and Bin Wong, since 1500 till 1800 (i.e. since the end of the land Silk Road till the era of the trade on opium) there was a “massive foreign trade”, as China acquired huge amounts of silver from Mexico and Peru (in those days around 80% of world's silver was produced there), with a view to monetarize it.⁶⁷² Ken Pomeranz and Bin Wong don't mention it, but such trade had an essential factor, which was the means of transport, i.e. the Manila Galleon, which carried Chinese goods (which Chinese traders had conveyed from China to Manila, capital of the Philippines) to the Spanish American colonies and, in return, transported silver from the said territories to Manila, from where

⁶⁷⁰ POTTS, D., “Bactrian Camels and Bactrian-Dromedary Hybrids”, *The silkroad Foundation Newsletter*, Vol. 13, núm. 1/7, University of Sydney, available at http://www.silkroadfoundation.org/newsletter/vol3num1/7_bactrian.php, last visited on 5/11/2017. “[...] the breeding of Bactrian-dromedary hybrids, the strength of which was un-surpassed by any other domestic animal, apart from the elephant, in the ancient Near East.”

⁶⁷¹ BODDE, D., op. cit., “Chinese Ideas...” p. 1, available at <http://afe.easia.columbia.edu/chinawh/web/s10/ideas.pdf>, last visited on 24/10/2017.

⁶⁷² POMERANZ, K. and WONG, B., “China and Europe – 1500-2000 and Beyond: What is ‘Modern’?”, *Asian topics in world History*, Columbia University, available at http://afe.easia.columbia.edu/chinawh/web/s5/s5_4.html, last visited on 6/12/2017.

Chinese traders transported it to China. We will analyze the Manilla Galleon in the following pages.

The demand and supply practice has been a common place for ages. Therefore, regarding our topic of study, it is said that “[t]he trade routes served principally to transfer raw materials, foodstuffs, and luxury goods from areas with surpluses to others where they were in short supply.”⁶⁷³

Regarding this aspect, Jan de Vries maintains that the success of goods from the East was not only due to their good quality and low price, but there were several contributions of the West to this success, i.e. the significant reduction in *transaction costs*, the increase of income of the European upper class and the fact that information from the East was more important than goods coming from there.⁶⁷⁴

During the era of the land route, there was a relative trade unbalance in favor of China due to the silk trade, but this unbalance changed after the decline of the land route in favor of the sea route, mostly controlled by Westerners (with the exception of the times of Zheng He 郑和 and the Manila Galleon). And the opium trade caused a total trade unbalance in favor of Europe.

Jan de Vries maintains that as of 1750 the West (e.g the EIC) import of China’s increased enormously, but was not “finished fabric”, but “raw silk”.⁶⁷⁵

Excessive trade unbalance has been the motive for grave disruptions, not only in trade but also in general international relations. An example could be the trade unbalance in the XVIII and XIX centuries between Europe and China.⁶⁷⁶

During the Roman Empire, trade with China caused trade unbalance. A main reason for this was the quality of Chinese silk, in spite of its price,⁶⁷⁷ and the fact that China kept the monopoly on the fabrication of silk. However, when the secret of this fabrication was discovered to the West, Chinese silk was still popular in the West.

In this point we have to return to the principles of Chinese culture and ancient way of life. If we take into consideration what we have analyzed about the Silk Road, we see that China did a great deal of trade with the West. But there is

⁶⁷³ Trade Routes between Europe and Asia during Antiquity, op. cit.

⁶⁷⁴ DE VRIES, J., op. cit., pp. 8-9.

⁶⁷⁵ DE VRIES, J., op. cit., p. 26.

⁶⁷⁶ Chinese trade, British Museum, op. cit.

⁶⁷⁷ MARK, J., op. cit.

another question. De Vries, quoting Pomeranz, submits that China did not pay attention to trading with far away locations because it did not feel the need. Something similar happened to India.⁶⁷⁸

The old Silk Road showed, centuries ago, that trade (selling and buying thousands of kilometers away with the sole aid of camels and sailing ships) and mutual understanding with a win-win result are possible, and they are feasible nowadays.

III.2.2 Several trade components of the Manila Galleon

We analyze the Manila Galleon from the point of view of trade. Therefore, we consider trade from the producer to the final destination of the goods. For this reason, we will differentiate between the trade from the production source to Manila, and then from Manila to America, and America to Spain. The shift point is Manila; from there to Spain, trade was theoretically managed by Spain. This view is shared by Manel Ollé, who regards the Manila Galleon as a large-scale trading route, which linked Acapulco with Manila and the coasts of Fujian.⁶⁷⁹

From China to Manila, the maritime route and its trade was actually managed by Chinese traders. From Manila to Nueva España (nowadays Mexico) and from there to Spain, it was carried out by Spaniards. But the key of the trade via the Manila Galleon was Manila itself. Antonio Mira Toscano submits that the Philippine Islands for the Spaniards, to have them under control would be essential in order to establish a real commercial bridge with China.⁶⁸⁰

Mainly, the Manila Galleon didn't trade goods of Philippine origin, but those which had previously arrived in Manila, coming from China, among other countries. According to Carmen Yuste, during the first century of the Manila Galleon, goods carried from Manila to Nueva España were mainly made in China and Japan. But since the latest decades of the XVII century, traders from other

⁶⁷⁸ DE VRIES, J., op. cit., p. 5.

⁶⁷⁹ OLLÉ, M., "The development of the Manila parian: the construction of an unstable balance" in SAN GINÉS AGUILAR, P. (ed.) *Research over Asia-Pacific in Spain* (unofficial translation; original text: "La formación del parían de Manila: La construcción de un equilibrio inestable" en SAN GINÉS AGUILAR, P. (eds.) *La investigación sobre Asia-Pacífico en España*), CEIAP (Colección Española de investigación sobre Asia Pacífico), Granada, Universidad de Granada, 2007. Capítulo 2, pp. 27-49, p. 37, available at <http://www.ugr.es/~feiap/ceiap1/ceiap/capitulos/capitulo02.pdf>, last visited on 13/12/2017. Unofficial translation. Original version: "[...] ruta comercial a larga escala, que unía Acapulco con Manila y con las costas de Fujian".

⁶⁸⁰ MIRA TOSCANO, A., op. cit., pp. 107-122, p. 115.

Asian ports took part in the trade of the galleon, and they were European traders, Muslim and Armenian vessel owners, as well as the Spanish Manila residents. Since then, Carmen Yuste maintains, Manila became a mere transshipment station.⁶⁸¹

Chinese silk, since the secret of its production was stolen by emissaries sent by emperor Justinian,⁶⁸² was not only produced in China. According to Jan de Vries silk was produced not only in China, but the Chinese one was considered as the finest available. The Spanish empire's extraordinary Acapulco-Manila galleons conveyed silk from China to Acapulco, and the ships of the Cape route supplied Europe with Chinese silks.⁶⁸³

Patricia Buckley Ebrey mentions a special case of exported goods from China to America via Manila, the goods imported from America to China and the role Chinese traders played in the said commerce.⁶⁸⁴ Carmen Yuste states that most of the goods consisted of textiles and spices, as pepper, cinnamon and clove, coming from China among other origins.⁶⁸⁵

Ken Pomeranz and Bin Wong maintain that (in spite of the old chestnut according to which China, between 1500 and 1800, was inactive in trade) actually in those days, it had plenty of commercial activity, and the proof is the huge amounts of silver it bought. The said authors don't mention the means of transport of the said silver, but in fact it was carried by the Manila Galleon.⁶⁸⁶

The vessels from China to Manila were made in China and certainly, manned by a Chinese crew. We know that the galleons from Manila to America were commanded by Spaniards, but the interesting point here, which tilts the

⁶⁸¹ YUSTE, C., op. cit. pp. 208-209.

⁶⁸² MARK, J., op. cit., n. d.

⁶⁸³ DE VRIES, J., op. cit., p. 26.

⁶⁸⁴ EBREY, P. and WALTHALL, A., *East Asia: A Cultural, Social, and Political History*, Boston, Houghton Mifflin Company, 2006, pp. 269-270.

⁶⁸⁵ YUSTE, C., op. cit., p. 198.

⁶⁸⁶ POMERANZ, K. and WONG, B., op. cit. "The story of silver in China is really interesting and has been misunderstood for a long time. From 1500 to 1800, Mexico and Peru produced something like 85 percent of the world's silver. During that same period at least a third and some people would say over 40 percent of all that silver eventually wound up in China. Now what was going on there and what does it mean? The Europeans of course were not shipping the silver to China as an act of donation or charity. They were getting goods in return, such as silk, porcelain, and later especially tea. The large volume of silver that was going there and the volume of other goods that must therefore have been coming back illustrate the dynamism of the Chinese economy. Silver supported the staggeringly large export sector. This is interesting for many reasons because it invalidates one of our stereotypes of China: that China turned its back on the sea and was not interested in the outside world. Instead, we see massive foreign trade, which was attested to by all the silver coming in. So then the next question becomes, What did they want all this silver for? What were they doing with it? The main thing they were doing with it is monetizing it. They were making it their money supply."

balance in favor of China is that the participation of Chinese workmen in the ship construction was significant. Expert work for the construction and repair of ships was carried out by Chinese and Malayan workmen. Furthermore, metal pieces for the construction of ships were bought in China, and were made in China by Chinese experts.⁶⁸⁷

In our view, the above-mentioned is a clear precedent of the current Chinese industrial and trade capability.

Chinese traders, also called sangleyes, had a considerable trading capability. As mentioned above, Patricia Buckley Ebrey maintains that once “a galleon to the Spanish territories in the New World carried over 50,000 pairs of silk stockings. In return China imported mostly silver from Peruvian and Mexican mines, transported via Manila.”⁶⁸⁸

In this quotation we can observe the immense industrial capability China had in the era of the Manila Galleon, i.e. several centuries ago.

Antonio García-Abásolo González states that in 1572 ten sampans arrived in Manila with the purpose of doing an operation of research on the market the Spaniards had just opened simultaneously with the foundation of the city. Legazpi realized that they carried a sample of many of the goods they were able to offer. They announced that for the following year would arrive in Manila a bigger fleet carrying goods meeting the specific requirements of the demand of the new community. Legazpi also tried to contact the Chinese authorities through these traders.⁶⁸⁹

Since then, every year, in the suitable time (the monsoons allowing) the Chinese sampan fleet arrived in Manila. They came from ports in the provinces of Guangdong (广东) and Fujian (福建), both in southern China, usually they stayed in Manila from early March till late May or early June, and then they had to return to China, in order to avoid the storms. The voyage took between fifteen and twenty days.⁶⁹⁰

Out of the quotation above we can draw three conclusions: The first one is that this is a primitive example of what nowadays is called the market research,

⁶⁸⁷ CABRERO FERNÁNDEZ, L., op. cit., p. 514.

⁶⁸⁸ EBREY, P., op. cit., *History of ...*, pp. 269-270.

⁶⁸⁹ GARCÍA-ABÁSULO GONZÁLEZ, A., op. cit. pp. 120-121.

⁶⁹⁰ Id. p. 121.

which we consider as a part of a thorough commercial strategy. No wonder nowadays China is an export power.

A second conclusion is the outstanding adaptability of the Chinese to meet the requirements of the demand. In fact, according to Antonio García-Abásolo González, the amount of sampans taking part of the fleet was in relation with the availability of silver in Manila, i.e. the amount of sampans fluctuated according to the market rules (from twenty in the late XVI century till sixty in the XVII century).⁶⁹¹ According to Antonio García-Abásolo González “[...] whatever [the Manila Spaniards] could need would be catered for by the Chinese [traders].”⁶⁹²

Therefore, the sangleyes (the Chinese traders) provided Manila with the foundations for its wealth as well as for the continuity of its population, i.e. the trade of the Galleon and its maintenance.⁶⁹³ But the adaptability of the Chinese population of Manila does not only refer to the traders, but also to other jobs, e.g. bakers, bricklayers and master builders. The remarkable point is that all of them performed their work with the support of goods imported from China: bakers imported from China the flour with which they baked a bread very much appreciated by the Spaniards, while bricklayers and master builders imported from that country bricks, stone and lime, with which they built buildings, conforming the appearance of the city. Strangely enough they even took part, with building materials and their work, in the construction of the city walls of Manila, designed to protect it from its possible enemies, but sangleyes apparently stood in the first place as Spaniards’ foes.⁶⁹⁴ On the other hand, as expressed by the first bishop of Manila, Spaniards admired the ability and working capacity of the Chinese, who from an early stage managed to make Manila depend on their services. The said bishop compared building works in Spain and in Manila, complaining that building in Spain was onerous and troubled, while in Manila, due to the diligence and hard work of the sangleyes, they built good and inexpensive houses, and furthermore, they built swiftly. Moreover, according to the bishop, they did a comprehensive work, including the materials, with the exception of lime.⁶⁹⁵

A third conclusion is that, since those days, the Chinese had a preponderant situation in the trade of the Manila Galleon, not needing to conquer a territory, roll

⁶⁹¹ Id., p. 122.

⁶⁹² Id., p. 123. Unofficial translation. Original version: “todo lo que pudieran necesitar [los españoles de Manila] les era proporcionado por los [comerciantes] chinos.”

⁶⁹³ Ibid.

⁶⁹⁴ Ibid.

⁶⁹⁵ Quoted by GARCÍA-ABÁSULO GONZÁLEZ, A., op. cit., 117-140.

played by the Spaniards.⁶⁹⁶ The Chinese controlled the fabrication of goods in China; they also controlled the transport of goods from China to the Philippines; Chinese expert workers played a relevant role in the construction of the vessels; the metallic parts of the vessels were made in China; Manila Chinese traders also served as middlemen in the city; and, really remarkably, they even financed the Manila Spaniards trading goods to be transported by the Manila Galleon in its way to Acapulco. According to Juan Grau y Monfalcón, *procurador* of Manila in 1660,⁶⁹⁷ 75% of the goods sent by the Manila traders to Acapulco were financed by the sangleyes.⁶⁹⁸ In fact, this shows the relevance the sangleyes had in the configuration of the Philippines in those days. According to García-Abásolo González, sangleyes even financed the government and Manila institutions.⁶⁹⁹ Spaniards were interested in their means of wealth and the sangleyes in the silver coming from the American mines as well as, apparently, a better life standard in the Philippines than back home.⁷⁰⁰ But maybe due to the preponderance of the sangleyes and the mixed feelings of the Spaniards, who developed a love-hate relationship with the sangleyes, soon burst the conflict.

Another remarkable fact that shows that the sangleyes were in their element is the transformation they operated in the parian (the Chinese district). Sangleyes settled in the surroundings of Manila and Cavite, i.e. as close as possible to the Spaniards, but soon they transformed the commercial dynamics of the parian,⁷⁰¹ which was created with the purpose of being a market for goods coming from the external market, i.e. from China, but they transformed the parian into a market trading goods coming from the Philippines, for the most part produced by the locals, and always under the control of the sangleyes (and here comes one of the most amazing details) who became middlemen between the Filipinos and the Spaniards. Note the audacity of the sangleyes, who dared to act as intermediaries between the conquerors and the colonized people. We find that this point is relevant, as it shows the natural disposition the Chinese have for trade. But, if that is not enough, the sangleyes established a network between the Manila parian and

⁶⁹⁶ OLLÉ, M., op. cit., “The development of...”, pp. 27-28. However, according to Manel Ollé, in Manila, Spain didn’t follow the conquering model it had previously applied in the Americas, but it adapted to the Asian ways, in which there were a constellation of trading ports in concurrence.

⁶⁹⁷ The “*procurador de Manila*” was the representative of the Spanish crown in the Philippines.

⁶⁹⁸ GARCÍA-ABÁSULO GONZÁLEZ, A., op. cit., p.124.

⁶⁹⁹ Id., p. 129.

⁷⁰⁰ Quoted by GARCÍA-ABÁSULO GONZÁLEZ, A., op. cit., 117-140.

⁷⁰¹ OLLÉ, M., op. cit., “The development of...” pp. 27-28.

the provinces, by way of which they also controlled the national economy of the Philippines.⁷⁰² Apparently, the sangleyes knew no limits.

In the late XVII century, the Spanish authorities imposed the separation of the sangleyes from the rest of the population of the Philippines, especially the non-Christian sangleyes from the native Filipinos. But this separation failed, and in 1686 the authorities decided the expulsion of the sangleyes, unless they converted to Christianity; the ones who wouldn't convert were given one year to comply with the expulsion. But non-believer sangleyes were so essential for the economy of the islands that the said expulsion was not carried out dutifully till more than fifty years later, in 1755.⁷⁰³ Even though, the expulsion was not the end for the presence of the sangleyes in the Philippines, as after the death of Governor Arandía, attitudes became flexible again, and the Chinese population returned to Manila.⁷⁰⁴ The relation between Spaniards and sangleyes had many ups and downs, as mentioned above.

Regarding demand and supply, we refer to the part dedicated to traders, where many points also refer to this aspect.

One of the factors affecting the relation between demand and supply is the price. Nowadays, in general, Chinese produces are famous for their low price. It had the same reputation in the XVI century, according to Juan Pacheco Maldonado, *procurador* of the city of Manila, who in a writing dated on the sixth of May 1572, referred to the Chinese goods and their prices, stating that “[...] the prices of everything [imported by the Chinese traders] are so moderate, that nearly everything is almost for free; [...]” (unofficial translation).⁷⁰⁵

And we also know that the quality was good. Surely, this good price-quality ratio, in addition to the said diligence of the sangleyes, had no concurrence; hence they became indispensable in Manila. According to Manel Ollé, they ran business dealing with footwear, woodwork, daily food supply, etc.⁷⁰⁶

Regarding trade Balance or unbalance, the Manila Galleon is a special case, because from China (among other origins) via Manila, many different kinds of goods were sent to China, while from Acapulco (in Nueva España) to China a

⁷⁰² Quoted by GARCÍA-ABÁSULO GONZÁLEZ, A., op. cit., pp. 125-126.

⁷⁰³ Id., p. 128.

⁷⁰⁴ Id., p.130.

⁷⁰⁵ Carta en relación de Juan de Maldonado tocante al viaje y poblacion de la isla de Luzón en Filipinas que emprendió Martín de Goyti por mandado del Gobernador de la Isla de Panay en aquel pays, López de Legázpi. Rio de Panay, 6 de mayo de 1572. AGI Patronato 24, ramo 14. Transcrito en (FERNANDEZ DE NAVARRETE, 1946, XVII, doc. 39) y modernamente en (RODRIGUEZ, 1965-1988, XIV, doc. 46). Quoted by OLLÉ, M., p. 32.

⁷⁰⁶ OLLÉ, M., op. cit., p. 42.

single good was sent: silver. We would like to highlight the Chinese preponderance of the whole track from China to Manila and of most of the trade in Manila. The only aspect of the trade which remained in Spanish hands was part of the trade in Manila, the transport on the galleon from there to Acapulco and the trade there. After the age of the Manila Galleon, during the last century of the Qing (清) Empire, China sank in devastation.

III.2.3 Several trade components of the reform and open up to the outside world policy (改革开放 gaige kaifang)

The reform and open up to the outside world policy (改革开放 gaige kaifang) (hereinafter referred to as the economic reform) was undertaken by Deng Xiaoping (邓小平) (hereinafter Deng) in 1978 and developed in the 1980s. Heretofore there were virtually no trade relations between the European Union and the People's Republic of China (PRC). Denise Prevost, Leïla Choukroune, Rogier Creemers and Jean-François Huchet state that there were no commerce between the EU and China by the time China set off its “reform and opening up policy”.⁷⁰⁷

The land route had no impact on the European Union-China relations, while the maritime route did not differ essentially from the one in the age of the old Silk Road. The main difference was the technical improvements of the vessels.

As result of the reform undertaken by Deng, China started producing consumer goods and so it started exporting them to the EU.

The means of transport were essentially vessels, not made in China but mostly in the then developed world. Shipping companies were not either Chinese.

In this period, the Chinese Government set off the SOEs. Gregory Chow highlights two essential elements of the SOEs: first, SOEs were entitled to make autonomous decisions; second, SOEs production nearly reached half of the whole national industrial production.⁷⁰⁸

It is obvious that there is a cause-effect relation between the said two elements. Therefore, we can draw a primary conclusion: Deng immediately

⁷⁰⁷ PREVOST, D. et al., op. cit, p. 11.

⁷⁰⁸ CHOW, G., “Economic Reform and Growth in China”, *Annals of Economics and Finance* 5, 2004, Department of Economics, Princeton University, pp. 127–152, p. 130, available at <http://aeconf.com/Articles/May2004/aef050107.pdf>, last visited on 22/12/2017.

realized that the result of the experiment was successful, and consequently carried on the economic reform.

However, Gregory Chow also maintains that there are exceptional cases of prosperous conversion of major state companies.⁷⁰⁹

Gregory Chow submits that other three kinds of companies were also created: “collective, individual and overseas-funded”.⁷¹⁰

Another of the aspects of the economic reform was the so called Open-Door Policy (note that the name of the economic reform in Chinese is 改革开放, which literally means *reform and open up to the outside*), whereby “foreign trade and foreign investment are encouraged”, according to Gregory Chow:

“In 1978, the total volume of its foreign trade, or the sum of the values of its exports and imports, amounted to only 7 percent of its national income. Deng Xiaoping’s open-door policy encouraged the opening of China to foreign imports and the promotion of exports. By 1987, the volume of foreign trade increased to 25 percent and by 1998 to 37 percent of gross domestic product.”⁷¹¹

This is an essential change regarding traders: not only because traders in China dealing with the European Union started being not just Chinese but also foreign merchants, but also because, as mentioned above, “foreign trade was encouraged” and “the opening of China to foreign imports and the promotion of exports” were fostered.

Regarding the goal of the said measure “[a] main purpose was to absorb Chinese labor while using the capital and technical knowledge of the foreign investors.”⁷¹²

Furthermore, according to Gregory Chow, the Government promoted more initiatives, such as “joint ventures with foreign investors outside the export-processing zones”. The Shenzhen economic zone was launched in 1982, and in ten years was transformed into a modern city.⁷¹³

Later on, the Government also reformed the banking sector. It established the China International Trust and Investment Corporation (CITIC) in order to

⁷⁰⁹ Id., p. 131.

⁷¹⁰ Id., pp. 134-135.

⁷¹¹ Ibid.

⁷¹² Ibid.

⁷¹³ Id., p. 132.

promote foreign capital. In the early 1990s, in Shanghai and Shenzhen Stock markets were founded.⁷¹⁴

As we see, the reform caused an essential transformation in traders in China dealing with the European Union.

Vince Cable states that the main goals of Deng were, among others, national solidity, including promoting foreign investment and technology, accepting that getting rich quickly was not negative.⁷¹⁵

According to the above-mentioned opinion of Vince Cable, the reform introduced two new factors in the post-revolutionary Chinese traders: first, the foreign influence, i.e. some “Chinese traders” would be foreigners or, at least, Chinese companies in which foreigners would have a share. Second, the growing inequality is a matter of fact. In other parts of this thesis we also analyze the influence in the Gini Index caused by the opening policies introduced by Deng Xiaoping.

As a conclusion, Gregory Chow maintains that the essential element for the economic reform was the introduction of market institutions, and the second one was the Chinese human capital.⁷¹⁶

In fact, the said human capital would provide for the subsequent reforms and the development of China.

Gordon Chang maintains that, after Deng’s economic reform, there was another important stage, when in 2001 China accessed the WTO.⁷¹⁷ The privatizing trend started by Deng carried on, and this way more private traders dealt with the European Union.

Initially, there were foreign companies operating in China. At a later stage of the economic reform, Chinese companies were set up.

⁷¹⁴ Id., p. 136.

⁷¹⁵ CABLE, V., “Deng: Architect of the Chinese Superpower”, in JIE, Y. (ed.), *From Deng to Xi – Economic reform, the Silk Road and the return of the Middle Kingdom*, Special Report, SRO 23 May 2017, LSE Ideas, London School of Economics and Political Science, IDEAS Reports, pp. 7-13, p. 9, available at <http://www.lse.ac.uk/ideas/research/reports/deng-xi>, last visited on 22/12/2017.

⁷¹⁶ CHOW, G., op. cit., p. 133.

⁷¹⁷ CHANG, G., “China’s Third Era: The End of Reform, Growth, and Stability”, *World Affairs*, September/October 2014, available at <http://www.worldaffairsjournal.org/article/china%E2%80%99s-third-era-end-reform-growth-and-stability>, last visited on 22/12/2017.

Regarding demand and supply, the economic reform also affected the prices, according to Gregory Chow, due to the transformation of the price system, included in the Decision of the Central Committee on Economic Reform, implemented in October 1984.⁷¹⁸

The above-mentioned Decision had an impact on prices, and prices affected the demand.

Along centuries, European countries had the upper hand regarding trade, but at the end of the XX century, tables turned in favor of China. This happened in the years 1995-1996. Most probably, those were the only years in which there was trade balance between the European Union and China, but before that time and after then, the relations between both sides were asymmetrical. However the asymmetry has been excessive, both in the times of European imperialism as well as after the economic reform.

III.2.4 Several trade components of the new Silk Road

Given the peculiarities of the new Silk Road (also known as BRI, previously OBOR) and the Chinese e-commerce, in this part as well as in the next one, trade components differ slightly from the ones in the previous eras of Europe-China trade. Regarding the BRI, we analyze goods as well as services.

The main goal of the OBOR is to create a huge economic area, in which China, promoter of the initiative, can trade with Western Europe. Naturally, this action could also benefit the rest of the countries involved. The means to achieve such an enormous challenge is the connection of the whole Eurasian continent. Therefore, the Asiatic giant has undertaken a comprehensive investment program. One of the main aspects of the OBOR are the routes themselves. The innovation of this project is that, on one side, it covers the maritime route and, on the other, the land route, but creating a new one, the railway, i.e. “Silk Road Economic Belt”(丝绸之路经济带). The route reaching the furthest to the West is the Yiwu-Madrid railway (义乌至马德里铁路); on the other side, the maritime route, the “21st Century Maritime Silk Road” (21 世纪海上丝绸之路), which is a network of sea lines linking China and Europe. The OBOR is a comprehensive network scheme including the construction of roads, rails, ports, pipelines, etc., connecting

⁷¹⁸ CHOW, G., op .cit., p. 133.

China to central Asia, Western Europe and Africa, and one of the links is planned to cross South America. The OBOR is considered to be the most ambitious overseas enterprise ever undertaken by a single country.

The One Belt One Road extends along Eurasia, which has 75% of the world population and around 60% of the world's GDP.⁷¹⁹

The OBOR is intended to become “the world's largest corridor“, covering an immense “population of 4.4 billion and an economic output of \$21 trillion in more than 70 countries in Asia and the Pacific, Europe and Africa.”⁷²⁰ The projected total infrastructure amounts to \$1 trillion.⁷²¹

In 2017 a train loaded with containers full of goods made in China pulled out from 义乌(Yiwu) train station. It was the start of the first direct train journey from China to Madrid. It lasted 18 days, along a stretch of 12,000 km. This new railway is part of a new infrastructure, supposedly the largest infrastructure ever to be built, which would cost hundreds of billions of dollars.⁷²²

According to The Economist, transportation on railway in central Asia is already a reality, and it has a great potential.⁷²³ According to The Economist, the BRI's Railroad will compete with airlines and shipping firms.⁷²⁴ In fact, this shift is one of the greatest challenges of the New Silk Road: the promotion of railways as an intercontinental means of transport, which is the renewal of the land route, after more than half a millennium of inactivity.

⁷¹⁹ China Railway Express Building Development Plan (2016-2020) National Development and Reform Commission, p. 1, (Unofficial translation. Original text: 中欧班列建设发展规划 (2016—2020 年) 中华人民共和国国家发展和改革委员会, available at <http://www.ndrc.gov.cn/zcfb/zcfbghwb/201610/P020161017547345656182.pdf>, last visited on 01/08/2017.

⁷²⁰ ROSELLINI, N., op. cit. “[...] the Belt and Road Initiative (Silk Road Economic Belt and 21st Century Maritime Silk Road), potentially the world's largest economic corridor, is part of a new trend and an innovative contribution to global governance. It represents an opportunity to build a shared vision for common prosperity through regional cooperation, and could act as an accelerator for achieving the United Nations Sustainable Development Goals.

The Belt and Road Initiative covers a vast population of 4.4 billion and an economic output of \$21 trillion in more than 70 countries in Asia and the Pacific, Europe and Africa. The majority of them are emerging and developing countries. Through connectivity, it aims to foster trade, financial integration and people-to-people bonds, while promoting inclusiveness and win-win cooperation — hence reshaping the landscape of international cooperation.”

⁷²¹ ROLLAND, N., op. cit., n. d.

⁷²² “China's freight train to London travels 12,000 km in 18 days”, The Indian Express, available at <https://indianexpress.com/article/india/chinas-freight-train-to-london-another-step-in-exploring-ancient-trade-routes-4456591/>, last visited on 09/05/2019.

⁷²³ “New rail routes between China and Europe will change trade patterns-The new Silk Railroad will challenge airlines and shipping firms”, The Economist, 16/09/2017, available at <https://www.economist.com/business/2017/09/16/new-rail-routes-between-china-and-europe-will-change-trade-patterns>, last visited on 09/05/2019.

⁷²⁴ Ibid.

Jane Golley considers that a relevant point for China proposing this huge project is that it will employ its manpower and resources.⁷²⁵

Adrián Vidales García states that the OBOR could also reach South America, if the South American leaders admit the Chinese project and join the transoceanic vision of the project: building a 5.000 km. railway from the Brazilian port of Açu till the Peruvian port of Ilo, where they would establish a regular maritime link to China.⁷²⁶ If China also succeeded in this extension of OBOR, the only parts of the world excluded from the OBOR would be North America and Australia. And most probably, eventually Australia will not be, at least entirely, out of the project.

Regarding the “21st Century Maritime Silk Road”, a key Chinese element is a shipping and logistic giant, named COSCO, which deals with this transportation network, and it has even acquired a controlling share in the Greek Piraeus port. Other Chinese maritime companies have also invested or at least shown interest in other ports within the European Union. This network of maritime lines and ports is essential for China, given that it eases the export of plenty of Chinese goods. The Chinese strategy consists of combining the above-mentioned maritime system with the railway system, and thus covering a good share in regional and international cargo transportation, according to Yawei Liu.⁷²⁷

Jonathan Hillman writes that the BRI could include Chinese investments around \$4 trillion, but some other sources consider they could amount twice as much.⁷²⁸ But Nicholas R. Lardy told New York Times reporters Jane Perlez and Yufan Huang that China has only invested a humble amount: only \$50 billion, compared to China’s domestic investment plan.⁷²⁹

Yawei Liu, quoting Turloch Mooney, senior editor of Global Ports, casts doubt on the profitability of the railway Silk Road.⁷³⁰

⁷²⁵ ALEXANDER, R., op. cit., n. d.

⁷²⁶ VIDALES GARCÍA, A., op. cit., p. 6.

⁷²⁷ LIU, Y., “Will All Roads Lead to Beijing? Risks and Challenges in China’s ‘Belt’ and ‘Road’ Plan”, *China Research Center*, available at https://www.chinacenter.net/2017/china_currents/16-2/will-all-roads-lead-to-beijing/, last visited on 09/05/2019.

⁷²⁸ HILLMAN, J., “China’s Belt and Road Initiative: Five Years Later”, *CSIS (Center for Strategic & International Studies)*, available at <https://www.csis.org/analysis/chinas-belt-and-road-initiative-five-years-later-0>, last visited on 09/05/2019.

⁷²⁹ PERLEZ, J., “Behind China’s \$1 Trillion Plan to Shake Up the Economic Order”, *New York Times*, 13/05/ 2017, available at <https://www.nytimes.com/2017/05/13/business/china-railway-one-belt-one-road-1-trillion-plan.html>, last visited on 09/05/2019.

⁷³⁰ LIU, Y., op. cit., n. d.

Apart from the above-mentioned infrastructures, it is evident that the OBOR could open new markets for Chinese produces. It could be an effective way to collocate Chinese goods. And another factor is that the New Silk Road, according to Golley, could help reduce the regional inequalities. We shouldn't forget that this plan stretches along more than 4,000 Km in Chinese territory.⁷³¹

Jonathan Holslag maintains that Chinese apparel makers is one of the industry sectors to be benefitted by the promotion of "Chinese production chains" and to establish factories in countries along the OBOR.⁷³²

Jonathan Holslag also submits that one of the sectors to benefit from the new Silk Road is the steel industry, and not only as a way of exportation, but it will mainly benefit from the construction of the railways.⁷³³

Jonathan Holslag also specifies the industrial sectors to profit from the OBOR, i.e. high-tech items: "electricity, railways, shipbuilding, aviation, renewable energy, machinery, biotech, aviation [sic] and advanced machinery."⁷³⁴

At least two of the above-mentioned industries affect the means of transport within this comparative analysis, i.e. means of transport: shipbuilding and aviation. Railways are part of the land route itself.

Other Chinese goods to be benefitted from the New Silk Road are those produced by the Chinese food industry, according to Jonathan Holslag.⁷³⁵

In a nutshell, regarding the OBOR, China is interested in exporting two kinds of goods, according to Johnathan Holslag: "labour-intensive manufactured goods" and "high-end manufactured goods and different services."⁷³⁶

However, China does not only need to export its goods, but it also needs to import, mostly natural resources, specifically energy.

Jonathan Holslag submits that China also needs to promote its service industry, as transportation and finance, among others.⁷³⁷

⁷³¹ ALEXANDER, R., op. cit., n. d.

⁷³² HOLSLAG, J., op. cit., p. 49.

⁷³³ Ibid. Jonathan Holslag supports his opinion on MIIT, "中国制造 2025" 应与 "一带一路" 无缝对接" ["China Manufacturing 2025"].

⁷³⁴ Id., p. 50. State Information center, "一带一路" 的基本政策 [OBOR, The Basic policy] § 2.4.

⁷³⁵ Id., pp. 50-51.

⁷³⁶ Id., p. 56.

⁷³⁷ Id., p. 51.

A mere comparison shows that the old Silk Road served for the trade of silk, tea, etc. The New Silk Road provides the means for selling many goods, but most of them are value-added goods, high-technological produces. But the remarkable point is that China still keeps the markets it catered for during centuries, as silk or tea.

According to Jonathan Holslag, there are some readjustments regarding the aviation industry.⁷³⁸ The relevant fact is that most of the means of transport serving the BRI are made in China.

The BRI is a Chinese project. As we have seen along this study, it intends to export China's goods. The staff dealing with the project will be Chinese as well.

Another aspect showing the asymmetry between the EU and China is that the OBOR is an exclusive Chinese initiative, what in fact will affect demand and supply. This shows the dynamism, creativity and adaptability typical to Chinese initiatives. A main reason for the Chinese superiority in this aspect is that China is eager to ease the exportation of its goods in several fields, mostly in its industrial production, but also in its manpower. Certainly, the EU has a great industrial capacity, and suffers unemployment. China, as the greatest exporting power and the most populated country in the world, has the necessity to find ways to export its production. Hence it will promote and finance transportation infrastructures, as e.g. in Africa.⁷³⁹

In the BRI initiative we find an example which shows the overwhelming asymmetry between China and one of the EU member states, as Spain. China launched the Yiwu-Madrid railway line which is a clear example of the trade imbalance, according to Frans-Paul van der Putten, John Seaman, Mikko Huotari, Alice Ekman and Miguel Otero-Iglesias.⁷⁴⁰ And when it comes to compare the

⁷³⁸ Id., p. 50. State council, 国务院办公厅关于促进 通用航空业发展的指导意见 [Guidance on Aviation Industry]. Ibid. and MIIT, 中国制造 2025 解读之:推动航空装备发展 [Interpreting Made in China 2025].

⁷³⁹ "China in Africa", *The searcher of Radio 5* (Unofficial translation. Original text: "China en África", El Buscador de Radio 5), 07/06/2018, Transcription of a radio programme, available at <http://www.rtve.es/alcarta/audios/el-buscador-de-r5/buscador-china-africa-07-06-18/4626809/>, last visited on 19/06/2018. "La inversión China en África no para de crecer. Desde hace más o menos diez años China ha construido en África todo tipo de infraestructuras tecnológicas [...] aeropuertos, centrales eléctricas, puertos, estadios, puentes, además de autopistas y vías férreas. Esta relación se manifiesta en asuntos como el turismo. Los turistas chinos son de los que más gastan en el mundo [...] Parece que en lo que va de 2018, África es el destino favorito de los turistas chinos, por encima de Japón y Australia [...] Kenia acaba de lanzar una campaña para atraer turismo chino [...] Ante el desinterés de Estados Unidos de afianzar su presencia en lugares como África u Oriente Medio [...] los chinos está aprovechando este vacío de poder para situarse ellos."

⁷⁴⁰ VAN DER PUTTEN, F. et al., op. cit., p.57.

flows in the two ways, the difference is enormous, as “[o]f the almost 6,000 TEUs moved so far by the Yiwu–Madrid railway line, 5,564 arrived in Spain from China, yet only 366 arrived in Yiwu from Madrid.”⁷⁴¹

In other words, the trade flow from Yiwu to Madrid is more than 1,500% of the trade flow from Madrid to Yiwu. Regarding this point the asymmetry between China and one of the EU member states is conspicuous, which shows us that only through a coherent EU, will it be possible to enhance the position of the EU member states.

For China, the New Silk Road represents an evident leap forward, which reflects a new phenomenon: the Asian giant is not just skipping up grades, but a quality leap. China covers a wider range view. If the European Union is determined to compete at the level of the New Silk Road, maybe it should not develop its own network, but take advantage of the OBOR. Moreover, the key element regarding this issue will be the inner cohesion of the EU, and this will demand a full coordination of the European institutions.

III.2.5 Several trade components of the Chinese e-commerce

The online trade is not a physical one, and therefore, its main trade components are not the same as those pertaining to the trade phenomena we have analyzed previously. First, under the title *E-commerce companies* we have subsumed two categories: *the road (or maritime route)* and *means of transport*. Second, we have substituted *traders* for *manufacturers*, who are connected to *goods*. A new trade phenomenon, the *cryptocurrencies*, peculiar to the e-commerce, is also analyzed in this part. *Demand and supply* as well as *trade balance or imbalance*, remain unaltered regarding the e-commerce. In spite of the said changes, the online trade can be compared with the previously analyzed forms of trade.

Regarding E-commerce companies, Jonathan Holslag states that, if competitive items acquire strong branding, online shops are launched, as Alibaba, Jingdong, Suning, or Dangdang, with a combination of internal promotion and external support. Such successful examples could lead to other Chinese service companies be attracted to initiate their branches abroad.⁷⁴²

⁷⁴¹ Ibid.

⁷⁴² HOLSLAG, J., op. cit., p. 50.

Regarding this issue, Chinese companies are operating in more countries and are covering more business aspects. Moreover, courier services are an essential part of e-commerce and, according to the above-mentioned paragraph, China is interested in exporting not only goods, but also services.

The preponderance of Chinese e-commerce companies is not just a project, but a reality. For example, Panos Mourdoukoutas has published statistics according to which, in Wall Street, Alibaba shares have gained nearly three times more than those of Amazon (we make this comparison with Amazon, not an European but an American company, as it is probably the most relevant e-commerce company at least in the Western world).⁷⁴³

Furthermore, Jack Ma, cofounder of Alibaba, created the Electronic World Trade Platform (eWTP), which is another Chinese move in order to promote globalization.⁷⁴⁴

Moreover, the Alibaba Group's Factsheet maintains that "[th]e eWTP is not intended to supplant the WTO, but rather to complement it."⁷⁴⁵

Obviously, China does not want to be just the largest factory of the world, and therefore it has adopted the role of a world's leader. The same happens with the OBOR, another example of how China vies to gain the global leadership.

China is also exporting its e-commerce technology. The company doing so is Alibaba, and the benefited country is Malaysia.⁷⁴⁶ If this were not enough, this achievement is comprehensive.⁷⁴⁷

Alibaba and its chief, Jack Ma, can be considered as the image of modern China. This includes the global leadership.⁷⁴⁸

However, neither Alibaba is the only worldwide Chinese company nor e-commerce is the only IT sector in which Chinese companies play, according to

⁷⁴³ MOURDOUKOUTAS, P., "Alibaba Beats Amazon", *Forbes*, available at <https://www.forbes.com/sites/panosmourdoukoutas/2017/08/22/alibaba-beats-amazon/#6f7dd1ac3f97>, last visited on 24/12/2017.

⁷⁴⁴ MENG, J. and CHEN, Y. "Alibaba chief seeks global e-trading platform", *China Daily*, available at http://www.chinadaily.com.cn/kindle/2016-09/04/content_26693753.htm, last visited on 09/05/2019.

⁷⁴⁵ "Electronic World Trade Platform", Alibaba Group Factsheet, available at <https://www.alizila.com/wp-content/uploads/2016/09/eWTP.pdf>, last visited on 09/05/2019.

⁷⁴⁶ Alibaba Group's First Overseas eWTP Hub Goes Live in Malaysia, *Business Wire*, available at <https://www.businesswire.com/news/home/20171103005324/en/Alibaba-Group%E2%80%99s-Overseas-eWTP-Hub-Live-Malaysia>, last visited on 28/12/2017.

⁷⁴⁷ Ibid.

⁷⁴⁸ "eWTP, WTO and World Economic Forum launch joint public-private dialogue to open up e-commerce for small business", *Electronic World Trade Platform*, available at <https://www.ewtp.org/article.html?id=ewtp-1>, last visited on 09/09/2019.

Jonathan Woetzel, Jeongmin Seong, Kevin Wei Wang, James Manyika, Michael Chui, and Wendy Wong.⁷⁴⁹ There are several key points of Chinese digital success: the immense magnitudes of the Chinese own digital universe; there are three Chinese technological giants covering vast multi-faceted fields (Baidu, Alibaba and Tencent, collectively called BAT); the Government supports them; Chinese digital sector is changing the Chinese economy; all the said aspects are transforming the world economy. We should keep in mind that the Chinese digital ecosystem has the power to transform itself profoundly, according to the authors of the previous quotation.⁷⁵⁰ They also maintain that China is already a world player in e-commerce.⁷⁵¹ The above-mentioned authors consider that:

“China’s venture capital industry is increasingly focused on digital. Overall, China’s venture capital sector has grown rapidly, from just \$12 billion, or 6 percent of the global total, in 2011–13 to \$77 billion, or 19 percent of the worldwide total, in 2014–16. The majority of venture capital investment is in digital technologies such as big data, artificial intelligence (AI), and financial technology (fintech) companies. China is in the top three in the world for venture capital investment in key types of digital technology including virtual reality (VR), autonomous vehicles, 3-D printing, robotics, drones, and AI.”⁷⁵²

In this point, we refer to the part of this thesis about the Manila Galleon, when we analyzed that the sangleyes (the Chinese traders living in Manila) financed the Spanish Manila residents in their commercial operations via the Manila Galleon.⁷⁵³ In the New Silk Road, China is also a financing power and, finally, it is also the case of the Chinese *fintech* companies,⁷⁵⁴ as they finance, but they have also adapted to modern financial ways. In the same way, China has adapted to the new trading trends. In Europe, we can observe the boom of the e-commerce, but leaders are somehow reticent to support the e-commerce, as it might hurt the traditional commerce. Meanwhile, in China there is a direct support

⁷⁴⁹ WOETZEL, J., SEONG, J., WEI WANG, K., MANYIKA, J., CHUI, M., and WONG, W., “China’s Digital Economy - A Leading Global Force”, *Mckinsey Global Institute*, Discussion Paper 2017, available at <https://www.mckinsey.com/global-themes/china/chinas-digital-economy-a-leading-global-force>, last visited on 29/12/2017. In business, finance and economics, a unicorn, mentioned in the text is “a start-up (= new business) whose value is considered to be over \$1 billion”, Cambridge Dictionary, available at Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/english/>, last visited on 21/11/2019.

⁷⁵⁰ WOETZEL, J. et al., op. cit., “China’s Digital Economy...”

⁷⁵¹ Ibid.

⁷⁵² Ibid. Venture capital, according to the Cambridge Dictionary, is “money that is invested or is available for investment in a new company, especially one that involves risk”, available at <https://dictionary.cambridge.org/dictionary/english/venture-capital>, last visited on 21/11/2019.

⁷⁵³ GARCÍA-ABÁSULO GONZÁLEZ, A., op. cit., p. 124.

⁷⁵⁴ DORFLEITNER, G., HORNUF, L., SCHMITT, M., WEBER, M., “Definition of FinTech and Description of the FinTech Industry”, 2017/03/18, available at <http://www.springer.com/978-3-319-54665-0>, last visited on 29/12/2017. Definition of fintech: “The term “FinTech,” which is the short form of the phrase financial technology, denotes companies or representatives of companies that combine financial services with modern, innovative technologies.”

of the e-commerce, as they consider it boosts the national economy. Premier Li was a firm supporter of the e-commerce.⁷⁵⁵

Jonathan Holslag maintains that even the e-commerce is considered part of the New Silk Road. The Chinese e-commerce project is intended to promote Chinese manufacturers.⁷⁵⁶

According to Wade Shepard, Shenzhen is challenging the Silicon Valley as the world's most esteemed top high-tech location, holding tech giants such as Huawei, ZTE, and Tencent, and many more are coming.⁷⁵⁷

Jonathan Woetzel, Jeongmin Seong, Kevin Wei Wang et al. set three examples showing the transformation experimented by Shenzhen (深圳): the first is DJI, a worldwide leading drone company; the second is SCGC (Shenzhen Capital Group) which, according to the above-mentioned authors "is now China's leading domestic venture capital firm"; and the third one is HAX; according to Jonathan Woetzel, Jeongmin Seong, Kevin Wei Wang et al., Shenzhen attracts entrepreneurs from all over the planet.⁷⁵⁸

If we consider Jack Ma as the image of the Chinese digital entrepreneur, Shenzhen is the image of the Chinese digital city.

The goods China needs from the rest of the world are obvious: an industrial country is *energy-thirsty*. In general terms, the European Union is not a power on raw materials and energy sources. Speaking in rough terms, there are two main fields in which Europe can sell to China: on one side, agricultural goods, mostly delicacies; and on the other side, high-tech produces which quality is not yet within China's reach. Actually, these are most of the produces exported from the European Union to China.

In general terms, China is cautious regarding new economic phenomena, as e.g. cryptocurrencies, and especially in this case, due to their high volatility. Cao

⁷⁵⁵ Premier: Internet Plus to push China's economy to higher level, The State Council - The People's Republic of China, Updated: Mar 15, 2015 11:20 AM, Xinhua, available at http://english.gov.cn/premier/news/2015/03/15/content_281475071697289.htm, last visited on 02/01/2018.

⁷⁵⁶ HOLSLAG, J., op. cit., p. 50.

⁷⁵⁷ SHEPARD, W., "A Look Inside Shenzhen's High-Tech Empire", *Forbes*, available at <https://www.forbes.com/sites/wadeshepard/2016/07/14/a-look-inside-shenzhens-high-tech-empire/#6be9f19c4f36>, last visited on 09/05/2019.

⁷⁵⁸ WOETZEL, J., SEONG, J., WEI WANG, K., MANYIKA, J., CHUI, M., and WONG, W., "Digital China: Powering The Economy To Global Competitiveness", McKinsey & Company, December 2017, available at <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/China/Digital%20China%20Powering%20the%20economy%20to%20global%20competitiveness/MGI-Digital-China-Report-December-20-2017.ashx>, last visited on 09/09/2019.

Li and Giulia Marchi state that China is not an open promoter of bitcoin. However, “in the Dalad Economic Development Zone, lies one of the biggest Bitcoin farm. These eight factory buildings with blue-tin roofs account for nearly one-twentieth of the world’s daily production of the cryptocurrency.”⁷⁵⁹

China supply has shifted from low-value goods to high-tech innovations. Regarding what lies ahead, we guess that there will be a new shift, in which Chinese companies will offer worldwide services. Apparently, the current trend will carry on.

According to certain sources, in spite of the appearance, the concurrence of Chinese companies does not imply unemployment, but it enhances the competitiveness of Western companies. This issue has a cause-effect link with the trade balance/imbalance.⁷⁶⁰

According to Friends of Europe, one of the essential aspects regarding this point is that companies from the EU have still plenty to learn from the Chinese ones, specifically in respect of innovation, leading to market opportunities.⁷⁶¹

According to Friends of Europe, the Internet Plus policy, as well as the support of research & development is the basis of the promotion of Chinese digital economy.⁷⁶²

Once again, the e-commerce allows China to show its multifarious capabilities, and it marks the pace for competitors. The European Union is still a power regarding know-how, but it will have to apply it using ingenuity, anticipation and audacity in order to be able to be within the top ranking world powers.

⁷⁵⁹ LI, C. and MARCHI, G., In China’s Hinterlands, Workers Mine Bitcoin for a Digital Fortune, Sept. 13, 2017, New York Times, available at <https://www.nytimes.com/2017/09/13/business/bitcoin-mine-china.html>, last visited on 02/01/2018.

⁷⁶⁰ LI, Y. and SCHMERER, H.J., “Trade and the New Silk Road: opportunities, challenges, and solutions”, *Journal of Chinese Economic and Business Studies*, Vol. 15, 2017, no. 3, pp. 205-213, 206-207, available at <https://doi.org/10.1080/14765284.2017.1347473>, last visited on 27/12/2017.

⁷⁶¹ “The shape of EU-China cooperation in the digital age, Friends of Europe.” This article is part of Friends of Europe’s Policy Paper ‘EU-China: New Directions, New Priorities’ which brings together the views of Friends of Europe’s large network of scholars, policymakers and business representatives on the future of EU-China relations. These articles will provide immediate input for the EU-China Summit on 12-13 July 2016, but their value and relevance goes well beyond this year. They set the tone for EU-China relations over the next decade. Available at <http://www.friendsofeurope.org/global-europe/the-shape-of-eu-china-cooperation-in-the-digital-age>, last visited on 2/1/2018.

⁷⁶² “The shape of EU-China cooperation in the digital age”, Friends of Europe, available at <https://www.friendsofeurope.org/global-europe/the-shape-of-eu-china-cooperation-in-the-digital-age>, last visited on 09/05/2019.

According to Elcano Royal Institute, China will soon lead the cross-border e-commerce. Its global share will rise from 27% in 2015 to 40% in 2021. Alibaba trading group has developed AliExpress, an online sales portal created to connect Chinese manufacturers with European consumers. Online, China exports five times more than it imports, and regarding Spain, China exports ten times more than what it imports.⁷⁶³

Regarding taxes on e-commerce, goods imported in China are taxed with 11.9 % postal fee, hence they become more expensive. On the other hand, there is a customs moratorium regarding low-value goods imported in Spain. The said report states that there is no control on those goods (e.g. sometimes, they infringe other companies' intellectual property). AliPay, according to the said report, does not meet the same control and security standards as the banking systems or Paypal. The report states that there is lack of reciprocity regarding e-commerce between the EU and China. In this regard, the EU has developed a Revised Directive on Payment Services (PSD2).⁷⁶⁴

III.3 Conclusions

Chapter III of the thesis is about the economic dimension, a core aspect of the EU-China relations. We have to determine whether trade between the European Union and China is asymmetrical. We conclude that the said trade relations have nearly always been asymmetrical.

China exports to the European Union are roughly 250% of what the European Union exports to China. Trade is one of the major asymmetrical aspects in the EU-China relations. Trade on goods is clearly in favor of China, while trade on services is in favor of the European Union. But the surplus for China in the first aspect is so daunting compared to the surplus in favor of the EU (16 times more) that the final balance is overwhelmingly in favor of China.

A key aspect of the economic dimension in the European Union-China relation is the *level playing field*, because the EU claims that the EU companies do not have free access to the Chinese market, while the Chinese companies have liberty to operate in the EU.

⁷⁶³ ESTEBAN, M. (coordinator), op. cit., p. 69.

⁷⁶⁴ Id., p. 70.

The defense of industrial property (IP) is another pitfall in the EU-China relations. The European Union invests in creativity, research, design and quality. This is an advantage in favor of the European Union. But it is also an asset to be protected from copies and imitations. Therefore, infringements of IP badly affect the EU. But there is another problem: counterfeit can affect the health and security of consumers. Regarding the fight against IP violation, there is a total asymmetry between the European Union and China. For instance, in China counterfeit is a major offence only when it amounts more than 150.000 RMB; below such an amount, counterfeit is only an administrative offence, while the EU is hardening its position in the fight against faked produces.

Is it possible a change in the current asymmetry in the EU-China trade relations? Such an asymmetry existed in the antiquity in favor of China, when Europeans had to pay Chinese goods in silver. But tables turned when the Europeans introduced the trade on opium. Since then, the asymmetry was in favor of Europeans. But after the Chinese economic reform developed in the eighties, tables turned again in favor of China. Naturally, there are no exactly symmetrical trade relations, but the said relations have almost always been extremely asymmetrical. In the XX century, according to statistics, the only roughly symmetrical time in the EU-China relation was held in the years 1995 and 1996.

In respect of the easiness to do business in both the EU and China, the World Bank publishes the “Doing Business” ranking. There is an evident asymmetry, as shown in these statistics. There is no data about doing business in the whole EU, but if we take Germany, we can clearly see that the difference in the ranking is huge in favor of Germany, but we also see that Germany is worsening, while China is improving. Moreover, China is improving four times faster than Germany is worsening and hence, in less than ten years China will have overcome Germany in the above-mentioned ranking.

In Chapter III we also analyze the possibility of granting China the Market Economic Status (MES) by the EU. Both sides consider they have grounds for winning. A negotiated solution does not seem feasible.

The last part of Chapter III is dedicated to a comparative analysis of several components of trade in five cases. The sangleyes (Chinese traders living in Manila) were pioneers of globalization. They financed a good part of the trade between Manila and Nueva España (nowadays Mexico) and the even financed the Spanish authorities in the Philipines.

The economic reform (改革开放 *gai ge kai fang*) is another trading case we analyze. It was an era of great changes, and China had to start nearly from scratch, after the devastating Qing Dynasty (清代 *qing dai*) and several revolutions. This reform was developed by Deng Xiaoping (邓小平). The reform of the economy was such a success that in 1995-1996 tables turned and the trade imbalance became in favor of China.

The fourth trading case we analyze is the New Silk Road (also called BRI or OBOR). The main goal of the OBOR is to create a great economic area, but the interesting point of the OBOR is not only trade, but also the previous step to trade, consisting of the construction of infrastructures. And they cover both the land route (with the construction of railways) and the sea route (with the construction of ports). Compared to the old Silk Road, we see that the OBOR has just one power, China, in charge of the whole network. The OBOR is the most ambitious infrastructure project ever. The maritime route is related to a Chinese shipping giant, COSCO, dealing with this network. It has acquired a controlling share in the Greek Piraeus port. Most probably China will buy more shares in other ports. The aim is to combine the sea route with the railway route. This way, China will manage to have a good share of the regional and international cargo sector. Furthermore, the OBOR has another function: enhance national cohesion, as it stretches along 4.000 km in Chinese territory. Moreover, the key element regarding this issue will be the inner cohesion of the EU. Hence this question will demand a full coordination within the EU.

The last trading case we analyze is the Chinese e-commerce. As it is not a physical trade, its elements are not the same as in the previous cases. The first elements are the e-commerce companies. There are several successful Chinese online trading companies, as Alibaba, Jingdong, Suning, Dangdang or Baidu. In the e-commerce, as well as in the OBOR, we can see not only the trade imbalance in favor of China, but also that they are covering gradually more business areas. Furthermore, China is launching a new strategy: it is exporting not only goods, but also services.

There are no major EU e-commerce companies, compared to the Chinese ones or those from the USA. Hence, we will compare China's e-commerce companies with the USA ones. For instance, Alibaba shares have gained nearly three times more than those of Amazon.

Jack Ma, co-founder of Alibaba, has established the Electronic World Trade Platform (eWTP), a platform allowing small and medium enterprises (SMEs) to expand worldwide. In its own website, it is stated that they don't want to substitute the WTO, but to complement it. China is also selling its eWTP abroad i.e. to Malaysia. But there is even more power in this move: the platform is comprehensive, including e-commerce, logistics, cloud computing, mobile payment and talent training. This is a major shift in China's trade, as it is not only about selling goods, but also technology and services.

The e-commerce, the Manila Galleon and the New Silk Road (or OBOR) have a point in common. The sangleyes used to finance the Spaniards resident in Manila in their business operations via the Manila Galleon; the OBOR shows that China is also a financing power; and finally we experience the same in the e-commerce, specifically in the *fintech* companies, which are modern financial institutions. A comparable case is also the Asian Infrastructure and Investment Bank, which lets China conform transcontinental cohesion. Meanwhile, the EU lacks cohesion. Regarding supply and demand, China has experienced a clear evolution from being the factory of the world, making produces with no originality, to a country producing innovative high-tech devices.

The e-commerce allows China to show its multifarious capabilities, and it marks the pace for competitors. The European Union is still a power regarding know-how, but it will have to apply it using ingenuity, anticipation and audacity in order to be able to keep a place within the top ranking world powers.

IV. INTERNATIONAL RELATIONS DIMENSION

IV.1 Analysis of the EU-China relations: symmetry or asymmetry?

IV.1.1 Previous considerations

To analyze this aspect, we will compare both parties of the relation. Paloma García Picazo states that ignoring Chinese culture and civilization, with their deep roots and their mighty capability of influence, is one of the worst cognitive and hermeneutical mistakes regarding the analysis of current international relations. China is a major player in the international system.⁷⁶⁵

Hence, following the considerations by Paloma García Picazo, along our work we expose, whenever needed, the suitable cultural facts giving ground to relevant matters regarding the EU-China relations.

Both the EU and China are situated in Eurasia. They also have many differences, which we will analyze. Paloma García Picazo considers that in itself, China forms its own complete and global universe. It is much more than a *nation*, in the limited and Western sense of the word. It not only comprises a culture –one of the oldest in the world, miraculously preserved in its main features- but also a civilization, having all the resources needed to enterprise its own transformation, without losing its characteristic values.⁷⁶⁶

China is considered a civilization, which is a much larger concept than a nation. And this statement points as well to the continental dimension of China. However China is not only a civilization, but the one and only in the world which has been standing for several thousand years and China is the only State in the world lasting for so long more than 4.700 years. In a world suffering very grave tensions, conflicts, grievances, violence, this continuity of China has to be considered as an essential reference to analyze the international arena.⁷⁶⁷

First, we will compare the EU and China from a geographical and cultural point of view. *Prima facie*, the EU is an international organization comprising a continent and China is a country. But appearances deceive, because officially China is a country, which geographically and culturally is often considered as having continental dimensions, but the European Union is an international organization comprising only part of the European continent, because “the

⁷⁶⁵ GARCÍA PICAZO, P., op. cit., “Módulo II: situación geopolítica...”, p. 175.

⁷⁶⁶ Id., p. 165.

⁷⁶⁷ Id., p. 178.

continent's eastern boundary (north to south) runs along the Ural Mountains".⁷⁶⁸ The total area of the EU is "over 4.3 million square kilometers (km²)".⁷⁶⁹ The area of the People's Republic of China is 9,388,211.0 km².⁷⁷⁰ Hence, the land area of a country as China is more than twice the one of a "continental" organization as the EU. The land area of Europe, as a continent (i.e. covering from Portugal till Ukraine, Belarus and Russia up to the Ural Mountains), is 9,938,000 km².⁷⁷¹ Hence, the land area of Europe as a continent is slightly larger than the China's one (an area not much larger than Spain).

Regarding population, the total population of the European Union was estimated at 508.5 million people in 2015.⁷⁷² Meanwhile, the total population in China was estimated at 1374.6 million people in 2015, according to the latest census figures.⁷⁷³ In other words, the population of China is more than 2.5 times the one of the EU. If we try to compare China with the European continental dimension, this has a population of 739 million people.⁷⁷⁴ In a nutshell, even if we compare China's population with the population of the whole European continent, the Chinese one is nearly twice the European one.

Regarding culture, both sides comprise a variety of ethnical groups and their cultures. In the European Union there are Member states, and they don't coincide with ethnicities. Nowadays there are new ethnicities in the EU, which arrived in the last decades as immigrants. Colin Mackerras states that there are fifty-six ethnic groups officially recognized in China, i.e. the Han, which represents the majority, and fifty-five minority nationalities. The Han were 91.51 percent of the total population, according to the 2010 census.

The twenty four EU official languages are written in three different alphabets.⁷⁷⁵ In China there is a common language, what we call mandarin, which

⁷⁶⁸ Europe, continent, Encyclopaedia Britannica, available at <https://global.britannica.com/place/Europe>, last visited on 27/03/2017.

⁷⁶⁹ Eurostat, Main statistical findings, Land cover in the European Union, available at http://ec.Eurostat/statistics-explained/index.php/Land_cover_statistics, last visited on 27/03/2017

⁷⁷⁰ The World Bank, Land area (sq. km), available at <http://data.worldbank.org/indicator/AG.LND.TOTL.K2>, last visited on 27/03/2017.

⁷⁷¹ Worldatlas, Geography Statistics of Europe, available at http://www.worldatlas.com/webimage/countrys/European_Union/landst.htm, last visited on 27/03/2017.

⁷⁷² Trading Economics, European Union population, available at <http://www.tradingeconomics.com/europeanunion/population>, last visited on 27/03/2017.

⁷⁷³ Trading Economics, China population, available at <http://www.tradingeconomics.com/china/population>, last visited on 27/03/2017.

⁷⁷⁴ Worldometers, Europe Population, available at <http://www.worldometers.info/world-population/Europe-population/>, last visited on 27/03/2017.

⁷⁷⁵ ORBAN, L., "Cyrillic, the third official alphabet of the European Union, was created by a truly multilingual European", SPEECH/07/330, p. 2, available at [Europa.European Union/rapid/press-release_SPEECH-07-330_en.pdf](http://europa.eu/rapid/press-release_SPEECH-07-330_en.pdf), last visited on 27/03/2017.

is known in China as common language (普通话 putonghua) or han language (汉语 hanyu), but it coexists with many others: There are 298 individual living languages in China.⁷⁷⁶

In China five major writing systems coexist, so beside the han or common language (written in characters, which is completely different from an alphabet) there are four alphabets which correspond to four minority languages, “Mongol, Tibetan, Uighur and Zhuang.”⁷⁷⁷

As a conclusion, now we can understand much better the comparison of these two world players. Regarding China, Europeans are often deceived by their Eurocentric vision, as they tend to think of China as a country, but in fact, given China’s geographical, ethnic and cultural dimensions, China has continental features, rather than those of a country. If we forget this paramount aspect, we will not be able to understand the EU-China relations.

Apparently, the parties in the European Union-China relations are two: the EU and China, but this is not just right. The European Union has legal personality but, as stated in the article 24 of the Treaty on the EU, its legislative and acting capability is limited to the ones of the Member states.⁷⁷⁸ There are at least two strata in the EU-China relations: one stratus is the proper EU-China relations and the other one is multiple, consisting in the relations between the Member states and China. The problem is that such strata have coincidences, and thus there is discoordination between the member states and the EU. On the Chinese side there is not such a multiplicity and discoordination.

Probably this is the first aspect in which the asymmetry of these international relations is displayed. This shows the effects of the lack of integration of the EU, compared to a unitary State as China, although it has continental dimensions. In this regard the analysis made by Mikko Huotari, Miguel Otero-Iglesias, John Seaman and Alice Ekman is very accurate. They

⁷⁷⁶ Ethnologue, Languages of the world, China, available at <https://www.ethnologue.com/country/CN>, last visited on 27/03/2017.

⁷⁷⁷ A Linguistic Look at China’s Currency, China Briefing, available at <http://www.china-briefing.com/news/2010/07/09/a-linguistic-look-at-chinas-currency.html>, last visited on 27/03/2017.

⁷⁷⁸ Consolidated Version of the Treaty on European Union, 26.10.2012, Official Journal of the European Union, C 326/13, available at https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF, last visited on 19/09/2019. “24. Declaration concerning the legal personality of the European Union - The Conference confirms that the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member states in the Treaties.”

submit that the environment of the relations between the EU and China have completely changed recently. Such changes affect the physical reality as well as the aspects involved. The first point, because Central, Eastern and Southern Europe are touched. And the second one, because there are some domains that till not so long ago were unthinkable, for instance the surge of Chinese investments in the EU. Moreover, these relations are gradually more outlined in Beijing. Furthermore, the situation is “exacerbated” by the EU’s lack of cohesion and communication. In a nutshell, the said authors maintain that “asymmetries” “have turned increasingly to Beijing’s favour”.⁷⁷⁹ In the said analysis we find a matter of fact and two important considerations linked between each other by the cause-effect relation: the fact is that there are asymmetries in the member states relations. The text uses the term in plural, which makes it even more relevant, and shows a more asymmetrical relation than when used in the singular form, as the member states are 28, while China is a single country. In other words, if Europe does not resolve the said weaknesses, the imbalanced relation will keep on substantiating against the interest of the EU.

Javier Roldán Barbero submits that given the fact that every Member State holds relations with China, bilateralism is essential in this relationship.⁷⁸⁰

Other experts, as Guy de Jonquières, are of the same opinion, and he even gives some examples in which the EU has failed to give a united voice regarding its relations with China.⁷⁸¹

Furthermore, the EU, in its relations with China has no cohesion, and is challenging itself.⁷⁸² The above-mentioned Javier Roldán Barbero and Guy de Jonquières rightly affirm that the said asymmetry is not due to a deliberate strategy deployed by China, but by the proper reality of the EU. China, regarding

⁷⁷⁹ HUOTARI, M., et al., op. cit., p. 5.

⁷⁸⁰ ROLDÁN BARBERO, J. The said author expressed the above-mentioned opinion during an International Congress named “The EU and the Protection of Fundamental Rights”, held in Málaga (Spain) the 20th-21st April 2017, information on the said Congress available at http://www.aepdiri.org/images/actividades/descarga/Programa_Malaga_2017.pdf, last visited on 27/03/2017.

⁷⁸¹ DE JONQUIÈRES, G., op. cit., p. 2. “Equally important, the EU must learn to speak to China with one voice. It has never found that easy. Time and again – over the post-Tiananmen arms embargo, over the textiles imports “bra wars”, over the ill-starred anti-dumping case against Chinese solar panels – the EU’s efforts to forge a united front towards Beijing have stumbled or foundered on petty rivalries and squabbles in its own ranks.”

The European Union’s China Policy: Priorities and Strategies for the New Commission.

⁷⁸² Id.

the EU, instead of a single market with single authorities, finds “28 gateways to Europe”. For its part, China deals with each individual EU member State.⁷⁸³

Regarding a coherent policy by the EU about investments coming from China, the EU has little coordination and much left to do, because there are huge differences between the member states in this regard.⁷⁸⁴ In this discoordination, it is impossible for the EU to respond to China with a single strategy.

According to Guy de Jonquières, the problem within the EU is not only the said lack of coordination, cohesion and coherence, but that the EU member states deploy their resources and strengths competing with each other in order to gain the favors of Beijing.⁷⁸⁵

Lately, another factor depriving the EU of the minimum necessary coherence in its relations with China has been the European debt crisis, which has especially badly affected the EU and its member states, some of which have seen in China a suitable partner in order to emerge from a painful economic situation. China has been interested in many of such investments. This situation has created even less consistent EU common policies regarding China.⁷⁸⁶

Mikko Huotari, Miguel Otero-Iglesias, John Seaman and Alice Ekman rightly support the coordination of the different players in the EU, trying to coordinate EU-China relations in the EU, i.e., on one side the EU institutions and, on the other side, the member states.⁷⁸⁷

The lack of coordination and the limited leadership are two of the main weaknesses of the European Union. But having admitted the deficient EU strategy, we firmly believe that the EU should go a step beyond and thoroughly study China and the Chinese reality in order to design a suitable strategy for these relations. In this point the EU should keep an eye on the other party, following “The Art of War”, by Sun Tzu.⁷⁸⁸

One of the most serious handicaps for the EU-China relations is the rivalry between the EU countries themselves, which badly damages EU-China

⁷⁸³ HUOTARI, M., et al., op. cit., p. 5.

⁷⁸⁴ Id.

⁷⁸⁵ DE JONQUIÈRES, G., op. cit., p. 2.

⁷⁸⁶ DE JONQUIÈRES, G., op. cit., p. I,

⁷⁸⁷ HUOTARI, M., et al., op. cit., p. 7.

⁷⁸⁸ TZU, S., “Sun Tzu: The Art of Warfare” (English version. Chinese version: 孙子兵法) Chinese-English edition by Prof. Roger T. Ames, University of Hawai and 李零(Li Ling)) Company, Zhonghua Book, 2012, p. 31.

relations.⁷⁸⁹ However, this European inner competition is not caused by China, but by the EU member states themselves, perhaps due to the discoordination in the EU.

The said inner antagonism has, in our opinion, two aspects: on one side, the rivalry between the EU member states and, on the other side, the rivalry between the EU member states and the EU itself; this second aspect is caused, at least partially, by the lack of a proper coordination by the EU.

As a result of this antagonism within the EU, all parties in the EU will be damaged: on one side, the EU, because it will show an image of a not solid partner and, on the other side, the EU member states, because the concurrence between them will not improve their bids, but deprive them from a more competitive position. If the EU member states would present a united EU,⁷⁹⁰ they could be more benefitted in the relations with China.

We believe that the EU-China relations are asymmetrical, clearly in favor of China, let alone the single EU member states-China relations. For several EU member states, China is unfathomable. China, with its huge manpower and means capability does not always connect with the EU.⁷⁹¹

Human rights have always been a key element of the EU-China relations, but lately, due to the above-mentioned inner EU discoordination and to the EU debt crisis, several EU Member states have neglected this issue.⁷⁹²

IV.1.2 The end of History...and the beginning of a new one

In 1989 Francis Fukuyama published in *The National Interest* an article under the title of “The End of History?” On that article, he considered that the History had ended, due to the triumph of Western liberalism. Now we raise the following two questions:

1. Is his theory valid nowadays?
2. Has the old West-East ideological difference been replaced by the asymmetry?

⁷⁸⁹ HUOTARI, M., et al., op. cit., p. 9. Mikko Huotari et al. offer some examples of how the said rivalry is badly damaging the EU member States and the European Union itself.

⁷⁹⁰ European Union – The European Union motto. In 2000 was introduced the motto “United in diversity”, available at https://europa.eu/european-union/about-eu/symbols/motto_en, last visited on 27/03/2017.

⁷⁹¹ HUOTARI, M. et al., op. cit., p. 10.

⁷⁹² Ibid.

We take the thesis of Fukuyama, exposed in the above-mentioned article, as a theoretical basis for the analysis.

Fukuyama concentrates on Hegel as the theoretical underpinning of his analysis. But he studies Hegel direct from the source, not through Marxism which, in Fukuyama's opinion, is the way he considers Hegel is mostly studied. The formulation of the hypothesis is that the motor of history of mankind is consciousness, this is to say, ideology; nowadays liberalism has imposed itself all over the world. Three essential points of his logical thinking are: first, the observation of what he considers the preponderance of one idea, the Western liberalism, all over the world; second, he develops the concretion of the concept of ideology regarding this issue; and third, Fukuyama determines the different weights of ideas and materialism.

First, the circumstance he perceives is the victory of the West is conspicuous due to the lack of alternatives to liberalism from the West.⁷⁹³ Second, after the observation of the said phenomenon, Fukuyama determines the concept of ideology *lato senso*, which includes an ample understanding of culture.⁷⁹⁴

It could be assumed that Western liberalism has spread almost all over the world, but it is questionable that the same has happened to Western religions, culture and values. In fact, such aspects show that History has not ended, and they are the precise aspects which mark the current asymmetries. In fact, Johan Galtung considers that "China is China-centric, the deep culture is still holistic-dialectic with a Western surface [...]".⁷⁹⁵

Hence, according to Johan Galtung, China hasn't been the victim of the invasion of Western liberalism, but obviously, it has received the Western influence, although only on the surface. Furthermore, Wang Hongying considers that China will rescue humanity from crisis, and it will also overtake the West as a civilization. Moreover, the said author states that, reacting to the 2008 financial crisis, China has proposed a new financial system more inclusive and that the world should abandon the dollar as the dominating currency.⁷⁹⁶

⁷⁹³ FUKUYAMA, F., "The End of ...?", p. 1.

⁷⁹⁴ Id., p. 3.

⁷⁹⁵ GALTUNG, J., "A Theory of China", *Counterpunch*, February 6, 2015, available at <https://www.counterpunch.org/2015/02/06/a-theory-of-china/>, last visited on 17/02/2017.

⁷⁹⁶ WANG, H., op. cit., "Understanding the intangible in...", p. 216.

Furthermore, Mart Veliste develops the ideas of Foot as well as of Friedberg. Veliste states that, from the point of view of Beijing, the US will not be satisfied until it imposes its own idiosyncrasy worldwide.⁷⁹⁷

It is evident that China officially refuses the American “views and way of life”.

Fukuyama assumes that the end of History is not an original concept, but it was disseminated by Marx, although the conception of the idea of history as a dialectical process with its phases from beginning to end is due to Hegel. Fukuyama also takes as a reference a French defender of Hegelianism, called Kojève.

Fukuyama determines the different weights of ideas and materialism. He maintains that materialism has two varieties: the communist one and the capitalist one. Francis Fukuyama considers the said circumstances regarding Asia, somehow accepting the practical and adaptable character of the average Asian.⁷⁹⁸

Therefore, Fukuyama assumes that it is not merely liberalism the reason for Asian success, but also the Asian cultural background. Some scholars, among whom we consider Kishor Mahbubani, maintain that the twenty-first century will be the century of Asia.⁷⁹⁹

Fukuyama maintains that even something so concrete as economy is not determined by materialism, but by ideas.⁸⁰⁰ Fukuyama highlights the amazing results of the transformations operated in Asia.⁸⁰¹

Francis Fukuyama states that the reasons for Asian success were “the strength and adaptability of the [Asian] indigenous cultures”. This idea is rightly developed by Kishor Mahbubani.⁸⁰² It is precisely the strength and adaptability of Asian peoples what makes one of the underlying foundations of the asymmetry.

In a later article (published nearly twenty years after “The end of History?”) titled “The Fall of America, Inc.”, Fukuyama submits that “[t]he American brand

⁷⁹⁷ VELISTE, M., op. cit., p. 50.

⁷⁹⁸ FUKUYAMA, F., op. cit. “The End of ...” p. 5.

⁷⁹⁹ WANG, H., op. cit., p. 215.

⁸⁰⁰ FUKUYAMA, F., op. cit. “The End of ...” pp. 5-6.

⁸⁰¹ Id., p. 8.

⁸⁰² MAHBUBANI, K., op. cit.

is being sorely tested at a time when other models—whether China's or Russia's—are looking more and more attractive.”⁸⁰³

Apparently, nearly two decades after the publication of his successful work, the author recognizes a basic change in his thesis: he considers that China and Russia have their own models (in spite, it could be said, of being heavily under the influx of Western liberalism) and they are not mere subjects of the invasion of Western liberalism. Furthermore, he considers that those models are increasingly more attractive, hence, more competitive. Therefore, it could be said that the history has not ended, but maybe a new history has started.

Chan-young Yang maintains that, according to Fukuyama, the culture clash could help the world to progress. Hence, he assumes that history has not ended. The clash of civilizations is related to the asymmetrical relations.⁸⁰⁴

How far is the Chinese case a triumph of the West? China has not fully adopted the Western style; it has adopted part of the market economy and the consumerism. But the Chinese system is peculiar. Extrapolating the theory of the end of history, China did not succeed in imposing its system. But this issue could be seen in another way: China proved that it is very adaptable, as Fukuyama recognizes.

Another point which requires a proper analysis is connected with the previous one. China, being adaptable, assumes some features of a foreign system. This is the means, and someone could discuss the argument, but what is unquestionable is the result: in less than four decades, and in spite of drawbacks, China is one of the major world-players. For China, having to adapt to a foreign system, is not a defeat, given that it is not at all the end of history, but most probably the beginning of a new one, in which perhaps there will be a change in roles.

In short, we consider the following answers, regarding the questions we posed at the beginning of this part:

1. Whether Fukuyama's theory is valid nowadays or not. We consider that it could have had some foundation when it was originated. But we guess

⁸⁰³ FUKUYAMA, F., “The Fall of America, Inc.”, *Newsweek*, From the magazine issue dated Oct 13, 2008, p. 2.

⁸⁰⁴ YANG, C., *Revisiting Fukuyama: The End of History, the Clash of Civilizations, and the Age of Empire*, Class of 2010, Doctoral Thesis, Middletown, Connecticut, April, 2010, p. 81, available at https://wescholar.wesleyan.edu/cgi/viewcontent.cgi?article=1405&context=etd_hon_theses, last visited on 18/02/2017.

nowadays China is gradually coming out on top. According to this view, History is reawakening, but on completely different parameters. The Asian giant is using liberalism as the lift which is helping its rise. Perhaps the fight is no longer an ideological one, but the standards are not those of liberalism, but the Chinese ones: strength and adaptability.

2. Regarding the East-West ideological gap, first of all, it is no longer an issue, Fukuyama stated it was the end, but not of History, it was only the end of that History. Such History is being replaced by the asymmetry between East and West, which primarily involved their respective Weltanschauung.

IV.1.3 Soft power, hard power and sovereignty

Catherine Ashton maintains that the world should embrace four principles, one of which is sovereignty, and the other three are cooperation, democracy and stability. She also considers that “In short, the EU has soft power with a hard edge – more than the power to set a good example and promote our values. But less than the power to impose its will”.⁸⁰⁵

And she concludes:

“So while the EU has little power in the conventional sense, it can have a big influence. When so many countries wish to be our partners, we have the opportunity to build relationships that can make a difference to their citizens’ lives, and ours. Such relationships do not always run smoothly. Negotiations can be tough. And I must always be mindful that the interests of the EU’s own 27 member states do not always coincide. But in my experience, as long as we are clear about our objectives and honest in our dealings, progress can always be made in building our relationships. For we can offer something special: post-imperial partnerships for a post-imperial age.”⁸⁰⁶

There are two remarkable ideas in the above-mentioned statement: the first is the dichotomy Catherine Ashton makes, regarding the EU, between its little power and its big influence. We consider this is due to the preponderance of soft power in the EU. But the EU does not renounce to exert its influence, when necessary.

The second idea is clearly expressed by Catherine Ashton: “post-imperial partnerships for a post-imperial age”. Therefore, it is obvious that the image of imperialism, although if it is taken as a reference compared to today’s “post-

⁸⁰⁵ Ibid.

⁸⁰⁶ Ibid.

imperial” one, still has weight in the EU’s foreign affairs, and especially in the EU-China relations.

In the 90’s of the last century, Joseph Nye coined the term “soft power”. The said author considers that war is no longer the way to demonstrate power, but it is rather shown by aspects such as “technology, education, and economic growth”. Meanwhile, extension, population and natural resources are losing significance.⁸⁰⁷

Joseph Nye also submits that in the next future the US will remain as a world leader, but power will be shared with other champions. The key element will no longer be the strength to compel other powers to favour its own interests, but to make them do the wished move without the use of force.⁸⁰⁸

Joseph Nye states that the United States is not in decline, but it will have to confront a “general diffusion of power”.⁸⁰⁹ However, many scholars disagree with Joseph Nye’s position, as e.g. John Ikenberry, Ruan Zongze, Manuel Montobbio and Chen Zhimin.

Another aspect Joseph Nye analyses is the worldwide interdependence. But he maintains that “[c]ontrary to some rhetorical flourishes, interdependence does not mean harmony. Rather, it often means unevenly balanced mutual dependence.”⁸¹⁰

Given the above-mentioned reasoning, Joseph Nye conceptualizes the idea of soft power, which in a nutshell is “which occurs when one country gets other countries to want what it wants”.⁸¹¹

Joseph Nye differentiates between hard power (HP) and soft power (SP) and determines that the national whole power (NWP) equals to the addition of hard power and soft power. Hard power consists of the addition of military power (M) and economic power (E). Soft power is the result of the addition of political power (P) and cultural power (C). Hence, the formula is as follows:

$$NWP=HP+SP=M+E+P+C^{812}$$

⁸⁰⁷ NYE, J., “Soft Power”, *Foreign Policy*, No. 80, Twentieth Anniversary, Autumn, 1990, pp. 153-171, p. 154, Published by: *Washingtonpost.Newsweek Interactive, LLC*, available at <http://www.jstor.org/stable/1148580>, last visited on 19/03/2017.

⁸⁰⁸ Ibid.

⁸⁰⁹ NYE, J., op. cit., “Soft ...” p. 155.

⁸¹⁰ Id., p. 158.

⁸¹¹ Id., p. 166.

Yan Xuetong, for his part, disagrees, and considers that the right formula is not a mere addition, as all elements of the formula are not just the same. He considers that the essential element is the politics power, as stated by Montserrat Pintado Lobato.⁸¹³ Therefore, he maintains that the correct formula is as follows:

$$NWP=(M+E+C) \times P^{814}$$

Joseph Nye considers that the transcendence of soft power equals the one of hard power. Furthermore, he considers that “in general, power is becoming less transferable, less coercive, and less tangible.”⁸¹⁵

Joseph Nye gives some examples of soft power: multinational corporations or American culture.

According to Yan Xuetong “[...] during a period of globalization, the sphere of competition is no longer about land, resources or markets but rule-making, setting regulations, norms or customs”⁸¹⁶

Montserrat Pintado Lobato states that, according to John Agnew, hegemony goes beyond material power and represents a normative and cultural factor, established by the most powerful international actor.⁸¹⁷ Hence, we submit that the cultural power (C) is often underestimated, but it plays a decisive role in international relations, as it is the factor that adds understanding and harmony to long-lasting international relations. A good example of the relevance of the cultural power can be seen in the perceptive analysis by Montserrat Pintado Lobato, showing the particular importance China pays to the cultural power: Beijing pays special attention to its own ancient philosophy and aims to expand its language and culture. Pintado Lobato rightly submits that the expansion of Confucius Institutes throughout the planet as well as the 2008 Olympics in Beijing,

⁸¹² Quoted by MONTIOBBIO, M., “Tianxia, teoría de las Relaciones Internacionales y ascenso global de China”, *REDI*, Vol. 70 1 2018, pp. 235-244, p. 239.

⁸¹³ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 136.

⁸¹⁴ Quoted by MONTIOBBIO, M., *Ibid.*

⁸¹⁵ NYE, J., op. cit., “Soft ...”, p. 167.

⁸¹⁶ Quoted by D’HOOGUE, I.; Yan Xuetong quoted by LEONARD, M., *What does China Think?* (New York: PublicAffairs, 2008), p. 94. D’HOOGHE, I., “The Limits of China’s Soft Power in Europe-Beijing’s Public Diplomacy Puzzle”, *Clingendael Diplomacy Papers*, no. 25, January, 2010, Netherlands Institute of International Relations ‘Clingendael’, available at https://www.clingendael.org/sites/default/files/pdfs/20100100_cdsp_paper_dhooghe_china.pdf, last visited on 20/03/2017.

⁸¹⁷ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 110. AGNEW, J., *Hegemony: The New Shape of Global Power*, Philadelphia, Temple University Press, 2005, pp. 1-2.

the 2010 Shanghai Expo worldwide have played a decisive role in the expansion of Chinese culture.⁸¹⁸

Moreover, Pintado Lobato, based on the ideas of Andrew Hurrell, states that softpower can be apprehended as the values expressed in culture and society, and can be followed by others.⁸¹⁹

Regarding the EU, Jeremy Garlick considers that there is no EU's army, and this is the reason why the EU is not a champion regarding hard power, and therefore it just exerts its soft power and economic power.⁸²⁰

Garlick is depicting the EU's hard power. The traditional distinction between the soft sovereignty, shared and transferable, carried out by EU member states on one side, and the sovereignty employed by China on the other side is no longer so clear. This change in attitudes is due to, at least, two factors:

1. The EU is developing its policies regarding the common police force or the protection of European borders, e.g.
 - a. The European Gendarmerie Force, which since 2007 has participated in five missions in four continents. It was established by the Treaty of Velsen (Netherlands).⁸²¹
 - b. Frontex is another example.⁸²²

However, the said examples do not show that the EU is becoming a hard power player.

2. China is not any longer a mere hard sovereignty state. A world player, in general terms, also deploys powerful soft power sovereignty.

François Godement and Abigaël Vasselier state that, due to China's soft power diplomacy, the Asian giant has entered the EU. European companies wish

⁸¹⁸ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 324.

⁸¹⁹ PINTADO LOBATO, M., "Reformulaciones teóricas en torno a...", op. cit., p. 14. HURRELL, A., *On global order: power, values, and the constitution of international society*, Oxford, Oxford University Press, 2007, p. 73.

⁸²⁰ GARLICK, J., "A critical analysis of EU-China relations: towards improved mutual understanding", *Contemporary European Studies* 1/2013 Articles, pp. 51-70, p. 52.

⁸²¹ European Gendarmerie Force (Eugendforce), available at <http://www.eurogendfor.org/organisation/what-is-eurogendfor>, last visited on 30/02/2018.

⁸²² European Border and Coast Guard Agency (Frontex), European Union, available at https://europa.eu/european-union/about-eu/agencies/frontex_en, last visited on 30/02/2018.

to maintain their access to the Chinese market.⁸²³ Now let us concentrate on China's soft power. China is improving its capabilities regarding soft power, by means of the access to the Chinese market. The meaning of Chinese soft power is debated.⁸²⁴

Eleanor Albert submits that the BRI is a case of soft power.⁸²⁵ This author states that Beijing is promoting its language as well as educational exchanges or expansion of the media.⁸²⁶ This author enumerates three examples of China's soft power: Confucius Institutes around the world,⁸²⁷ educational exchanges⁸²⁸ and international media.⁸²⁹ The report drafted by the Elcano Royal Institute states that, since 2005, the international "explosion" of China's cultural diplomacy has set in more than twenty cultural centres and 1.500 centres of the Confucius Institute.⁸³⁰

Regarding the means to exert soft power, Eva Paus, Penelope B. Prime, and Jon Western concur with Joseph Nye, because they believe nowadays appeal is more effective than constraint. They consider that only by means of seduction can soft power be implemented. The said authors submit that China is an emerging soft power player. They state that ideology is roughly what Nye conceives as soft power. Regarding China, the said authors maintain that others consider that soft power is embodied by the Beijing Consensus development model. But what is the Beijing Consensus? These authors maintain that the Beijing Consensus is the alternative to the Washington Consensus and a way to compete with the USA.⁸³¹

Wang Hongying states that ideology is one of the factors why the international community sees China as an outsider.⁸³²

⁸²³ GODEMENT, F. and VASSELIER, A., "China At The Gates: A New Power Audit Of EU-China Relations", *European Council on Foreign Relations*, ecfre.eu, p. 7, available at http://www.ecfr.eu/page/-/China_Power_Audit.pdf, last visited on 24/02/2018.

⁸²⁴ Id., p. 80.

⁸²⁵ ALBERT, E., "China's Big Bet on Soft Power", *Backgrounder, Council on Foreign Relations*, Last updated 09/02/2018, available at <https://www.cfr.org/backgrounder/chinas-big-bet-soft-power>, last visited on 27/02/2018.

⁸²⁶ Ibid.

⁸²⁷ Confucius Institute Headquarters (Hanban), available at <http://english.hanban.org/>, last visited on 1/04/2018.

⁸²⁸ China Education Association for International Exchange (CEAIE), available at <http://en.ceaie.edu.cn/>, last visited on 01/04/2018.

⁸²⁹ Cctv.com, available at <http://english.cctv.com/2017/01/17/ARTI1nVsdTNIDqACMpTgIWUk170117.shtml>, last visited on 01/04/2018.

⁸³⁰ ESTEBAN, M. (coordinator), op. cit., p. 110.

⁸³¹ PAUS, E., PRIME, P., WESTERN, J., "China Rising: A Global Transformation?", in PAUS, E., PRIME, P., WESTERN, J., *Global Giant - Is China Changing the Rules of the Game?*, New York, Palgrave Macmillan, 2009, pp. 3-28

⁸³² Quoted by WANG, H., op. cit., p. 210.

However, Eva Paus Penelope B. Prime, and Jon Western maintain that the Beijing Consensus is not a clear representation of soft power, the reasons being the following ones: the first, because it lacks content or effect; its main feature is, according to Ramos, the creator of the idea, that it has no model. Second, Beijing Consensus might have undesired socio-economic, ecologic, etc. effects, according to the said authors. Third, even though the term was created by a foreigner, the idea, according to these authors, could be used as a way to compare China's rise with the might of the USA.⁸³³ Montserrat Pintado Lobato, who quotes Zbigniew Brzezinski, states that, beyond the said concrete elements, there are also intangible elements, as recognition and legitimacy, thus the core of China's hegemonic institution will be the mutual interest and the Five Principles of Peaceful Coexistence, advocated by China in its IR. The US, according to Pintado Lobato, will try to integrate China in the institutions created by America's hegemony, so that China does not create its own alternative order. However, in case such institution hinder China's rise, constrain its own power of decision or affect its home affairs, it is certain China will create its own institutions. This will just be the shift from Washington Consensus to Beijing Consensus.⁸³⁴

Wang Hongying maintains that Chinese government takes pride in China's peculiar development model, in other words, what in general terms is named economics "with Chinese characteristics", opposed to "Washington consensus".⁸³⁵

According to Shichen Wang, national leaders only play part of the role of diplomacy, given that people-to-people diplomacy plays a role as well.⁸³⁶

There are two relevant aspects in the above-mentioned text: the first is that at least in some cases, people-to-people diplomacy, which is an expression of soft power, substitute hard diplomacy. This might be a reason for hope, because probably relations could be more fluent, and in the mid-term, a bridge towards deeper negotiations. The second is the realms in which people-to-people diplomacy develops: culture, academy and sport. All the said domains allow, in general terms, a far more harmonious environment than hard diplomacy.

⁸³³ PAUS, E. et al., op. cit., id.

⁸³⁴ PINTADO LOBATO, M., "Reformulaciones teóricas en torno a...", op. cit., p. 15-16. BRZEZINSKI, Z., *America and the world: conversations on the future of American foreign policy*, New York, Basic Books, 2008, p. 113.

⁸³⁵ WANG, H., op. cit., p. 215.

⁸³⁶ WANG, S., "China's People-to-people Diplomacy and Its Importance to China-EU Relations: A Historical Institutionalism Perspective", *JCIR*, VOL. 4, 2016, no. 1, pp. 1-19, p. 1, available at <https://journals.aau.dk/index.php/jcir/article/view/1512/1237>, last visited on 24/02/2018.

We have analyzed the OBOR (New Silk Road) as a case of soft power. And a major reason for considering it as such is that it deploys people-to-people exchanges. As expressed above by Sichen Wang, such exchanges are a way to spread soft power.

Regarding the notion of soft power, Kenneth Ka Lok Chan submits that the EU prefers diplomacy and dialogue than the use of force, and this way the EU is considered a soft power global actor.⁸³⁷ The said author, regarding the importance the EU deserves to China, maintains that there is not a single trend in this regard.⁸³⁸

Bengt Johansson submits that China and Taiwan could take the EU's double layered sovereignty as a model for their mutual relations.⁸³⁹ This author submits that there are two feasible realms for such a proposal: "The high authority for fishing control" and "The high authority for electricity trade".⁸⁴⁰ This proposal seems hard to develop, but it must be respected as a positive idea based on precedents. Attila Marján has a negative opinion about the possibility of the EU serving as a model for China.⁸⁴¹

For his part, Kenneth Ka Lok Chan does not support unrestricted soft diplomacy.⁸⁴² Furthermore, this scholar maintains that the EU lacks a unified voice in foreign affairs.⁸⁴³ Hence, the EU does not only lack cohesion, but also coordination.

According to Wu Hailong, China's soft power and image are gaining momentum, but it still has the image of a hard power.⁸⁴⁴

⁸³⁷ KA LOK CHAN, K., "EU in China: Images, Visibility and the Prospects of Soft Power", *Asia-Europe foundation*, p.2, available at https://www.asef.org/images/docs/1082-Final_Paper.pdf, last visited on 24/02/2017.

⁸³⁸ Id., p. 10.

⁸³⁹ JOHANSSON, B., "The EU Two-Level Sovereignty System as Model for Taiwan and China", *Taiwan in Comparative Perspective*, Vol. 1, November 2007, Taiwan Culture Research Programme, London School of Economics, pp. 70-75, p. 70, available at <http://www.lse.ac.uk/researchandexpertise/units/taiwanprogramme/journal/journalcontents/tcp1johansson.pdf>, last visited on 25/02/2017.

⁸⁴⁰ Ibid.

⁸⁴¹ MARJÁN, A., "Why is the EU not an ideal model for China in foreign policy", *European Studies-The permanent journal of professionals on Europe*, available online since 20/10/2015 (Unofficial translation. Original text: *Études Européennes- La revue permanente des professionnels de l'Europe*, Article mis en ligne le xx/10/2015), p. 52, available at <http://www.etudes-europeennes.eu/accueil/why-is-the-eu-not-an-ideal-model-for-china-in-foreign-policy.html>, last visited on 27/02/2017.

⁸⁴² KA LOK CHAN, K., op. cit., "EU in China: Images, Visibility and ..." p. 14.

⁸⁴³ Id., p. 15.

⁸⁴⁴ WU, H., "China-EU Business Relations: Working Together To Create A Win-Win Situation", *InBev-Baillet Latour Chair of European Union-China Relations*, Department Of EU International

About the specific Chinese soft power, Ingrid d'Hooghe maintains that Yan Xuetong considers China's "institutions and social justice" as the essence for soft power.⁸⁴⁵

Joshua Kurlantzick submits that "China's rise 'will not come at the cost of any other country, will not stand in the way of any other country, nor pose a threat to any other country,' said Prime Minister Wen Jiabao in a 2004 speech that encapsulated the Peaceful Rise idea."⁸⁴⁶ Actually, according to Pintado Lobato, China's growing and dynamic participation in international organisations is one of the key elements of China's rise.⁸⁴⁷

Furthermore, Kenneth Ka Lok Chan considers that, due to its peculiarities, the EU does not enjoy the positive aspects proper to states, and that is why it lacks the notion of national interest and does not possess hard powers. Moreover, it suffers the absence of traditional institutional leadership regarding foreign and security policies.⁸⁴⁸

What is the difference between the EU's soft power and the China's one? According to Esther Pan, the difference is that the promotion of democracy and the reassurance of good governance abroad are the main aims of European soft-power while China is focused on trade and natural resources, what yields results to the local population, such as very welcomed transport, hospital and educational infrastructure.⁸⁴⁹

According to the report on the conference "Europe and sovereignty: Reality, limits and outlook", drafted by François Frigot and Ester Bonadonna, held on 29th September 2016 "traditional power politics" is shifting to soft power. However, "international competition" hard power is gaining momentum.⁸⁵⁰ The above-

Relations And Diplomacy Studies, pp. 16-17, available at https://slidelegend.com/eu-china-observer-college-of-europe_59eaae931723dd3ac382334d.html, last visited on 24/02/2017.

⁸⁴⁵ Quoted by D'HOOGHE, I., op. cit., "The Limits of China's Soft Power in ..." p. 6.

YAN, X., "The Path for China to Increase its 'Soft Power'", *China and World Affairs*, vol. 2, April 2006, no. 1, p. 1, available at <http://www.thinkinchina.asia/wp-content/uploads/3-ThePathforChinatoIncreaseitsSoftPower.pdf>, last visited on 02/06/2019.

⁸⁴⁶ KURLANTZICK, J., *Charm offensive : how China's soft power is transforming the world*, Yale University Press New Haven and London, First edition, A New Republic Book, 2007, p. 38, available at <http://www.nicoravanilla.com/uploads/2/4/1/1/24114923/kurlantzick2007.pdf>, last visited on 20/03/2017.

⁸⁴⁷ PINTADO LOBATO, M., "Reformulaciones teóricas en torno a...", op. cit., p. 15.

⁸⁴⁸ KA LOK CHAN, K., op. cit., "EU in China: Images, Visibility and ..." p. 3.

⁸⁴⁹ PAN, E., "China's Soft Power Initiative", *Backgrounder, Council on Foreign Relations*, 18/05/2006, available at <https://www.cfr.org/backgrounder/chinas-soft-power-initiative>, last visited on 27/02/2018.

⁸⁵⁰ FRIGOT, F. and BONADONNA, E., Report on "Europe and sovereignty: Reality, limits and outlook", Conference of 29th September 2016, *European issues* no. 410, 08/11/2016, Policy Paper, p. 2, available at <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-410-en.pdf>, last visited on 24/02/2017.

mentioned report submits that regarding EU's interests, they must be defined, implemented and subject to flexibility.⁸⁵¹ Moreover, the said report states that unity is required in the 21st century, given the assertiveness of giants like China, the US and Russia. Therefore, the choice of the EU could be a multi-tiered sovereignty.⁸⁵²

Judy Dempsey maintains that both the EU's soft and hard powers are very limited, and they are in decline.⁸⁵³

Kenneth Ka Lok Chan concludes that soft power is an applicable instrument, which can be deployed in three aspects: in the design of the aims for foreign policy, in constructing alliances with powers outside the EU and in encouraging values as a means for further objectives.⁸⁵⁴

Shichen Wang considers that EU-China relations cannot be understood without the historical perspective, and this applies also to people-to-people exchanges and diplomacy.⁸⁵⁵

Regarding soft power along the OBOR, China, according to Shi Yinhong does not require that countries compromise their sovereignty.⁸⁵⁶ Hence, according to this opinion, the OBOR could be seen as an optimal case of soft power, because it does not affect partners' sovereignty.

Shichen Wang considers that there are four reasons why China should take people-to-people diplomacy as a cornerstone of its foreign affairs policy: first, because it is a valuable criteria to enhance China's prestige abroad. Second, it is the suitable counterbalance for the Chinese foreign policy. Third, people-to-people diplomacy might have a bearing on future generations throughout the planet. Fourth, people-to-people diplomacy between both sides could improve the image of Chinese government in the eyes of Chinese people, according to Shichen Wang.⁸⁵⁷

⁸⁵¹ Id, p. 5.

⁸⁵² Id., p. 2.

⁸⁵³ DEMPSEY, J., "Europe's Paralysis Over Hard and Soft Power", *Judy Dempsey's Strategic Europe*, Carnegie Europe, October 18, 2016, available at <http://carnegieeurope.eu/strategieurope/64884>, last visited on 27/02/2017.

⁸⁵⁴ KA LOK CHAN, K., op. cit., "EU in China: Images, Visibility and ...", p. 15.

⁸⁵⁵ WANG, S., op. cit., "China's People-to-people Diplomacy and ...", p. 3.

⁸⁵⁶ SHI, Y., "Balance between China's hard and soft power", 6/08/2015, *China Daily*, available at http://www.chinadaily.com.cn/opinion/2015-08/06/content_21513389.htm, last visited on 27/02/2017.

⁸⁵⁷ WANG, S., op. cit., "China's People-to-people Diplomacy and ...", pp. 11-13, available at <https://journals.aau.dk/index.php/jcir/article/view/1512/1237>, last visited on 24/02/2017.

Janice Bially Mattern and Ayşe Zarakol submit a new term, which is not the soft sovereignty, but the softness of sovereignty. According to the said authors, the process of globalization has led the academia to conceive politics worldwide even more adapted to the reality of the planet. Moreover, they state that sovereignty is no longer the single parameter to lay out politics in the world.⁸⁵⁸

IV.1.4 The EU and China regard each other

China implements the most suitable means to deal with each European market.⁸⁵⁹ Many Member states of the EU have issued a “strategic partnership with China”, but the question is to discern the real meaning of this idea. Apparently, it is an idea coming from China, and it consists of the following proceedings: China shows each EU Member State that they are important for China.⁸⁶⁰ As a result, it is evident that China attaches great importance to its relation with the EU. The reason for this strategy on China’s side is the current multipolarism, in which the USA is not the world sole leading power any longer; in this situation China does not want a feeble EU. Most probably, China is not in favor of a divided and weak EU, but it is the EU itself which is to blame for its poor unity, coordination and consolidation.⁸⁶¹

The EU finds it hard to develop a common strategy about China. Even if China should be awarded the market economy status remains as a hard task to issue a united response. Hypothetical investment and trade agreements in regard to China also represent an arduous work to be resolved by such an international entity as the EU.⁸⁶²

The lack of unity and coordination is not only about the investments from China regarding the EU, but also from the EU to China. Moreover, there is asymmetry regarding the “level playing field”, as stated by the “Joint

⁸⁵⁸ BIALLY, M. J. and ZARAKOL, A., “Hierarchies in World Politics”, *Apollo*, University of Cambridge Repository, 2016, p. 7, available at www.repository.cam.ac.uk/handle/1810/251402, last visited on 25/02/2018.

⁸⁵⁹ Id, p. 11. Some examples of the above-mentioned adaptability: “China follows more than ever a flexible approach to European Union markets, adjusting to the changes happening in the domestic and regional context as much as possible and trying to seize opportunities that emerge. The Ukraine crisis, for example, has encouraged China to assess the effect of sanctions for European Union agricultural exports and how China could benefit from it. Romania and Poland, for instance, are increasingly trying to sell their products to China, thus deepening their commercial relationships with the Middle Kingdom.”

⁸⁶⁰ Ibid. “In our discussions we have discovered that every European Union country claims to be China’s ‘best friend’, or ‘best partner’, or at least its ‘entry door’ in European Union. Hence, it seems that China has managed to create ‘28 different gateways to the European Union.’”

⁸⁶¹ Ibid.

⁸⁶² Id, p. 12.

Communication to the European Parliament and the Council-Elements for a new EU strategy on China”. The Joint Communication claims that there is a total lack of reciprocity about the openness regarding investment and businesses.⁸⁶³

The EU and especially the Commission have already had quite a few anti-dumping cases against China in which there were different positions regarding each case.⁸⁶⁴ Hence, as a result of the previous considerations, there is little coherence within the EU when it comes to talk about the possibility of regarding China as a market economy. What is a *déjà vu* is the conclusion that, regarding trading with China, the EU member states will have less room for maneuver than the EU itself.⁸⁶⁵ The European Union should find an appropriate common track for negotiations with China. However, in this situation we find the same problem for the lack of coherence of the EU: the fear of the EU member states to surrender part of their sovereignty. However it could be said that somehow the EU member states do not want to lose their sovereignty in favor of the EU but, as they handle business with third parties on their own, they are not so powerful and thus, they lose capability but they are not losing some of their sovereignty in favor of those third parties. Actually, the EU’s concept of sovereignty is based on the principle of attribution of competences, which we explain in the part named “V.3.2 Human rights in China, seen from the EU”.

From the analysis above, a conclusion can be drawn: if the EU member States do not act according to the principle of attribution of competences, they are too feeble regarding several third parties which are heavy weights. The reasons are the lack of cohesion and the weak leadership.

The fact that China is progressing at a much faster rate than the EU member states, and still increasing it, will sooner or later force the EU to gain cohesion and coordination in order to avoid losing its footing. But new problems appear within the EU, and this makes it even harder for the EU to enhance its consolidation, and the common strategy regarding China will go down in the EU agenda. Meanwhile, China will be in an even better position regarding the EU.

Cohesion is essential to the development and even survival of the EU. According to the television emission *Le dessous des cartes*, Europe has a relevant

⁸⁶³ High Representative of the Union for Foreign Affairs and Security Policy, European Commission, Brussels, 22.6.2016, JOIN(2016) 30 final; “Joint Communication to the European Union Parliament and the Council-Elements for a new European Union strategy on China”. <http://www.ipex.European Union/IPEXL-WEB/dossier/document/JOIN20160030.do>, last visited on 27/03/2017.

⁸⁶⁴ HUOTARI, M. et al., op. cit., p. 10.

⁸⁶⁵ Id, p. 13.

weight worldwide, with nearly 450 million inhabitants (the third most populated entity after China and India). Europe makes 40% of the worldwide trade on goods and is still the first economic power worldwide, before China, the United States and Japan, provided that it remains united.⁸⁶⁶

As we demonstrate along our work, the EU-China relationship is asymmetrical. However, there are certain factors which reverse the first appearance, according to Manuel de Jesús Rocha Pino. The said author maintains that “mutual understanding” and effective cooperation in bilateral and worldwide affairs determine the symmetric level, in spite of the initial impression. The very author affirms that Sino-European relations might fall under one of the four categories drawn up by Frank Pfetsch and Alice Landau (specifically Category C).⁸⁶⁷ However, we disagree with this point. Unfortunately for the European Union the European Union-China relations are not symmetrical. By way of example, several findings show that our statement is right:

1. The Joint Communication, in its part called “III.1 The EU as a partner in China's reforms”, states that “It is also in the EU's interest to support China's transition to a more sustainable and inclusive social and economic model by promoting core labor standards and decent work, welfare reform”.⁸⁶⁸

It is “in the EU's interest”, not in Chinese people's and worker's interest. Why? Maybe because these aspects, e.g. labor and social rights, as well as the welfare state might affect the competitiveness of both sides, and therefore might affect the “level playing field”. The “level playing field” is referred to in the Joint Communication ten times, which shows the paramount importance the EU attaches to this matter.

Since China's economy is based on a free market economy with plenty of State-owned companies, and the EU has a liberal market system, the basic principles are so distant that the relation is asymmetrical.

⁸⁶⁶ “Après le flux, le reflux”, Le dessous des cartes, TV5, 21/05/2019, transcription of a television program.

⁸⁶⁷ ROCHA PINO, M., “La simetría en la asociación estratégica República Popular China-Unión Europea”, *Estudios de Asia y África*, El Colegio de México vol. XLV, enero-abril 2010, núm. 1, pp. 117-158, pp. 125-126.

⁸⁶⁸ European Commission High representative of the Union for Foreign affairs and Security policy Brussels, 2.6.2016 Join(2016) 30 final Joint communication to the European Parliament and the Council, Elements for a new EU strategy on China, available at http://eeas.europa.eu/archives/docs/china/docs/joint_communication_to_the_european_parliament_and_the_council_-_elements_for_a_new_eu_strategy_on_china.pdf, last visited on 5/04/2018.

2. In the Joint Communication, at its final part, we find the recommendations:

“The Council is invited to endorse the elements proposed in this Communication. Specific recommendations for follow-up will be made in the following areas:

- (...) Mainstreaming key themes and objectives across all EU-China dialogues and concentrating resources on a smaller number of priorities where the EU has the greatest added value.”⁸⁶⁹

Why should the EU concentrate resources “on a smaller number of priorities”? Should we understand the EU has already given up priorities?

Guy de Jonquières expresses the amount of issues in which the EU and China have dealings, and apparently insinuates the same as the Joint Communication.⁸⁷⁰

Perhaps the above-mentioned fact is due to the fact that the EU cannot overcome the said asymmetrical factor, and thus gives up several priorities, which is a grave concern.

European leadership is undergoing dramatic changes. So is the Chinese one, but while the Chinese supremacy is clearly consolidating, after the reform of the China’s Constitution, the European guidance is trying to find out a way out of its predicament.

Kim Willsher and Tom Phillipps report that Emmanuel Macron paid a visit to China’s Xi Jinping.⁸⁷¹ Apparently, Emmanuel Macron used a double opportunity: he took advantage of the EU in order to gain preponderance in the face of China, and used his visit to China to obtain more prestige regarding the EU. Furthermore, he was swift, because he was the first leader of a EU member state to pay a visit to China’s leader since he was assured in power. And his visit was carried out just days after he stated that a stronger Europe was needed to improve its chances regarding other world powers. Kim Willsher and Tom Phillipps add that Macron, in light of Brexit and the election of Donald Trump, tries to improve France’s links to China, even to become China’s preferent

⁸⁶⁹ Joint Communication, p. 18-19.

⁸⁷⁰ DE JONQUIÈRES, G., op. cit., p. 2. “There is scope also for beneficial Sino-European Union co-operation beyond the sphere of trade and investment. However, efforts need to be much more sharply focused than in the past. The European Union and China have more than 70 ‘sectoral dialogues’ on a diverse array of issues ranging from agriculture to textiles trade. But it is hard to say what, if anything, of substance these talking shops have produced: many seem to be more successful at conference-building than confidence-building.”

⁸⁷¹ WILLSSHER, K. and PHILLIPPS, T., “Emmanuel Macron to visit China as Beijing shifts focus from UK to France”, The Guardian, France, 7/1/2018, 19.10 GMT, available at <https://www.theguardian.com/world/2018/jan/07/emmanuel-macron-china-visit-beijing-ties-eu-xi-brexit>, last visited on 22/03/2017.

European partner. In fact, this is another example of the proverbial European lack of cohesion.⁸⁷²

Brexit, obviously, will make room for another state to substitute the UK as a valid representative power. France is vying to succeed the UK. However, regarding the EU leadership, France will need a co-leader, who will be Germany.

Paul Irwin Crookes assesses what could be the key elements of the oncoming development unchained by the Brexit: what will be the Brexit agreement and what effects will have the resulting instability on the economy at all levels.⁸⁷³ Naturally, the Brexit is already having effects on the EU-China relations and will have lasting consequences.

However the main question is the partnership between Germany and France, resulting in a two-headed leadership for the EU, according to Francis Ghilès.⁸⁷⁴

According to Elizabeth Economy, quoted by Tom Philips, Xi is a decisive leader for China's history, in the line of Mao and Deng.⁸⁷⁵

Zhang Ming maintains that the 19th Congress will be fully beneficial for both China and the EU.⁸⁷⁶ China has proved its adaptability several times, and this occasion can be another one. Perhaps what Zhang Ming states is right about Europe, but certainly there must be some conditions. Perhaps the EU will have to adapt to further reforms. China keeps the leadership, as in general terms it is the first side to assume changes.

Chinese leadership gains consolidation. According to Alan Fleischmann, as a result of the above-mentioned CPC 19th Congress, Xi Jinping (习近平) is enshrined in China's Constitution.⁸⁷⁷ And finally, completing the Chinese

⁸⁷² Ibid.

⁸⁷³ CROOKES, P., "Impact of Brexit on Europe-China Relations", *News & Events*, University of Oxford, Published 10 October, 2016, available at <http://www.ox.ac.uk/news-and-events/oxford-and-brexit/brexit-analysis/impact-brexit-europe-china>, last visited on 22/03/2017.

⁸⁷⁴ GHILÈS, F., "Restoring The Franco-German Leadership Of The EU", *Opinión, CIDOB*, May 2017, núm. 480, pp. 1-2, p. 1, available at https://www.cidob.org/publicaciones/serie_de_publicacion/opinion/europa/restoring_the_franco_german_leadership_of_the_eu, last visited on 23/03/2017.

⁸⁷⁵ PHILLIPS, T., "Xi Jinping heralds 'new era' of Chinese power at Communist party congress", *The Guardian-International Edition*, available at <https://www.theguardian.com/world/2017/oct/18/xi-jinping-speech-new-era-chinese-power-party-congress>, last visited on 22/03/2017.

⁸⁷⁶ ZHANG, M., "New era for China brings new opportunities to all", *euobserver*, available at <https://euobserver.com/stakeholders/139762>, last visited on 22/03/2017.

⁸⁷⁷ FLEISCHMANN, A., "Xi On The Rise: Outcomes From The 19th Chinese Communist Party Congress", *Forbes*, Nov 9, 2017 @ 06:25 PM, available at

constitutional evolution, term limits were abolished from China's Constitution, according to The Washington Post.⁸⁷⁸ Hence, leadership is a further factor of asymmetry.

Historically, international relations are permeated with ethnocentrism. But nonetheless, lately there is a trend marked by the emerging powers, which are putting the Western hegemony into question. China is the main player in that direction, along with its dynamism as a global player and as a major economic power. Furthermore, China is developing its own school of international relations, not based on Western parameters, but on its own idiosyncratic references.⁸⁷⁹ Celestino del Arenal, quoting Leire Moure, pays a special attention to the fact that Chinese culture has been developed by a millenary civilization, hence China's school of international relations theory must be based on the Chinese background. Celestino del Arenal, following the ideas of Callahan, considers that the rise of China will affect the theory of international relations, weakening the preponderant ethnocentrism.⁸⁸⁰ Perhaps the said author is right, or maybe there will be a transformation from ethnocentrism to poly-ethnocentrism. The difference between the (improbable) absence of ethnocentrism and the said poli-ethnocentrism is that in the first case there would be no bias due to ethnicity, while in the second case, what we call poly-ethnocentrism, instead of being under the influx of a ethnocentrism, i.e. westerncentrism, there would be a pool of several major powers with different Weltanschauungs, shaping the international relations theory. Qin Yaqing, who according to Montserrat Pintado Lobato is the most popular Chinese internationalist,⁸⁸¹ submits that in order to determine whether there is a Chinese school of IR, we should check if the following requirements are met: first, its development should underpin on historical, cultural, traditional and contemporary experienced basements. Second, it should be recognized as the main stream among the internationalists. Third, its theoretical core has to be overwhelming regarding other IR theories, and its mainstay has to be a central

<https://www.forbes.com/sites/alanfleischmann/2017/11/09/xi-on-the-rise-outcomes-from-the-19th-chinese-communist-party-congress/#245395b1573c>, last visited on 22/03/2017.

⁸⁷⁸ RAUHALA, E., "Xi cleared to rule indefinitely as China officially scraps term limits", *The Washington Post*, Asia & Pacific, 11/03/2018, available at https://www.washingtonpost.com/world/china-approves-plan-to-abolish-presidential-term-limits-clearing-way-for-xi-to-stay-on/2018/03/11/973c7ab2-24f0-11e8-a589-763893265565_story.html?utm_term=.42d30be641b0, last visited on 22/03/2017.

⁸⁷⁹ DEL ARENAL, C., op. cit., p. 168.

⁸⁸⁰ Id., p. 169-170.

⁸⁸¹ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 122. KRISTENSEN, P. M. y R. T. NIELSEN, "Constructing a Chinese International Relations Theory: A Sociological Approach to Intellectual Innovation", *International Political Sociology*, Vol. 7, nº 1, 2013, pp. 19-40.

question. Qin Yaqing states that the lack of consensus about such question hinders the development of a Chinese school of IR.⁸⁸²

Leire Moure quotes Qin Yaqing, stating that he maintains that in the last years, within the Chinese academic world, a broad consensus has built up, in the sense that mainstream Western theories are insufficient. The major critics reproach them the scarce weight cultural aspects have in those theories. However, such theories are under the influence of (Western) cultural facets, even though they are not evident.⁸⁸³ Qin Yaqing states that Chinese scholars have asked themselves two questions. The first one is whether Western theories would suffice for worldwide issues, and more particularly in respect of non-Western questions. In his opinion, they are insufficient, as shown by different examples in the last decades, as e.g. the inapplicability of the European integration to the regional proceedings in Eastern Asia. The second question they confront is whether culture has to be taken into account in the construction of international relations theories. Qin Yaqing considers that culture is essential for the theoretical innovation and development. In fact, human beings are determined by their idiosyncrasy. Therefore, Qin Yaqing considers that China and India, among other powers, will play a relevant role in the shaping of the new world order.⁸⁸⁴

Regarding culture and international relations, Wang Gungwu considers that the cause that culture has been ignored is that Western culture has been so prominent that it has been regarded as equal to civilization, as if no other one existed.⁸⁸⁵ Furthermore, Wang states that the historical perspective of culture is relevant.⁸⁸⁶

Lately, IR experts are showing more interest in culture what, in Wang Gungwu's words means that culture can not be despised any longer, given the fact that it is essential as an analytical framework for current issues.⁸⁸⁷ Hence, Wang

⁸⁸² PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 122. QIN Y., "Guoji Guanxi Lilun de Hexin Wenti yu Zhongguo Xuepai de Shengcheng" (Central Question of the International Relations Theory and the existence of a Chinese school), *Chinese Social Sciences*, nº 3, 2005, p. 166.

⁸⁸³ MOURE, L., "International order in transition and International Relations: Theoretical approaches to the hegemonic decline of the United States and the rise of China as a global power" (Translation by the author. Original text: Orden internacional en transición y Relaciones Internacionales: Aproximaciones teóricas al declive hegemónico estadounidense y al ascenso de China como potencia global) *Cursos de Derecho Internacional y RI.indb*, 30/06/14, 11:12, pp. 367-449, pp. 416-417.

⁸⁸⁴ QIN, Y., op. cit., "Culture and global thought...", pp. 68-69.

⁸⁸⁵ Quoted by WANG, H., op. cit., p. 203.

⁸⁸⁶ WANG, G., "Allies and friends: Culture in Asia-Pacific state relations", *Asian Journal of Political Science*, Vol. 5, 1997, no. 2, pp. 23-36, p. 23, available at <https://doi.org/10.1080/02185379708434102>, last visited on 27/06/2019.

⁸⁸⁷ Quoted by WANG, H., op. cit., p. 203.

Gungwu considers that positivist methods are inadequate to study the cultural factors in international relations.⁸⁸⁸

Leire Moure also quotes Zhao Tingyang, creator of the theory of Tianxia (天下),⁸⁸⁹ who considers that Western theories take the States as fundamental analysis units, what leads to a “no-world” or a “failed world”, while the Tianxia theory regards the world as a whole, irrespective of its constituent parts.⁸⁹⁰ Zhao Tingyang submits that the world is politically abandoned, and there is no oneness in our world, because there is no institution worldwide accepted. Hence, he proposes a world controlled by a planetary institution.⁸⁹¹ Montserrat Pintado Lobato argues that Zhao Tingyang’s theoretical contributions lack the capability to export concepts and link with other perspectives. Zhao is a philosopher (as such, does not specialize in IR nor in politics) hence probably this is the reason for the said shortcomings of his theories. Moreover, tianxia is an utmost rigid theory, which intends to reestablish a Chinese hegemonic past, organized through an extremely hierarchichal order.⁸⁹²

As we analyzed above (IV.1.3), there is a broad consensus within the Chinese academic community about the preponderant role culture plays in international relations theory. But going beyond, we find a common point between Zhao Tingyang and Yan Xuetog, as both attach importance to politics in the field of international politics. As we analyzed above, Joseph Nye established the formula of National Whole Power:

$$NWP=HP+SP=M+E+P+C.$$

NWP stands for national whole power, HP means hard power, SP is soft power, M regards the military power, E stands for economic power, P for political power and C for cultural power.

⁸⁸⁸ Quoted by WANG, H., Ibid.

⁸⁸⁹ Pleco, op. cit. Literally, 天下 means “everywhere under heaven”, but the figured common meaning is “the whole world”.

⁸⁹⁰ MOURE, L., “International order in transition and International Relations: Theoretical approaches to the hegemonic decline of the United States and the rise of China as a global power” (Translation by the author. Original text: Orden internacional en transición y Relaciones Internacionales: Aproximaciones teóricas al declive hegemónico estadounidense y al ascenso de China como potencia global) Cursos de Derecho Internacional y RI.indb, 30/06/14, 11:12, pp. 367-449, pp. 417-418.

⁸⁹¹ ZHAO, T., “A Political World Philosophy in terms of All-under-heaven (Tian-xia)”, *Diogenes*, Vol. 56, 2009, no. 5, pp. 5-18, p. 5, available at <http://www.aisixiang.com/download%2Fdiogenes%20tianxia.pdf>, last visited on 21/06/2019.

⁸⁹² PINTADO LOBATO, M., “Hacia una teoría china de las relaciones...”, op. cit., p. 223.

Yan Xuetong disagrees with the said formula, as he does not believe that all of the elements of the said formula are on equal standards. He maintains that the key component of the formula is the political power. Therefore, he elaborates the following formula, in which politics is not added, but multiplied to the rest of elements of the formula:

$$NWP=(M+E+C) \times P^{893}$$

Naturally, what is still to be seen is the practical application of the mentioned political element at a worldwide level.

According to Wang Hongying, in order to analyse the future of China and the international community, first it should be determined why there is no cultural comprehension between each other. The first step, Wang Hongying states, is to determine the reasons why the international community does not accept China as a full member. Wang Hongying considers that there are three factors: the ideological factor, the values factor and the racial factor.⁸⁹⁴ Regarding the ideological factor, Wang Hongying considers that the West often mistrusts Chinese initiatives.⁸⁹⁵

In respect of the values factor, Wang Hongying states that there is a difference in values between China and the international community. In the late XXth century, several Asian political leaders, as Singapore's Lee Kuan Yew and Malaysia's Mahathir maintained that (East) Asia had its own values, given that it was not eager for "individual freedom", as it is sought for in the West. Wang Hongying states that values vary according to different societies.⁸⁹⁶ This is what in Germany is known as "Andere Länder, andere Sitten", i.e. "A different country, different customs".

Individualism is, according to Wang Hongying, an essential value for Westerners. Wang Hongying mentions two examples showing that the community is the paramount interest in China: the support China's people had for the "one-child policy" and that China's people were mostly in favor of a controlled Internet.⁸⁹⁷ The said two cases show the asymmetry regarding values between China and the West, especially Europe. Wang Hongying considers that the gap in values will be more difficult to surmount than the ideological one.

⁸⁹³ Quoted by MONTIOBBIO, M., op. cit. "Tianxia, teoría de...", pp. 235-244, p. 239.

⁸⁹⁴ WANG, H., op. cit., p. 209-210.

⁸⁹⁵ Quoted by WANG, H., op. cit., p. 211.

⁸⁹⁶ Ibid.

⁸⁹⁷ Id., p. 212.

The third and last factor is the racial one. Wang Hongying states that this aspect affects many facets within international relations.⁸⁹⁸

Wang Hongying guesses whether the three above-mentioned factors have caused the Western refusal of China as a full member of the international community. The answer, according to the said author, is due to the way China has, in the past, been treated by the international community, as for example, the Westerners in China destroyed the “sinocentric world order in East Asia” according to the Chinese *Weltanschauung* as well as the continuous humiliations inflicted by the Western powers on China.⁸⁹⁹ According to Wang Hongying, this issue causes a profound victim complex, resulting in the century of humiliation, common in Chinese official rhetoric.⁹⁰⁰ Criticisms coming from the West against China are seen under this optic and as an attack to China’s sovereignty.

Wang Hongying considers that one of the examples showing the above-mentioned victim complex was reflected in the previous months to the Beijing Olympics, when China was the target of West’s criticisms regarding Tibet, what led to the outrage of the Chinese people. Wang Hongying submits that, given the century of humiliation, although China has established material relations with the West, the said attitude by the West, creates Chinese alienation, hence they consider themselves as outsiders to the international community. China considers itself as a civilization hence it does not feel it should follow unlimited Western rules. The Chinese are proud of the resurgence of their country, From the cultural point of view, Confucianism is the framework of modern China, as reflected in Jiang Zemin’s “rule by virtue” (以德治国 *yide zhiguo*) and Hu Jitao’s “harmonious society” (和谐社会 *hexie shehui*). China is proud of its own backgrounds, therefore it relies on its own cultural resources in order to establish its references, as expressed in “socialism with Chinese characteristics” and the “four cardinal principles”.⁹⁰¹

William A. Callahan states that there is a growing interest among Western scholars for *Tianxia* (天下), due to two reasons: first, because it is an alternative to Eurocentric International Relations; second, because as an emerging power, soon China will dispose of enough institutional power as to promote its own

⁸⁹⁸ Id., p. 213.

⁸⁹⁹ Ibid.

⁹⁰⁰ Ibid.

⁹⁰¹ Id, p. 215.

Weltanschauung.⁹⁰² American stance, also opposed to the Chinese one, is the origin of most of current institutions of IR, according to Montserrat Pintado Lobato. Hence, she submits, IR is a ethnocentric realm, thus it is not capable of offering response to issues coming from other cultural perspectives.⁹⁰³ Following the theories of Li Rong, Wang Hongying considers that Chinese civilization and Asian civilization in general have many aspects to offer to the world, of which Tianxia is only an example.⁹⁰⁴

Hence, according to the above-mentioned statement by Wang Hongying, the basic aspects of the Chinese “harmonious world ([和谐世界] hexie shijie)” will be democracy (among States), reduction of inequalities among nations, tolerance of diversity and peaceful resolution of disputes. However, from our point of view, the basic element affecting the above-mentioned framework is the cultural factor, which most of all is represented by values.

According to William A. Callahan, Tianxia represents the Chinese Weltanschauung.⁹⁰⁵ Montserrat Pintado Lobato, who quotes Y. Wang, submits that Tianxia system underpins on six philosophical principles. The first one is that the world should be a political entity; otherwise, the political system would not be complete. Therefore, given the absence of a global political institution, the world becomes a ‘no world’.⁹⁰⁶ Second, the world must be the supreme political entity in terms of sovereignty and authority. Third, world’s governance must be exerted by a global institution, a universal empire. Fourth, political institutions, in all levels must be ruled by the same universal principles. Fifth, the legitimacy of the the world institution must underpin on ethics. Sixth, linked to the previous one, the ethic justification of the political governance is the representation of the world’s hearts.⁹⁰⁷

According to William A. Callahan, quoted by Montserrat Pintado Lobato, “Tianxia is a hierarchical system that values order over freedom, ethics over law,

⁹⁰² CALLAHAN, W. A., op. cit., “Chinese Visions of World Order...”, p. 749. Quoted by DEL ARENAL, C., pp. 169-170.

⁹⁰³ PINTADO LOBATO, M., “Hacia una teoría china de las relaciones internacionales. Evolución, proyectos teóricos y pertinencia práctica”, *Revista Española de Derecho Internacional*, Sección ESTUDIOS, Vol. 70/1, enero-junio 2018, Madrid, pp. 201-225, pp. 201-202, available at <http://dx.doi.org/10.17103/redi.70.1.2018.1.08>, last visited on 12/12/2020.

⁹⁰⁴ WANG, H., op. cit., p. 215.

⁹⁰⁵ CALLAHAN, W. A., op. cit., “Chinese Visions of World Order...”, p. 750.

⁹⁰⁶ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 128. WANG Y., “Public Diplomacy and the Rise of Chinese Soft Power”, *The ANNALS of the American Academy of Political and Social Science*, Vol. 616, n° 1, 2008, pp. 257-273.

⁹⁰⁷ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 128. WANG Y., “Public Diplomacy and the Rise of Chinese Soft Power”, *The ANNALS of the American Academy of Political and Social Science*, Vol. 616, n° 1, 2008, pp. 257-273.

and elite governance over democracy and human rights.” Thus, Tianxia is a clear example of the opposed East-West Weltanschauungs.⁹⁰⁸

Actually, the collapse of many Western institutions during the 2008 financial crisis, while the Chinese financial framework came out mostly unharmed and stable, could serve as an example of the reasons for the said statement. Perhaps, such cases could affect the solidity of the USA dollar as leading world currency, compared to the Chinese RMB. In fact, China, as reaction to the financial crisis has taken the initiative, because it has suggested that developing countries should be treated with more inclusiveness and the world financial system should abandon its dependence on the dollar.⁹⁰⁹ Therefore, there is a further aspect: culture is so relevant in international relations that it even affects economic relations.

John Ikenberry considers that the United States’ position as a global hegemon will be in decline, but the world system it created will still be in command for the 21st century.⁹¹⁰

Regarding the interaction between the EU and China, the Elcano Ryal Institute, in its report on EU-China relations, states that the interaction of public and private actors must underpin on knowledge and not on Manichean stereotypes which idealize or demonize China. Only this way will it be possible to attain a pragmatic approach to these international relations.⁹¹¹

Technology is no longer a mere economic factor, but it has become one of the essential structural elements of the state. This is the reason why we have placed technology in the International Relations dimension.

According to a report on EU-China relations by Elcano Royal Institute, Made in China 2025 is the industrial strategy of the 13th five-year plan. Some of the scientific realms to develop are astrophysics, biomedicine, oceanography and supercomputing. From a more applied perspective, the most conspicuous fields to develop are modern agriculture, food processing, green energies, biotechnology, nanotechnology, new materials as graphene, pharmaceuticals, electric automobile, intelligent cities and the 4.0 industry.

⁹⁰⁸ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 128-129. CALLAHAN, W. A., “China’s Strategic Futures. Debating the Post-American World Order”, *Asian Survey*, Vol. 52, nº 4, 2012, p. 633, p. 752.

⁹⁰⁹ WANG, H., op. cit., p. 216.

⁹¹⁰ IKENBERRY, J., op. cit., p. 37.

⁹¹¹ ESTEBAN, M. (coordinator), op. cit., p. 129.

Regarding the technological race and warfare, Pedro Baños states that the Chinese have taken advantage of the crisis. They are more agile, their government has no opposition and they make decisions without the costs and the protractedness of the European institutions which, in this sense, are like a knocked-out boxer.⁹¹²

In respect of the statement above, some considerations:

- The first sentence of the statement shows that the Chinese are not discouraged by crisis, but rather they see in each crisis an opportunity.
- What is at stake is the very European political system. As stated by Pedro Baños, the Chinese government is free of opposition, hence is more agile and its decision-making process is dynamic. Accordingly, if the EU wishes to survive and maintain a democratic system, it seems that its institutions will have to suffer a deep transformation.
- The cultural aspect of International Relations theory is still discussed by some scholars. However, probably we should go a step beyond, as it is not only a question of culture or even idiosyncrasy, but it is the very decision-making process of the EU what affects the competitiveness of the EU.
- In fact, the key issue is the lack of cohesion and coordination of the EU, what leads us to one of the cornerstones of our work: the conceptual gap about sovereignty in the EU-China relations.

Moreover, another aspect intertwined with the above-mentioned one is whether the EU will remain on the side of the free market.⁹¹³

According to the above-mentioned report issued by Elcano Royal Institute, China is shaping the future of technology, regarding produces as well as at the level of consumers. China is the country using the most industrial robots. Furthermore, it has 56 unicorns (private technological companies worth more than 1.000 million dollars). Its growth rate is comparable to that of the USA.⁹¹⁴ Another statistic shows that 80% of unicorns are in the USA or China. In 2018,

⁹¹² BENÍTEZ, J., “Por qué los europeos seremos los esclavos tecnológicos en la nueva Guerra Fría”, *El Mundo, Historias-Geoestrategia*, 13/05/2019, 11:04, available at <https://www.elmundo.es/papel/historias/2019/05/13/5cd5a808fc6c83f9128b470f.html>, last visited on 27/06/2019. (Unofficial translation. Original text: “Los chinos se han aprovechado de la crisis. Son más ágiles, su gobierno no tiene oposición y toman decisiones sin los costes ni la lentitud de las instituciones europeas, que en este sentido son como un boxeador noqueado”).

⁹¹³ Ibid.

⁹¹⁴ ESTEBAN, M. (coordinator), op. cit., p. 84.

each four days, one unicorn was born in China, while in the EU each unicorn needed twenty six days to be created.⁹¹⁵

E-commerce depends on hi-tech, and in fact is part of it. Hi-tech is the keystone for the future. The EU is an outsider regarding 5G, hence it will also be left out in respect of 6G. 5G will be the highway for interconnectivity, which is not a mere technological question. According to the European Commission and the High Representative for Foreign Affairs and Security Policy

“5G networks will provide the future backbone of our societies and economies, connecting billions of objects and systems, including sensitive information and communication technology systems in critical sectors. Any vulnerability in 5G networks could be exploited in order to compromise such systems and digital infrastructure – potentially causing very serious damage. A range of EU instruments, including the Network and Information Security Directive, the recently approved Cybersecurity Act, and the European Electronic Communications Code will allow reinforcing cooperation in addressing cyber-attacks and enable the EU to act collectively in protecting its economy and society. The Commission will adopt a recommendation following the European Council for a common EU approach to security risks to 5G networks, building on a coordinated EU risk assessment and risk-management measures, an effective cooperation and exchange of information framework, and joint EU situational awareness covering critical communication networks.”⁹¹⁶

In the paragraph above we see how far the said new technologies are relevant for international relations, as we expressed at the beginning of this part.

Integration does not only affect politics, but also technologies. For example, the EU Parliament states that the budget for research and innovation should be increased. One of the reasons for such an increase is the need for integration.⁹¹⁷

Multipolarity also affects S&T and, therefore, R&D. One of the reasons for China’s success regarding technology is its increasing budget in R&D. According

⁹¹⁵ BENÍTEZ, J., op. cit.

⁹¹⁶ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the European Council and the Council, EU-China – A strategic outlook, Strasbourg, 12.3.2019 join(2019) 5 final ,12/03/2019, p. 2, available at <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>, last visited on 19/09/2019.

⁹¹⁷ VEUGELERS, R., and BALTENSPERGER, M., “Europe – the Global Centre for Excellent Research”, *Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies*, PE 631.062 - April 2019 EN, pp. 1-76, pp. 8-9, available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631062/IPOL_STU\(2019\)631062_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631062/IPOL_STU(2019)631062_EN.pdf), last visited on 28/06/2019.

to Reinhilde Veugelers and Michael Baltensperger the world will become multipolar, in which the R&D budget will be vital, as in the example of China.⁹¹⁸

Regarding the future of the relations between the EU and China, on January 18, 2017, China's president Xi Jinping held a speech at the United Nations Office at Geneva, named "Working Together to Build a Community of Shared Future for Humankind".⁹¹⁹ This speech is meaningful for the future of the EU-China relations, even though it does not exclusively refer to the said relations. President Xi started the said speech expressing several issues posed by certain authorities at the World Economic Forum Annual Meeting, held in Davos just before the said speech at Geneva. Such issues focused on the uncertainty of the present and the conundrums regarding the future. President Xi stated that the key questions to resolve the said issue affect the origin, current position and destination of the developments. The Chinese leader said that, after a period of wars and colonialism, for over a century the world is in pursuit of peace, which should yield as a result both cooperation and common development. However, full peace is not yet attained. IT and science should help to obtain such goal, according to Xi Jinping. He maintained that we have to keep in mind not only the interest of the existing humankind, but also the one of the oncoming generations. Therefore, the president of the Asian giant expressed that "China's proposition is to build a community of shared future for humankind and achieve shared and mutually-beneficial development."

The said speech includes some nuances of the Tianxia theory, because it refers to global questions and the global governance. In fact, the very name of the speech represents an implicit reference to "Tianxia": "Working Together to Build a Community of Shared Future for Humankind", with expressions such as "Community" and "Humankind". Furthermore, it is evident that China is already playing the role of much more than a mere order-taker, but the one of a solid order-shaper. China's BRI represents a vision of global order and a full support of development and common cooperation, which covers most of Eurasia, part of Africa, with extensions as far as South America. In fact, at a later point of the speech, Xi Jinping stated that

"The Belt and Road Initiative I put forward aims to achieve mutually-beneficial and shared development. Over 100 countries and international organizations have voiced support for

⁹¹⁸ Id, p. 8.

⁹¹⁹ "Working Together to Build a Community of Shared Future for Humankind", CPC Central Committee Bimonthly Qiushi, Updated: 2021-01-05, available at http://en.qstheory.cn/2021-01/05/c_579937.htm, last visited on 07/05/2021.

the initiative, and a large number of early harvest projects have been launched. China supports the successful operation of the Asian Infrastructure Investment Bank and other new multilateral financial institutions in order to provide more public goods to the international community.”⁹²⁰

As above-mentioned, according to President Xi, more than 100 States and international organizations are involved in China’s BRI. Meanwhile, EU’s TRACECA involves the EU and 12 member States of the Eastern European, Caucasian and Central Asian region. It is crystal clear the imbalance between the EU and China, and not only in the economic field.

President Xi stated several ideas which we maintain in our thesis that are the mainstays of China’s international policy: he advocated the principles of “equality and sovereignty established in the Peace of Westphalia over 360 years ago”, the UN Charter and “the Five Principles of Peaceful Coexistence”. Xi Jinping insisted that sovereign equality is the essential principle governing international relations. Moreover, he expressed the recurrent Chinese critic regarding the century of humiliation: “In the century that followed the 1840 Opium War, China suffered immensely from aggression, wars, and chaos.”

President Xi maintained that “The internal affairs of countries must not be interfered with”. This statement does not only represent a full support of national sovereignty, but it also expresses a diverging stance from the Western Responsibility to Protect, and rather supports the Chinese Responsible Protection. One of the main asymmetries between the EU and China is that according to the European mentality, national sovereignty could be restrained in case of infringements of human rights, while from the Chinese point of view national sovereignty is untouchable under any circumstance. This divergence is clearly expressed along our thesis.

China also plays the role of World’s Champion for the free market, as President Xi, in the said speech, advocated WTO rules. This statement shows the solid position of China regarding world competitiveness and its self-reliance. Moreover, he stated that “economic globalization is moving in the right direction”. China’s leader, in the above-mentioned occasion, also expressed his support for sustainable development. As a whole, China’s stance is the one of a global leader.

The statement “We should build an open and inclusive world through exchanges and mutual learning” and its explanation is a clear expression

⁹²⁰ “Working Together to Build a Community of ...”, op. cit.

diverging from Western ethnocentrism. It also enhances China's role as an order-shaper. In another point of his speech, President Xi expressed himself in favor of "harmony without uniformity", which is a clear support of a more flexible cultural approach regarding world order."

IV.2 New Eurasian land corridors

IV.2.1 The EU and China develop their transcontinental projects

The EU is diversifying its export modalities using the new land corridor to ease its exportations to Eurasia: the TRACECA-transport Corridor Europe-Caucasus-Asia.⁹²¹

TRACECA is a land corridor connecting East and Central Asia with Central and Western Europe. Now it is formed by thirteen member countries.⁹²²

TRACECA was created at the Conference in Brussels, in May 1993, initially involving 8 non EU member states, but lately the group has grown. It is financed by the EU.⁹²³

Russia, in turn, has established the EEU, which is formed by five countries. This association extends Russian high tariffs to neighbour countries. Some authors, as Wolfgang Zank, consider that this is not precisely a suitable international strategy. Moreover, he considers that the EEU, at least in its present format, will not be able to match Chinese Belt and Road Initiative.⁹²⁴

China is developing suitable strategies about the EU and is showing a key capability in nowadays ever changing world, i.e. adaptability. This is what allows China to face new scenarios with a chance to succeed. But Europe is also a key element for the development of key Chinese projects, as e.g. the OBOR (一帶一

⁹²¹ SAVERIO ANGIÒ, F., "El poderío de China en Asia oriental: un análisis según conceptos geopolíticos clásicos", *Cuadernos de pensamiento político*, FAES, 2016, Número 49, pp. 157-182, p. 162.

⁹²² Traceca member countries, available at <http://www.traceca-org.org/en/countries/>, last visited on 28/02/2017. Welcome to TRACECA, TRACECA, available at <http://www.traceca-org.org/en/traceca/>, last visited on 28/02/2017.

⁹²³ History of TRACECA, How TRACECA started, TRACECA Transport Corridor Europe Caucasus Asia, available at <http://www.traceca-org.org/en/traceca/history-of-traceca/>, last visited on 28/02/2017.

⁹²⁴ ZANK, W., "The Eurasian Economic Union: A Brittle Road Block on China's 'One Belt – One Road' - A Liberal Perspective", *Journal of China and International Relations (JCIR)*, Vol. 5, 2017, no. 1, p. 88, available at http://scholar.google.es/scholar_url?url=https://journals.aau.dk/index.php/jcir/article/download/1917/1482&hl=es&sa=X&scisig=AAGBfm10K03yKj1UOVrvw82Hl6xYNkMStw&nossl=1&oi=scholaralrt, last visited on 04/07/2017.

路)⁹²⁵ plan, as well as the design of major international institutions, e.g. the Asian Infrastructure and Investment Bank – AIIB) or the construction of a multipolar world.⁹²⁶ The OBOR is a project regarding both national and foreign levels.⁹²⁷

Tamara Chin considers that, historically, there was not only one Silk Road, but a network of roads, not only linking Europe and China.⁹²⁸ She adds that, apart from the silk trade, there was a connection regarding ideas, inventions and creeds.⁹²⁹

Tamara Chin maintains that it was in 1877 when Germany sent a Geographer to China, named Ferdinand von Richthofen. The purpose of his journey was to determine how much coal was in China, and whether its transportation to Europe was feasible. His vision was a transcontinental railway from China to Europe. He wrote a series of articles about the said idea, in which he coined the term “Die Seidenstrasse”. But who really developed his idea was his Swedish pupil Sven Hedin who, in the 1920s projected an air route to China as well as a motor route, and he named both of them as “The Silk Road”. Hence, according to Chin, this is a European idea. It was in the 1950s and 1960s when the Chinese found a utility for this term; they started conversations with their neighbors. This way, via anti-colonialism, China started its way to becoming an alternative to Western powers. Its vision was that, in the Antiquity, China and Afghanistan or China and Somalia had a friendly relationship, which was destroyed in the XIXth century by European colonialism, and in the 1950s and 1960s the Chinese wanted to revive that historical friendship. And this very spirit is flourishing nowadays again. The Silk Road is, according to China, a proof of its openness; and it is also the mainstay of its foreign policy. According to the emission *Le dessous des cartes*, the evolution in the population of African students in China has grown from 2.000 in 2003 to 50.000 in 2015. Moreover, there are 2.500 Chinese blue helmets in Africa. Hence China is the member of the

⁹²⁵ Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorization, March 2015, First Edition 2015, available at http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html, last visited on 10/06/2017.

⁹²⁶ HUOTARI, M., OTERO-IGLESIAS, M., SEAMAN, J. and EKMAN, A., “Mapping Europe-China Relations A Bottom-Up Approach”, p. 6, Merics – Look and Feel A Report by the European Think-tank Network on China (ETNC), 2015, available at http://www.iai.it/sites/default/files/2015_etnc_report.pdf, last visited on 05/03/2017.

⁹²⁷ MISIĄGIEWICZ, J. and MISIĄGIEWICZ, M., op. cit., p. 1.

⁹²⁸ CHIN, T., interviewed by ALEXANDER, R., Why does China want to revive the Silk Road?, The Inquiry, BBC World Service, transcription of a radio program, available at <http://www.bbc.co.uk/programmes/p055y581>, last visited on 17/09/2019.

⁹²⁹ Ibid.

Security Council with most blue helmets in Africa. And finally, China is the second country, after France, but way ahead the USA, to train African students.⁹³⁰

Jane Golley describes the New Silk Road as a strategy aiming the development of a huge region.⁹³¹ The New Silk Road expands, according to Jane Golley, along “more than sixty countries and more than 60% of the world’s population”.⁹³² Adrián Vidales García submits that, in a world order becoming uni-multipolar, the New Silk Road plays a crucial role.⁹³³

Actually, the OBOR is the Chinese version of globalization. Obviously, for decades China is taking part of globalization, but the peculiarity of the OBOR is that it is entirely tailored in China. The OBOR initiative is based on the idea of globalization. It covers a larger territory than the original Silk Road.

Which areas are included in the OBOR? According to Misiągiewicz, there is no official map of the OBOR, but what is certain is that it runs along several regions in three continents: Asia, Europe and Africa.⁹³⁴

During the last decades, China has attached great importance to the creation of a no adverse “neighborhood” and the consolidation of its import-export maritime lines. Nowadays China can be clearly considered more than a regional power, because it has become a world power.⁹³⁵

And this is one of the most relevant elements of the initiative: it should enhance the globalization and go a step beyond, according to Chen, ZhiMin and

⁹³⁰ ALEXANDER, R., Why does China want to revive the Silk Road?, The Inquiry, BBC World Service, available at <http://www.bbc.co.uk/programmes/p055y581>, last visited on 31/05/2017.

CHIN, T., op. cit., pp. 194-219.

La Chinafrique?, Le dessous des cartes, TV5, 13/05/2019. In this regard, there is a propagandistic poster from the said era, which shows the philosophy China used to implement in those days; on it, there is a revealing slogan: 自力更生(ziligengsheng) meaning “regeneration (or reconstruction) through own’s efforts; self reliance”.

⁹³¹ ALEXANDER, R., op. cit.

⁹³² Ibid.

⁹³³ VIDALES GARCÍA, A., op. cit., p. 1.

⁹³⁴ MISIĄGIEWICZ, J. and MISIĄGIEWICZ, M., op. cit., p. 38. “The SR outside China spans three continents, Asia, Europe and Africa. The “Economic Belt” contains Central Asia, South-East Asia, Russia, Europe (including the Baltic Sea), the Persian Gulf and the Mediterranean Sea, and the “21st-Century Maritime Silk Road” embraces harbors along China’s coasts, the South China Sea, the Pacific Ocean, the Indian Ocean and Europe. The “Maritime Silk Road”, as envisioned by China, will greatly improve connections between the western Pacific, the Indian Ocean and the Mediterranean Sea, between South Asia and East Africa, and between East Asia and Europe. China’s initiative for the so-called “21st-Century Maritime Silk Road” is aimed at port development in South-East Asia, around the Indian Ocean and in the eastern Mediterranean region [...]. China’s involvement in ports and other maritime infrastructure should be seen in the context of its broader infrastructure activities under the “One Belt, One Road” programme. Sea lanes and railways complement each other, and jointly open up new trade links between regions [...].”

⁹³⁵ VIDALES GARCÍA, A., op. cit., p. 5.

Zhang, Ji.⁹³⁶ In fact, the OBOR is only part of the Chinese globalising strategy. Therefore, the OBOR is enlarged to Africa and this is also the reason for the 16+1 and the South European Countries initiatives.

The OBOR initiative focuses on linking the vital economy of East Asia and Europe's first world.⁹³⁷ The main aim of the OBOR is to revitalize the old Eurasian "Silk Roads".⁹³⁸ This Chinese initiative is multimodal, full-comprehensive and planned for long-term goals.

On the European side there is a good example of coordination (which lacks on the EU policies regarding China, as we have already commented) in the European Think-tank Network on China (ETNC). This Network could be a good model for the EU as a coordinated body.⁹³⁹ Think-tanks from many EU member states have joined this network, and hopefully in the next future every EU member state will be represented. Only through this kind of initiatives will the EU be able to diminish the asymmetry in the EU-China relations.

Frans-Paul van der Putten, John Seaman, Mikko Huotari, Alice Ekman and Miguel Otero-Iglesias rightly state that OBOR projects affecting EU member states have an impact on the EU-China relations.⁹⁴⁰ Sometimes, initiatives which

⁹³⁶ CHEN, Z. and ZHANG, J., "'One belt, one road' proposed China-EU contact: double-layered European vision", p. 1. Unofficial translation. Original text: "一带一路"倡议的中欧对接: 双层欧盟的视角", 陈, 志敏 & 张, 骥, available at <http://www.sirpa.fudan.edu.cn/wp-content/uploads/2016/03/g.pdf>, last visited on 08/06/2017. Unofficial translation. Original text: "这种良性的互动机制已经初步形成, 并正在推动中欧进一步接近和合作关系的提升, 使新阶段的中欧关系再次具有了全球性的战略意义。"

⁹³⁷ Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorization, March 2015, First Edition 2015, available at http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html, last visited on 10/06/2017.

⁹³⁸ LI, Y., BOLTON, K. and WESTPHAL, T., "The Effect of the New Silk Road Railways on Aggregate Trade Volumes between China and Europe", *Working Papers on East Asian Studies*, no. 109, Institute of East Asian Studies, Universität Duisburg-Essen, p. 5, available at <https://www.econstor.eu/bitstream/10419/142779/1/861804694.pdf>, last visited on 09/06/2019.

⁹³⁹ VAN DER PUTTEN, F., SEAMAN, J., HUOTARI, M., EKMAN, A. and OTERO-IGLESIAS, M., "Europe and China's New Silk Roads", *Europe and China's New Silk Roads*, Edited by: Frans-Paul van der Putten, John Seaman, Mikko Huotari, Alice Ekman, Miguel Otero-Iglesias, A Report by the European Think-tank Network on China (ETNC), December 2016, pp. 1-73, p. 4, available at https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/Europe_and_Chinas_New_Silk_Roads_0.pdf, last visited on 09/05/2019.

⁹⁴⁰ VAN DER PUTTEN, F., "Chinese Investment in the Port of Piraeus, Greece: The Relevance for the EU and the Netherlands", *Clingendael*, pp. 1-34, available at <https://www.clingendael.org/sites/default/files/pdfs/2014%20-%20Chinese%20investment%20in%20Piraeus%20-%20Clingendael%20Report.pdf>, last visited on 09/06/2019.

KEOHANE, R. and NYE, J. Jr., "Globalization: What's new? What not? (And so what?)", Note taken from the website: "This article is drawn from the forthcoming third edition of their book *Power and Interdependence: World Politics in Transition* (New York: Longman, 2000).", p. 112,

seem to be OBOR projects are far more reaching than OBOR, as for example the buildup of a Cross-Docking Center for Hewlett-Packard in Piraeus, which actually involves farther repercussions on HP factories in China.⁹⁴¹

China complements OBOR through two different schemes: one is the CEE (Central and Eastern Europe) 16+1,⁹⁴² and the other one is for six European Mediterranean countries.⁹⁴³

The European Union neither projects nor supports such a mammoth task, The OBOR is most probably the paramount of the examples showing the increasing asymmetry between the EU and China. The OBOR might have a multiplying effect, which would lead to an even greater asymmetry.

IV.2.2 China's complementary policies

Premier Li Keqiang, in 2014, during an international promotion campaign in favor of OBOR communicated a \$3 billion investment fund just for Europe's Central and Eastern regions in order to improve cooperation, including communication infrastructures.⁹⁴⁴

According to Mikko Huotari, Miguel Otero-Iglesias, John Seaman and Alice Ekman symmetry is present in these relations, but it has shifted to asymmetry in favor of China in several domains.⁹⁴⁵ However, based on the evidences shown in this work, we can state that the relationship is tilted to China's favor. The said

available at <http://www.asu.edu/courses/pos445/Keohane%20and%20Nye--Globalization%20What's%20New%3F%20%20What's%20Not%3F.pdf>, last visited on 5/03/2017. This phenomenon is due to what Keohane & Nye call "Globalism", what they define as "a state of the world involving networks of interdependence at multicontinental distances".

⁹⁴¹ VAN DER PUTTEN, F., op. cit., pp.1-34.

⁹⁴² Cooperation between China and Central and Eastern European countries, available at http://www.china-ceec.org/eng/zdogjxy_1/, last visited on 5/03/2017.

The Member States of the Cooperation between China and Central and Eastern European countries are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia. Within those 16, the five countries "currently outside of the EU" (on January 16th 2017) are: Bosnia and Herzegovina, Albania, Macedonia, Montenegro and Serbia. Member countries of the EU, available at https://europa.eu/european-union/about-eu/countries_en, last visited on 5/03/2017.

⁹⁴³ The said six European Mediterranean countries are: Greece, Malta, Cyprus, Italy, Spain and Portugal.

⁹⁴⁴ ROLLAND, N., "China's New Silk Road", The National Bureau of Asian Research, Published: February 12, 2015, available at <https://www.nbr.org/publication/chinas-new-silk-road/>, last visited on 5/03/2017.

⁹⁴⁵ HUOTARI, M. et al., op. cit. p. 8.

authors themselves show that the asymmetry in favor of China is evident, e.g. in the 16+1 policy and the dialogue with CEE countries, under China's layout.⁹⁴⁶

This is an evident effect of the asymmetrical UE-China relation, and it is obvious that the said asymmetry nowadays is clearly not in favor of the UE, but rather in favor of China.

Regarding Southern European countries, China has gained terrain in Europe via investments, given the bad financial situation caused by the harsh debt crisis in Europe.

The presence and strength of China in Europe, especially in the South of the continent, is evident. Therefore, the Asian giant has a key role regarding the EU. The new China, strong and adaptable, makes the Europeans to adapt to this new situation. As a matter of fact, China has established a full strategy covering both the goals and the means, both in the two sided structure (one belt, one road) as well as the complementary structures (16+1 and the Southern European countries initiatives).

The 16+1 and the Southern European countries initiatives are two further cases of asymmetrical relations. In this regard, the European Union, in the "Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China" has claimed that such interest shown by China should not affect the EU's regional security:

"One of China's foreign policy priorities is to develop its links with Europe, and it is allocating significant financial and diplomatic resources to achieving this goal. It is in the EU's interest to work with China to ensure that any Chinese involvement in the EU's Eastern and Southern neighborhoods helps reinforce rules-based governance and regional security."⁹⁴⁷

However this is not necessarily a strategy designed by China aimed to affect the EU's interests. It could be due to the EU's own poor cohesion.

⁹⁴⁶ HUOTARI, M., et al., op. cit., p. 11. Cooperation between China and Central and Eastern European Countries (中国—中东欧国家合作), available at http://www.china-ceec.org/eng/zdogjxy_1/, last visited on 5/03/2017.

⁹⁴⁷ Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China, op. cit., 30 final.

However, there are scholars as Guy de Jonquières who expressly maintain just the opposite, claiming that China uses divide-and-rule tactics.⁹⁴⁸

Mikko Huotari, Miguel Otero-Iglesias, John Seaman and Alice Ekman state that actually the policies affecting the EU-China relations are gradually moulded by China.⁹⁴⁹ In other words, China keeps the initiative regarding the EU-China relations, but this does not only affect the said relations, but also the action capability of the EU itself. As an example of this, according to Justyna Misiągiewicz and Marcin Misiągiewicz, quoting Yan, while the affected Asian countries are attaching great importance to the OBOR, the EU has not yet reacted.⁹⁵⁰

Obviously, this lack of reaction will not just affect the EU regarding its relation to China, but as a leadership space has been taken by China, the EU will have less room for maneuver not only regarding the Asian countries within the domain of the OBOR, but also regarding its Eastern and Southern EU member States, affected by the above-mentioned two complementary plans (the 16+1 project and the Southern Europe project).

Moreover, what is even more stunning is that both the EU and China are each other's major (or second major) trade partners. This fact should make the EU react, but it does not, at least in the scale and promptness it should.⁹⁵¹

Apparently, the EU which, with a view to revive the Silk Road took the initiative in the 1990's, has been overwhelmed by the OBOR. The USA launched the New Silk Road (NSR) initiative in 2010, but didn't implement it either. However, although the EU set off the TRACECA previously, it does not play a key role nowadays.⁹⁵²

⁹⁴⁸ DE JONQUIÈRES, G., op. cit., p.3. "...it has been an open invitation to Beijing pursue divide-and-rule tactics and get its way by bypassing the EU's institutions and dealing with its members bilaterally, like so many tributary states."

⁹⁴⁹ HUOTARI, M., et al., op. cit., p. 8.

⁹⁵⁰ MISIĄGIEWICZ, J. and MISIĄGIEWICZ, M., op. cit., p. 40.

⁹⁵¹ Ibid.

⁹⁵² STARR, S. and CORNELL, S., "The EU and Central Asia: Developing Transport and Trade", Published in Analytical Articles, December 10th, 2015, The CACI Analyst, The Central Asia-Caucasus Analyst, available at <https://www.cacianalyst.org/publications/analytical-articles/item/13313-the-eu-and-central-asia-developing-transport-and-trade.html>, last visited on 08/06/2017.

Furthermore, in the case of the 16+1 project, it is not only that this is a fully Chinese-promoted initiative, but also that it is China who has the upper hand in conducting the 16+1 policies.⁹⁵³

As we have already analyzed, in the 16+1 initiative, out of the 16 European countries, 11 are EU member states; and in the South European countries initiative, all of the 6 European countries are members of the EU. Hence, if we add the EU member states taking part in both initiatives, the result is that there are 17 EU member states taking part of these complementary initiatives to the OBOR. It could be said that, instead of 16+1 and 6 South European countries, the initiatives could have had the following structures: 1+5+1 (the EU+5 non EU states + China); and the EU (representing the Southern European Union states) + China. The current 16+1 and 6 South European countries are not necessarily designed by China in order to affect the EU, but keeping in mind all the troubles the EU goes through, mostly regarding its inner coherence, perhaps it is easier to deal with the EU member states one by one and, logically, the said EU member states do not benefit from a united position. Mikko Huotari, Miguel Otero-Iglesias, John Seaman and Alice Ekman maintain that China does not intend to divide the EU, which already lacks unity.⁹⁵⁴

The poor cohesion within the EU does not only affect Chinese investments which target the EU, but also EU companies or individuals aiming to invest in China. The “Joint Communication to the European Parliament and the Council- Elements for a new EU strategy on China” repeatedly claims that, regarding this matter, there is no “level playing field”, i.e. there is no reciprocity in this matter: Chinese investments in Europe have full possibilities and easiness, while EU investors in China, according to the said Joint Communication, find plenty of difficulties. Guy de Jonquières expresses the same idea as the Joint Communication.⁹⁵⁵

Chen, Zhi Min and Zhang, Ji (陈志敏&张骥) maintain that, according to the “double-layered” special support of European foreign policy for the “one belt one road” strategy, China, in different strategic domains, should adopt differentiated styles, regarding different goals, different points of contact, and through four different developing ways, give shape to the reciprocal “double-layered” positive China-EU reciprocal system: first, in a horizontal direction,

⁹⁵³ HUOTARI, M., et al., op. cit., p. 8.

⁹⁵⁴ Ibid.

⁹⁵⁵ DE JONQUIÈRES, G., op. cit., p.4.

cooperate with member states in order to find innovative ways of cooperation; second, in an upward way, receiving the aid of member states in order to model the EU policies regarding China with a view to enhance the China-EU cooperation; third, in a downward way, by means of the EU level create cooperation in the fields of policies, laws and public opinion; fourth, overflow abroad, through the China-EU double-layered linkup promote the rest of areas comprised along the OBOR as well as the China-EU cooperation worldwide.⁹⁵⁶ At a first glance, we see a primarily point of asymmetry compared with the EU, i.e. the meticulous analysis of the EU's policy and strategy about China. China develops its own strategy through the examination of the EU. Such a methodical way of thinking helps promoting cooperation. The EU should appreciate the advantages of this attitude. Notwithstanding, the EU finds itself just in the opposite situation. Mikko Huotari, Miguel Otero-Iglesias, John Seaman and Alice Ekman claim that “[m]ost of the interactions with China happen at the national level, and overlooking them would be a mistake.”⁹⁵⁷

Guy de Jonquières states that “[Europe]...needs to be able to speak with one voice and not give China the opportunity to play the game of divide and rule with Europe.”⁹⁵⁸

The said wishes, expressed by De Jonquières, so far don't seem to be feasible in the short term.

A critical point regarding the “One belt, one road initiative” is expressed by Nicholas Rosellini. He doubts whether the OBOR initiative will only bring economic development or it will enhance also the human development of the peoples along the OBOR. In other words, whether OBOR will only promote the economy in general terms (mostly through the improvement of infrastructures and industry) or also the local communities will benefit economically and whether there will be social and environmental benefits for them.⁹⁵⁹ A key element will also be the sustainability of the initiative. According to Rosellini, the UN and its

⁹⁵⁶ CHEN, Z.M., and ZHANG, J., op. cit., p. 1.

⁹⁵⁷ HUOTARI, M., et al., op. cit., p. 12.

⁹⁵⁸ DE JONQUIÈRES, G., op. cit., p. I.

⁹⁵⁹ ROSELLINI, N., A Shared Vision for Belt and Road Initiative, 10 Nov 2016, UN Resident Coordinator and UNDP Resident Representative in China, UNDP China, available at <http://www.cn.undp.org/content/china/en/home/presscenter/op-eds/2016/11/a-shared-vision-for-belt-and-road-initiative-.html>, last visited on 24/12/2017. “The question is how these investments can bring not only economic development, but also human development benefits along the way. The Belt and Road Initiative will contribute to improved infrastructure and industrialization, but it should not stop there, and must also transform local communities and help reduce poverty and protect the environment, and facilitate inclusive social development, contributing to the achievement of UN Agenda 2030.”

programmes will play a decisive role for the success of the OBOR, always keeping in mind the achievement of the SDGs.⁹⁶⁰

According to Mikko Huotari, Miguel Otero-Iglesias, John Seaman and Alice Ekman in Western Europe the 16+1 initiative has been seen as a matter of potential concern about China's strategy to divide or even challenge the EU, as five out of the sixteen European countries involved in the discussions are currently outside of the Union.⁹⁶¹

In this regard, we analyze this view complemented with the above-mentioned one, by Guy de Jonquière, according to which China practices a divide-and-rule strategy.⁹⁶² Maybe China does not need to use the said tactics. Chinese culture is very practical. Chen Zhi Min and Zhang Ji believe that there has been no reaction in the EU regarding the OBOR.⁹⁶³

As there is no unity within the EU, so China deals straight ahead with the EU member states. China does not create this advantage (the lack of cohesion of the EU), but once it exists, China does its best to attain its goals.

Regarding the impact of the OBOR initiative in the EU, Alicia Garcia-Herrero and Xu Jianwei (徐建炜) maintain that one of the most important projects in the EU nowadays is the so-called "Juncker Plan", which basically promotes the investment in infrastructures, and they state this is nowadays one of the "bottlenecks" of the EU's economy. They believe that Asian infrastructures are the main aim of the OBOR and there is a possible linkup between the OBOR and the Juncker Plan. The cooperation should also enhance the electric power resources as well as the digital economy. They add that the said cooperation should not be just restricted to commerce and investment, but it could also enhance the financial channels.⁹⁶⁴ Both the EU and China are undertaking plans,

⁹⁶⁰ United Nations, Sustainable Development – Knowledge Platform. Sustainable Development Goals, available at <https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>, last visited on 24/12/2017.

⁹⁶¹ HUOTARI, M., et al., op. cit., p. 11.

⁹⁶² DE JONQUIÈRES, G., op. cit., p.3.

⁹⁶³ CHEN, Z. M. and ZHANG, J., Unofficial translation of the title of the paper: "One belt, one road" proposed China-EU contact: double-layered European vision, p. 1. Original title: 陈, 志敏 & 张, 骥, "一带一路"倡议的中欧对接: 双层欧盟的视角, p. 1, available at <http://www.sirpa.fudan.edu.cn/wp-content/uploads/2016/03/g.pdf>, last visited on 24/12/2017. Unofficial translation. Original text: "在倡议提出之初, 尽管'一带一路'的远端都指向欧洲, 但欧盟作为一个整体以及它的28个成员国并没有被明确界定为'一带一路'的沿线国家"

⁹⁶⁴ GARCIA-HERRERO, A., and XU, J. (徐建炜), "How does the 'One belt, one road' promote the China-EU trade?", Bruegel, p. 3, available at <http://bruegel.org/wp-content/uploads/2016/11/%E4%B8%80%E5%B8%A6%E4%B8%80%E8%B7%AF.pdf>, last visited on 24/12/2017. Unofficial translation. Title of the paper: "一带一路"战略如何促进中欧贸易? ". Paragraphs from which we have obtained the above-mentioned ideas: "我们的研究对于中

but they haven't yet linked to each other. However, the economic development is important, but it should also benefit the local communities along the OBOR.

Jane Golley submits about the OBOR investments that it is uncertain if they will succeed.⁹⁶⁵

However China is determined to go ahead with the One Belt One road project, self-confident that this plan will raise the Asian giant to new heights, and the RMB (Chinese currency) overthrowing the USA dollar as the world's reference currency.⁹⁶⁶

Tom Miller guesses what advantage China obtains from the OBOR. Chinese official statements submit that the deals China is doing with other countries through the OBOR are win-win relations, but Tom Miller does not agree.⁹⁶⁷

Furthermore, there is a key legal factor, which is common to many megaregional integration projects: the impact of such projects in the governance of the worldwide trade system, due to its influence in the international trade normativity and, especially the one established by the WTO.⁹⁶⁸ President Obama was in favor of this idea, as he showed in his "Statement by the President on the Trans-Pacific Partnership",⁹⁶⁹

国的“一带一路”战略具有重要的政策启示。中国自 2013 年以来提出“一带一路”倡议，但是这一战略在欧洲却没有引起足够的重视。事实上，欧洲目前正在进行的容克投资计划，很重要的一个部分也是基础设施投资，这恰恰目前是欧洲经济发展的瓶颈之一。中国的“一带一路”战略侧重在亚欧大陆的建设，目前中国已经提出“一带一路”战略与欧洲容克计划的对接，共享基础设施投资方面的投资和经验合作，增强亚欧大陆的基础设施、电力能源以及数字经济的基础投资与连接，值得进一步加以实质性推动。在“一带一路”框架下，中欧可以开展的合作可以不仅仅局限于贸易与投资，金融渠道（如外商直接投资和证券投资流动）也具有很大的相关潜力，尤其是人民币跨境离岸市场的建立也可以助力加以推动。除此以外，通过推动“一带一路”战略的中欧合作，还可以进一步增强中欧双方的互信程度，有助于解决诸如是否授权市场经济地位等争议性问题。”

⁹⁶⁵ ALEXANDER, R., op. cit.

⁹⁶⁶ Ibid.

⁹⁶⁷ Ibid.

⁹⁶⁸ ROCHA PINO, M., "The China's mega-Regional Integration Projects: the Case of the Belt and Road (B&R) Initiative", (translation by the autor. Original text: "Los proyectos de integración megaregional de China: el caso de la iniciativa Cinturón y Ruta (CYR)") 2017, Anuario Mexicano de Derecho Internacional, vol. XVII, 2017, pp. 547-589, p. 557, available at <http://www.redalyc.org/pdf/4027/402750094016.pdf>, last visited on 05/07/2017.

⁹⁶⁹ Statement by the President on the Trans-Pacific Partnership, The White House – President Barack, Obama, The White House – Office of the Press Secretary, available at <https://obamawhitehouse.archives.gov/the-press-office/2015/10/05/statement-president-trans-pacific-partnership>, last visited on 27/07/2017. Quoted by ROCHA PINO, M., op. cit, p. 557.

However, after the US quitted the TPP, according to the said opinion, China might determine the normativity in global trade. The EU, in turn, could take advantage of the opportunity.⁹⁷⁰

Nadège Rolland maintains that the meaning of the OBOR to the world is that it is a great cooperation between nations. But she states that China is showing it is wishing to become a great power.⁹⁷¹

Naturally, China establishes the OBOR as a plan in its own interest, but the countries covered by it may also be benefitted by the said project.

On 14.05.2017 in Beijing was held the Belt and Road Forum. 28 heads of state and government as well as 1.200 delegates from countries across the world,⁹⁷² as well as the heads of the International Monetary Fund, the World Bank and the United Nations attended the said Forum. The Forum is a conference aimed to promoting the OBOR.⁹⁷³

Linda Yueh considers that, while the US is in decline, China is showing its mastery: it plans investments for trillion dollars.⁹⁷⁴

The asymmetry is not just about the comparison between the EU and China, but it is already affecting the relations between China and the United States too, in favor of China. Obviously, the GDP of China is lower than the one of the United States, but such a project as the OBOR has been undertaken by China. The USA promoted the Marshall Plan, which was an enormous task, but that was 70 years ago. In other words, by launching the OBOR China shows its capability to take the initiative.

⁹⁷⁰ CHARLEMAGNE, As the world sours on trade, the EU sweetens on it, *The Economist*, Print Edition – Europe, March 30th 2017, available at <https://www.economist.com/news/europe/21719801-top-agenda-deal-japan-world-sours-trade-eu-sweetens-it>, last visited on 28/7/2017. “One of the American president’s first acts was to withdraw from the Trans-Pacific Partnership (TPP), a trade deal covering a dozen countries around the Pacific Rim. Mr Trump complains about Germany’s trade surplus, and his administration hints that it will ignore rulings from the World Trade Organisation. The leader of the free world is pulling up the drawbridge, and the EU (which negotiates trade deals on behalf of its member governments) has spotted an opportunity.”

⁹⁷¹ ROLLAND, N., op. cit.

⁹⁷² MOODY, A., Belt and Road forum: China to forge global connections, *The Telegraph News* – World News, available at <http://www.telegraph.co.uk/news/world/china-watch/politics/belt-and-road-forum-beijing/>, last visited on 23/05/2017.

⁹⁷³ GARCÍA WEIL, A., “The Belt and Road Initiative and the Cohesion of the European Union”, *Revista de Estudios Europeos*, Instituto de Estudios Europeos, 2019, p. 128, available at <http://www.ree-uva.es/images/numeros/74/2019-74-107-137.pdf>, last visited on 24/12/2020.

⁹⁷⁴ YUEH, L., One Belt One Road, *Business Daily BBC*, available at <http://www.bbc.co.uk/programmes/p0527zz7>, last visited on 23/05/2017.

The Beijing OBOR Forum was not only a diplomatic showcase for such a project, but also a golden opportunity for China to display its attitude in favor of free trade, and this is a good example of its adaptability. Meanwhile, in the Western countries, i.e. the developed world, the former champions of free trade, emerges protectionism.⁹⁷⁵ Obviously, this shift in China (and many other developing countries) to free trade, and in the United States (and somehow in the West as a whole) to protectionism shows the difference in capabilities and hence the asymmetry.

When President Trump decided to leave the TPP, President Xi Jinping took it as an opportunity to step into the leadership role among Pacific Ocean nations.⁹⁷⁶

Justyna Misiągiewicz and Marcin Misiągiewicz consider that the OBOR enhances China's appeal as a soft power.⁹⁷⁷ Actually this vision of the OBOR as a means of soft power will, in our view, be a key element for the future development of the EU-China relations, but, as we have analyzed, it will also deepen the asymmetry between both sides.

The OBOR could work for China as a test bench for its international relations, especially regarding the EU. China, as a world player, is keen on the idea of responsibility on the worldwide development (负责任大国 fuzeren daguo) and it might take advantage of the OBOR as a unique possibility to put into practice its skills in the field of soft power.⁹⁷⁸ And this shift to soft power is also based on the terminological preference, e.g., for the use of the terms “proposal, idea or framework”, instead of “strategy”. Hence, China highlights that the OBOR has no political intention.⁹⁷⁹

The OBOR is an enormous challenge, but just by the mere fact of undertaking such a risky project, it is obvious that China enhances its position

⁹⁷⁵ GRACEFFO, A., “Trump's New Protectionism: Economic and Strategic Impact”, *Foreign Policy Journal*, 01/02/2017, available at <https://www.foreignpolicyjournal.com/2017/02/01/trumps-new-protectionism-economic-and-strategic-impact/>, last visited on 24/05/2017. “Across the globe, people are wondering why the US, usually the leader in free trade, is now taking such a protectionist stance. To understand Donald Trump's policy changes, one need only read this quote from Washington Post journalist, Simon Denyer: Trump “sees trade as a zero-sum game, and sees anyone ‘beating’ the United States as a threat.” Donald Trump obviously believed that the TPP partners were “beating us” on trade, and so he voted to leave. Furthermore, leaving the TPP will most likely be only the first of many steps in the new Trump-lead American protectionism, under the slogan “America First”.”

⁹⁷⁶ ALEXANDER, R., op. cit.

⁹⁷⁷ MISIĄGIEWICZ, J. and MISIĄGIEWICZ, M., op. cit., p. 33.

⁹⁷⁸ Ibid.

⁹⁷⁹ MISIĄGIEWICZ, J. and MISIĄGIEWICZ, M., op. cit., p. 37.

with a leader's vision. Should China succeed, it would be a crucial test for the Asian giant.

IV.3 Conclusions

Chapter IV is about the international relations dimension, but specifically, it is about the international multilayered relations of the European Union-China relations.

Apparently, the parties in the European Union-China relations are two: the EU and China; but appearances are deceptive. There are at least two strata in the EU-China relations: one stratus is the proper EU-China relationship and the other one is multiple, consisting in the relations between the Member States and China. The problem is that such strata have coincidences, and thus there is discoordination between the member states and the EU. On the Chinese side there is not such a multiplicity and discoordination, because it is a unitary country.

Probably this is the first aspect in which the asymmetry of these international relations appears. This shows the effects of the lack of integration of the EU, compared to a unitary State as China, although it has continental dimensions. The key element of the European multiple subjects of International Law is that the member states of the EU don't want to completely lose their national sovereignty in favor of the EU.

Asymmetries in the relations between the member States and China are increasingly in favor of China. One of the reasons for such an increase is the deficit of cohesion of the EU, which hinders an effective and coordinated policies activity. There are several cases showing the said lack of cohesion; here, only two examples of lack of cohesion, especially affecting the international relations dimension: the first one, there are 27 BITs instead of only one BIT, which would ease the relations with China. The second one, the EU does not have a common position regarding the R2P.

The main reason for this asymmetry is not China, but the idiosyncrasy of the EU, in which countries join the EU, but are not properly united in an institution with full capability in legislation and action.

With a view to the future, some believe that China's rise, along with the USA, may shape the world into a bipolar one but, if so happened, the EU could

still have room for manoeuvre, as China will be completely integrated into the world economy, and could still have the chance to play the role of “the third force”. However, the said “US-China bipolar structure” is most unlikely, as the world nowadays has other powerful players, not as much as China, but probably powerful enough as to hinder the mentioned bipolar structure. Most probably, in the medium-term, even the short-term future, there will be two major players, the USA and China, but other middle-size players, as the EU, India, Russia and Brazil; therefore, the situation would not be that of a bipolar structure, but a multiple layered structure, each level holding several players.

However, the sole presentation of this idea drives our thinking back to the symmetry-asymmetry factor. If China, following the above-mentioned statement, is a major player (or first level player) and the EU is a middle-size player (or second-level player), it is obvious that in this relation there is no symmetry.

After the Peace of Westphalia, the West imposed on China the notion of sovereignty, but the West broke China’s sovereignty. Nowadays, the West has abandoned the Westphalian ideas, but China advocates for Westphalia.

Francis Fukuyama, in 1989 published an article submitting that, after the collapse of the USSR and the Eastern block as a whole, the Western liberal ideology was the only one remaining, spreading all over the world. But time has proved that his stance was not completely right given that China was under such influence, but actually its adaptability has shown that such option has succeeded. China has an outer appearance similar to the West but, in fact it keeps its own cultural background. China has eventually become a successful world player.

Among Chinese scholars there is an ample consensus about two features regarding international relations: first, Western theories on international relations do not suffice for the whole world. Second, such Western theories do not openly incorporate the cultural factor.

The OBOR is part of the Chinese global project, which includes Africa and a connection to South America (including the South America’s bi-oceanic railway from the Brazilian port of Açu till the Peruvian port of Ilo) and the two complementary initiatives on Europe (the CEE 16+1 and the South European Countries ones). All the above-mentioned plans dovetail with the current Chinese shift for the free market, in order to ease its exports worldwide. The reasons are China’s skillfulness, ascertainment and soundness. Meanwhile, the West in

general is gradually more tilted in favor of protectionism. Naturally, the West also argues the dumping and the lack of a level playing field.

Some authors argue that the CEE 16+1 and South European Countries initiatives are intended to damage the EU. Probably the main reason for these initiatives is the EU's lack of cohesion. However, the EU has shown uneasiness, as reflected in the *Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China*.

The current circumstances of the European relations with China are gradually designed in Beijing. This might well be a good sample of asymmetrical relations. But to cap it all, the EU has not reacted at all to the OBOR for a long time, while Asian countries had a prompt response. At least, it could be said that the paralysis of the EU is leaving itself smaller room for maneuver, increasing the asymmetry even more. What is even more striking is the fact that the EU and China are each other main (or second) trade partners. Even though, the EU does not react to the Chinese outstanding initiatives.

The UN also feels the incertitude caused by a transcontinental network which could be in concurrence with some UN projects, e.g. the SDGs (Sustainable Development Goals). But, according to the UN, the SDGs will be essential for the success of the OBOR. Hence, if the OBOR succeeds, it could have unprecedented outcomes.

The OBOR is an enormous challenge. The mere fact of undertaking such a risky project, for the time being, shows that China enhances its position with a leader's vision. It is a crucial test for the Asian giant.

V. HUMAN DIMENSION

V.1 Precedents of the divergences concerning human rights. Confucius influence

According to Manuel Montobbio, a significant debate is open, on one side, about power and legitimacy; on the other side, there is the Chinese strategic culture. China is rising as never other culture did. Actually, China returns to its habitual centrality. We consider that this thought is included in the Chinese name of China: 中国 (zhongguo) meaning the country (or kingdom) in the middle.⁹⁸⁰

Apparently the said rise coincides with the thinking of Sun Tzu⁹⁸¹ or the ones in wei qi (围棋) i.e. Chinese chess, according to Zhongqi Pan.⁹⁸² Nowadays, the Chinese political system is based on neo-Confucianism, which confers legitimacy and grounding to the leadership.

Wei-Ming Tu considers that

“Confucius may have dreamed of the golden age of Yao and Shun as ‘great harmony’ [大同 datong], but his hero was the Duke of Chou (d. 1094 B.C.) who was said to have helped and refine the ‘feudal’ ritual system, thus enabling the Chou dynasty to survive in relative peace and prosperity for more than five centuries.”⁹⁸³

In the above-mentioned paragraph we can find some of the features of Confucius’ thinking: harmony, ritual and stability (“peace and prosperity”). In the said text, Wei-Ming Tu maintains that Confucius preferred ritual and stability to harmony. It could be said that it was a means to attain harmony. The great harmony is an ideal or perfect society.⁹⁸⁴ This hypothesis can also be corroborated in the fact that, according to Wei-Ming Tu, universal kingship is the basis of authority. Regarding social solidarity, it is attained with the help not of law, but of ritual observance.⁹⁸⁵

Regarding more specifically worldly issues, Wei-Ming Tu states that

⁹⁸⁰ MONTOBBO, M., op. cit. “Tianxia, teoría de...”, pp. 235-244.

⁹⁸¹ TZU, S., op. cit.

⁹⁸² PAN, Z., “Guanxi, Weiqi and ...”, pp. 303-321.

⁹⁸³ TU, W., *Confucius and Confucianism*, p. 6, available at <http://ahd1113.activehost.com/pdf/53843.pdf>, last visited on 05/05/2018.

⁹⁸⁴ Pleco, op. cit.

⁹⁸⁵ TU, W., op. cit., p. 7.

“[Confucius] felt that virtue, both as a personal quality and as a requirement for leadership, is essential for individual dignity, communal solidarity, and political order.”⁹⁸⁶

According to Bai Tongdong, “in terms of potential, human beings are all equal. In this sense, ‘the sage and I are of the same kind.’”⁹⁸⁷

As stated above, the basic requirement for a ruler, as Wei-Ming Tu sees Confucius, is virtue.

Confucius (孔子 Kongzi)⁹⁸⁸ is probably one of the most important intellectual influences in China nowadays. Along centuries, Buddhism has also played a relevant role in China’s way of thinking. This issue is essential, according to Pratoom Angurarohita.⁹⁸⁹

Wei-Ming Tu states that Confucianism plays a crucial role in East Asia’s Weltanschauung, especially regarding political, social, educational and family’s issues.⁹⁹⁰

Regarding the endurance of Confucian influence on Chinese habits, Wei-Ming Tu maintains that Confucian values and rules are still observed in China nowadays.⁹⁹¹

According to Wei-Ming Tu, Confucius establishes the moral dimension with which rulers should comply:

“[The] assertion that family ethics is politically efficacious must be seen in the context of the Confucian conception of politics as ‘rectification’ (cheng). The rulers are supposed to

⁹⁸⁶ Ibid.

⁹⁸⁷ BAI, T., *China: The Political Philosophy of the Middle Kingdom*, Zed Books, 2012. ProQuest Ebook Central, available at <http://ebookcentral.proquest.com/lib/bibliotecauma-ebooks/detail.action?docID=1042707>, created from bibliotecauma-ebooks on 2018-07-22 10:50:25, last visited on 22/07/2019.

⁹⁸⁸ CAO, S. (草石), *What is the meaning of the statement by Confucio “At fifteen my heart was set on learning at thirty I stood firm and knew what I wanted to learn”* (Unofficial translation. Original text: 孔子说的「吾十有五而志于学，三十而立」是什么意思, available at <https://www.zhihu.com/question/20653982>, last visited on 23/09/2019.

Confucius himself gave us his brief view of his own life: “At fifteen my heart was set on learning at thirty I stood firm and knew what I wanted to learn; at forty I had no more doubts; at fifty I knew the will of heaven; at sixty my ear was an obedient organ for the reception of truth; at seventy I could follow my heart’s desire without overstepping the boundaries of what was right.” Original text: 吾十有五而志于学，三十而立，四十而不惑，五十而知天命，六十而耳顺，七十而从心所欲，不逾矩”

Wei-Ming Tu describes Confucius’ life: “The plainness and reality of Confucius’s life [...] illustrate his humanity not as revealed truth but as an expression of self-cultivation, the ability of human effort to shape his own destiny.”

TU, W., op. cit., p. 8.

⁹⁸⁹ ANGURAROHITA, P., “Buddhist Influence on the Neo-Confucian Concept of the Sage”, *Sino-Platonic Papers*, 10, June 1989, available at http://sino-platonic.org/complete/spp010_buddhist_confucian_sage.html, last visited on 19/05/2018.

⁹⁹⁰ TU, W., op. cit. p. 3

⁹⁹¹ Id., pp. 7-8.

be moral exemplars who govern by moral leadership and exemplary teaching rather than force.”⁹⁹²

Apart from the fact that he mentions the “family ethics”, the moral aspect of rulers is what seems to be relevant to Confucius, and what actually makes the use of force irrelevant.

What makes Confucius even more suitable nowadays, according to Wei-Ming Tu, is that he refers to the functions of the government. The said author states that the people should be educated something that nowadays seems indisputable, but more than two thousand years ago probably not so much. Wei-ming Tu also delimits the notions of order and social harmony, and the ways to reach both of them. We can draw some interesting conclusions: the first one is that order, according to the appreciations of Wei-Ming Tu regarding Confucius, cannot be attained by the exertion of law and order, but by “virtue through ritual performance”, which is achieved “in a communal act to promote mutual understanding.” Hence, the importance Confucius attaches to the ritual performance is due to its value to reach mutual understanding as a way to obtain virtue, which will cater for social harmony.⁹⁹³ Furthermore, Wei-Ming Tu also considers that Confucius links family ethics with politics.⁹⁹⁴

Sébastien Billioud states that China’s rhetoric is linked to Confucianism and, in general, to Chinese civilization, with references such as “Harmony ([和谐] he xie), the rule of virtue ([以德治国] yide zhiguo)”.⁹⁹⁵

Some of the most relevant official documents, probably some of the earliest, were the following ones, as stated by Sébastien Billioud:

“[...] speeches by Hu Jintao or Wen Jiabao, the 2001 Action Plan for the Development of Civic Morality ([公民道德建设实施纲要] gongmin daode jianshe shishi gangyao), [also known as PCM, and especially the 2006 Plan for Cultural Development that figured into the eleventh five-year plan (2006-2010) ([国家十一五时期文化发展规划纲要] guojia “shiyiwu” shiqi wenhua fazhan guiha gangyao) also known as PCD”⁹⁹⁶

Probably, the above-mentioned comeback of Confucianism coincides with the increasing national proud of China. Furthermore, Confucianism has another

⁹⁹² Id., p. 12.

⁹⁹³ Id., p. 13.

⁹⁹⁴ Ibid.

⁹⁹⁵ BILLILOUD, S., “Confucianism, ‘cultural tradition’ and official discourses in China at the start of the new century”, China Perspectives [On line], 2007/3 | 2007, published online on 01/09/2010, p. 50, available at <http://chinaperspectives.revues.org/2033>, last visited on 20/05/2018.

⁹⁹⁶ Ibid.

peculiarity for China: it is made in China, what reinforces the above-mentioned common point.

According to Sébastien Billioud

“The second section of the eleventh PCD takes up the question of morality under the heading ‘Reinforcing socialist morality.’ [...] the text emphasises from the outset the necessity of both the rule of law ([以法治国] yifa zhiguo) and the rule of virtue ([以德治国] yide zhiguo). The general tone of the text reflects an attempt to find the proper balance between or synthesis of references to socialism and references to the national spirit (or to traditional culture), while at the same time insisting on the importance of being in synch with the *Zeitgeist* ([时代精神] shidai jingshen)”⁹⁹⁷

In fact, as Sébastien Billioud indicates, there is a simultaneous rule of law and rule of virtue. Hence, it can be said that with the said structure, China makes coincide two criteria: time and space. Time is represented by the coexistence of the old Confucian ideas and the rule of law, with a view to accommodate to modern times (*Zeitgeist*). Space is reflected also both in the rule of law (an imported practice) and the rule of virtue (a Chinese peculiarity, mainly based on Confucius). With the help of the said crossroads, China covers time and space.

Sébastien Billioud concludes that the said renovation of political sources is based mainly “in religion and the new interpretations of classical philosophy and political experience”.⁹⁹⁸

The above-mentioned remarks by Sébastien Billioud are right, but they do not exclude another vision: the adoption of the rule of law is also a significant renewal, which implies a great effort. Let us imagine that the EU adopts an Asian praxis. Europe did so, but more than a century ago: the public examinations for the civil service. Perhaps nothing similar has happened since. But, according to Manuel Montobbio among others, China might make contributions to International Law.⁹⁹⁹

According to Kenneth Walker, Jiang Qing criticizes Western democracy because it lacks morality and focuses on the wishes of the electorate. He also considers that Confucianism and meritocracy should be included in China’s Constitution.¹⁰⁰⁰

⁹⁹⁷ Ibid.

⁹⁹⁸ Ibid.

⁹⁹⁹ MONTOBIO, M., op. cit. “El ascenso global de China y...”, pp. 10-11.

¹⁰⁰⁰ WALKER, K., Review on Jiang Qing with Daniel A. Bell and Ruiping Fan (eds). A Confucian Constitutional Order: How China’s Ancient Past Can Shape its Political Future”, *Asian Affairs*, Vol.

Hence, apparently the future of China will rather derive from its own origins and a touch of modernization, than just merely copying the Western democracy style.

V.2 Two divergent Weltanschauungs about rights

V.2.1 Asymmetrical understanding of rights in the EU and China

The EU and China have so different views that they even differ in their views of rights. Elizabeth Perry states that specialized circles feel that in contemporary's China there is a rising "rights consciousness", i.e. a claim to citizenship.¹⁰⁰¹

However according to Elizabeth Perry, for more that two thousand years, the key element in Chinese reality has been the accomplishment of socioeconomic security.¹⁰⁰² This fact shows an evident divide between China's and Western weltanschauungs about rights. The concept of human rights is not monolithic. In this respect, the analysis made by Paloma García Picazo about the Universal Declaration of Human Rights is clarifying. This paradigmatic asymmetry roughly coincides with the difference stated by Paloma García-Picazo, i.e. civil-political rights on one side, and socio-economic ones on the other side.¹⁰⁰³ Hence, the universal character of the Declaration is affected.¹⁰⁰⁴

According to the Chinese State Council, "Progress was made in developing democracy and the legal system and in enhancing law-based government. Greater

45, 2014, núm. 1, pp. 184-186, available at <https://www.tandfonline.com/uma.debiblio.com/doi/pdf/10.1080/03068374.2014.874806?needAccess=true>, last visited on 12/05/2019.

¹⁰⁰¹ PERRY, E., "Chinese Conceptions of 'Rights': From Mencius to Mao—and Now", *Perspectives on Politics* [Chinese version in Guowai Lilun Dongtai, nos. 2-3 (2008)], pp. 37-50, p. 37, available at https://www.researchgate.net/publication/231796222_Chinese_Conceptions_of_Rights_From_Mencius_to_Mao-and_Now, last visited on 23/05/2018.

¹⁰⁰² PERRY, E., op. cit., p. 37.

¹⁰⁰³ GARCÍA PICAZO, P., op. cit., *La investigación del medio internacional...*, pp. 139-140. GARCÍA WEIL, A., "European Union-China: Two Asymmetrical Weltanschauungs about Human Rights. Remarks on the United States Concept of Human Rights", Transatlantic Studies Network, 7, January-June 2019, available at <https://dialnet.unirioja.es/servlet/articulo?codigo=7434673>, last visited on 24/12/2020.

¹⁰⁰⁴ China signed the International Covenant on Civil and Political Rights on 5 Oct 1998 but, as expressed above, it has not ratified it yet. See footnotes 4, 5 and 6 of the UN Treaty Collection site. "CHAPTER IV HUMAN RIGHTS 4. International Covenant on Civil and Political Rights New York, 16 December 1966", available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en, last visited on 08/09/2019.

efforts were made to safeguard people's rights and interests and ensure social fairness and justice.”¹⁰⁰⁵

Furthermore, according to China.org:

“People's living standards improved significantly. Fifty-one million urban jobs were created over the past five years. Urban per capita annual disposable income rose from 7,703 yuan in 2002 to 13,786 yuan in 2007, and rural per capita annual net income rose from 2,476 yuan to 4,140 yuan during the same period. The basic framework for a social safety net for both urban and rural areas was put in place. The number of people living in poverty was reduced every year.”¹⁰⁰⁶

The above-mentioned paragraph shows the importance that China attaches to economy. It is also an evidence of the Chinese pursue of socio-economic rights. Furthermore, it coincides with the view of Kishor Mahbubani, regarding the improvement of the living standards of many millions people in China.¹⁰⁰⁷ According to the Asian point of view, this is an essential part of the notion of human rights. Elizabeth Perry gives another example of China's understanding of human rights: it can also be included in China's Constitution, via the 2000 White Paper, but this issue means no changes in China's view of human rights, mainly based on subsistence and development.¹⁰⁰⁸

But, according to Montserrat Pintado Lobato, who cites Liang Shoude, from the point of view of the International Relations Theory with ‘Chinese Characteristics’, states' rights are above human rights, which is the first key element of the said theory. Furthermore, the second key element of the above-mentioned theory is the link between economics and politics (vid. p. 126).

Axel Berkofsky also analyses the Asian-style human rights, stating that some voices have advocated an “Asian identity”, with its peculiarities about social values and even about capitalism.¹⁰⁰⁹

¹⁰⁰⁵ “Report on the Work of the Government”, Delivered at the First Session of the 11th National People's Congress on March 5, 2008, Wen Jiabao, Premier of the State Council, 19/03/2008, available at <http://www.china-un.ch/eng/bjzl/t416396.htm>, last visited on 24/05/2018.

¹⁰⁰⁶ Report on the Work of the Government, Delivered at the First Session of the Eleventh National People's Congress on March 5, 2008, Wen Jiabao, Premier of the State Council, available at http://www.china.org.cn/government/NPC_CPPCC_sessions2008/2008-03/18/content_12968390.htm, last visited on 13/06/2019.

¹⁰⁰⁷ “Davos: Spreading the Wealth?” transcription of a radio program, op. cit., n. d.

¹⁰⁰⁸ PERRY, E., op. cit., pp. 38.

¹⁰⁰⁹ BERKOFSKY, A., “Comparing EU and Asian Integration Processes- The EU a role model for Asia?”, *European Policy Centre*, p. 9, available at http://www.epc.eu/documents/uploads/606968147_EPC%20Issue%20Paper%2023%20EU%20Asian%20Integration.pdf?doc_id=36, last visited on 13/05/2019.

The EU recognizes the improvements made by China regarding poverty: “Overall, in 2016 China continued to improve the social and economic situation, pulling millions of citizens out of poverty.”¹⁰¹⁰

However, according to the EU

“From an economic standpoint, 2016 saw a continued increase in the minimum wage and other wage levels, contributing to reducing poverty and expanding economic prosperity; however, labour disputes caused by unpaid or partially paid salaries remain a problematic issue.”¹⁰¹¹

Veron Mei-Ying Hung considers that China’s Constitution stipulates the protection of rights, but not of human rights. This author adds that China has signed, but not ratified, the international covenant on civil and political rights.¹⁰¹²

In the above-mentioned 2000 White Paper there is a sentence which indicates the basic content of its vision of human rights: “The Chinese government continues to put the safeguarding and promotion of the people’s rights to subsistence and development on the top of its agenda.”¹⁰¹³

However, according to Elizabeth Perry, it is also an issue in Western Europe, specifically shown in the figure of the “social citizenship”, developed by T. H. Marshall. The said “social citizenship” would represent “the collective right to economic welfare and social security”.¹⁰¹⁴

Elizabeth Perry considers that the above-mentioned paragraph is about two concepts, core of the Chinese notion of human rights: subsistence (生存 shengcun) and development (发展 fazhan). The first one is an old concept in Chinese culture, as it is based on Confucius sagesse, and was developed by Mencius. The second one was mainly coined by Mao Zedong.

¹⁰¹⁰ EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 1-295, p. 195, Available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

¹⁰¹¹ Ibid.

¹⁰¹² HUNG, V., “China’s Constitutional Amendment is Flawed”, *Carnegie Endowment for International Peace*, Op-Ed 05/03/2004, Reprinted with permission from the International Herald Tribune, available at <https://carnegieendowment.org/2004/03/05/china-s-constitutional-amendment-is-flawed-pub-1470>, last visited on 25/05/2018.

¹⁰¹³ “White Paper--Fifty Years of Progress in China’s Human Rights”, 01/02/2000, The State Council Information Office of the P. R. of China (February 2000, Beijing), available at <http://www.china-un.org/eng/zt/rqwt/t28675.htm>, last visited on 24/05/2018, quoted by PERRY, E., op. cit.

¹⁰¹⁴ PERRY, E., op. cit., p. 38.

Moreover, Elizabeth Perry states that in China the only admitted citizenship is ‘social citizenship’.¹⁰¹⁵ Therefore, the issue is not just about *rights* but also about a conception of a whole *citizenship*, which has a much ampler scope. Hence, there is a predisposition of the Chinese civilization in favor of “social citizenship”. However, it is not only a mere philosophical, official and academic stance, but also a common *Weltanschauung* among Chinese people, whose vital aims regard mostly subsistence and development.¹⁰¹⁶

Furthermore, the State Council Information Office of the P. R. of China, in its White Paper named *Fifty Years of Progress in China's Human Rights* established that

“[t]he establishment of the socialist system has provided the basic guarantee for the people throughout the country to constantly improve their human rights situation on the basis of equal participation in economic development and sharing the fruits of labor.”¹⁰¹⁷

In the above-mentioned paragraph it is evident once again China’s perception of human rights as economic rights.

Notwithstanding the two opposed *Weltanschauungs* about human rights, Sun Pinghua considers that in the Universal Declaration of Human Rights (UDHR) there is an unperceived influence of Confucianism, which made several contributions to it.¹⁰¹⁸ Nonetheless, plenty of work is still to be done in order to bring harmony and mutual understanding to the field of human rights.

One of the most progressive and advanced societies regarding socio-economic rights among other aspects, is the European one. Regarding this aspect, Elizabeth Perry, quoting T. H. Marshall, maintains that “social citizenship” is the highest expression of citizenship. That is the citizenship in China. But in the EU it is taken for granted that before reaching such social citizenship, a civil and political citizenship should already be attained. Meanwhile, in China, economy and development have priority. Moreover, the asymmetry between the EU and China is such that the order in which they reach the different kinds of citizenship is just reverse. In Europe: civil, political and social citizenship; in China, social

¹⁰¹⁵ Id., p. 39.

¹⁰¹⁶ Ibid.

¹⁰¹⁷ “White Paper--Fifty Years of Progress in China's Human Rights”, 01/02/2000, The State Council Information Office of the P. R. of China (February 2000, Beijing), available at <http://www.china-un.org/eng/zt/rqwt/t28675.htm>, last visited on 24/05/2018.

¹⁰¹⁸ PINGHUA S., “Pengchun Chang’s Contributions to the Drafting of the UDHR”, *J Civil Legal Sci*, Vol. 209, 2016, no. 5, available at <https://www.omicsonline.org/open-access/pengchun-changs-contributions-to-the-drafting-of-the-udhr-2169-0170-1000209.php?aid=80575>, last visited on 22/07/2018.

citizenship comes first, and the rest depends on the attainment of the first objectives.¹⁰¹⁹

The above-mentioned remarks lead to a further question: how far is the said asymmetry found in the respective legislations? Can it be seen in the respective Constitutions and related legislations? We compare the Chinese Constitution and the Constitution of the most powerful EU member state, i.e. Germany.¹⁰²⁰

In the German Constitution the priorities of rights are completely different from the Chinese one. There are some conspicuous aspects:

- The first remarkable point that we find is that there is no division between the different kinds of rights.
- The second one is the priority given to the following aspects: there are several rights, but there are more freedoms. Finally, there is one article dedicated to the equality before the law (Article 3)
- It mentions the right to assembly and the right of association (Article 9)
- The inviolability of the home is also enshrined in the German Constitution (Article 13), but there is no right to have a roof over one's head, what is taken for granted. The same can be said about Article 14, regarding property and inheritance.

Comparing the Chinese Constitution with the German one, we find out a formally protective text, with several rights also formulated in Constitutions of EU member States (e. g., equality before the law, art 33, second paragraph, of the Chinese Constitution; respect of human rights, art 33, third paragraph, of the Chinese Constitution) and some that are not (the Chinese Constitution pays

¹⁰¹⁹ PERRY, E., op. cit., p. 38.

¹⁰²⁰ Basic Law for the Federal Republic of Germany, Service provided by the Federal Ministry of Justice and Consumer Protection in cooperation with juris GmbH – www.juris.de, available at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf, last visited on 28/06/2018. In Germany's Constitution (or Basic Law) the basic rights are ordered as follows: "I. Basic Rights Article 1[Human dignity – Human rights – Legally binding force of basic rights] Article 2[Personal freedoms] Article 3[Equality before the law] Article 4[Freedom of faith and conscience] Article 5[Freedom of expression, arts and sciences] Article 6[Marriage – Family – Children] Article 7[School system] Article 8[Freedom of assembly] Article 9[Freedom of association] Article 10[Privacy of correspondence, posts and telecommunications] Article 11[Freedom of movement] Article 12[Occupational freedom] Article 12a[Compulsory military and alternative civilian service] Article 13[Inviolability of the home] Article 14[Property – Inheritance – Expropriation] Article 15[Socialisation] Article 16[Citizenship – Extradition] Article 16a[Right of asylum] Article 17[Right of petition] Article 17a[Restriction of basic rights in specific instances] Article 18[Forfeiture of basic rights] Article 19[Restriction of basic rights – Legal remedies]"

special attention to socio-economic rights; the right to rest is also formulated in the Chinese constitutional text, art 43).¹⁰²¹

There is further Chinese related legislation, i.e. the National Human Rights Action Plan (NHRAP), which starts with its “Contents”.¹⁰²² The following remarks are noteworthy:

- Human rights are divided in different kinds, i.e. in different chapters
- The order of appearance of the different genera of human rights follows the Chinese peculiar Weltanschauung: “Economic, Social and Cultural Rights” are prevalent
- Among the first kind of human rights in China is the “Right to basic living standards”. Although it is not specified, we consider this point no longer refers to the “secure employment” (lit. iron rice bowl)¹⁰²³ (铁饭碗 tie fanwan) but to the “comparatively well off” (小康 xiaokang),¹⁰²⁴ Xiaokang (小康) is a key element for human rights in China, which we will analyze in the following part
- Also among the first kind of human rights is the right to property or the environmental rights, also common in Western States
- Among the second genus of human rights, in this document are placed other peculiar rights, as the “right of expression and supervision”
- The third genus is dedicated to special groups, including ethnic minorities: women, children and elderly people

¹⁰²¹ Constitution of the People's Republic of China (Full text after amendment on March 14, 2004), Chapter II The Fundamental Rights and Duties of Citizens, The National People's Congress of the People's Republic of China, available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372964.htm, last visited on 28/06/2018.

¹⁰²² National Human Rights Action Plan of China (2016-2020), Updated: Sep 29, 2016, 1:57 PM Xinhua, available at http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm, last visited on 27/06/2018. “Contents - Introduction I. Economic, Social and Cultural Rights (1) Right to work (2) Right to basic living standards (3) Right to social security (4) Right to property (5) Right to health (6) Right to education (7) Cultural rights (8) Environmental rights II. Civil and Political Rights (1) Rights of the person (2) Right to fair trial (3) Freedom of religious belief (4) Rights to know and to participate (5) Rights of expression and supervision III. Rights of Specific Groups (1) Rights of ethnic minorities (2) Rights of women (3) Rights of children (4) Rights of the elderly (5) Rights of the disabled IV. Human Rights Education and Research V. Fulfillment of Obligations to Human Rights Conventions, and International Exchanges and Cooperation in the Field of Human Rights VI. Implementation and Supervision”

¹⁰²³ Pleco, op. cit.

¹⁰²⁴ Ibid.

V.2.2 *Xiaokang* (小康) a human right standard; *da tong* (大同) the Chinese dream

Is there a concept which could allow us to concrete the meaning of human rights in Chinese terms? Yes, there is: *xiaokang* (小康). Elizabeth Perry submits that the concept of *xiaokang* [小康] has a deep-rooted tradition in China. It can be described as “economically comfortable family” (*xiaokang zhi jia* [小康之家]).¹⁰²⁵

Paloma García Picazo poses the following question: what would be the interrelationship between *democracy* (as simplified expression of political and civil rights) and *development* (as simplified expression of social, economic and cultural rights) regarding such reductionism as valid?¹⁰²⁶ *Xiaokang* lets us know the position of China regarding the said question.

We would like to know the exact meaning of the term *xiaokang* (小康). According to the dictionary, it is “[...] a Confucian near-ideal state of society, second only to *Datong* (大同)”.¹⁰²⁷ So, according to Elizabeth Perry, *Datong* (大同) was the ideal society, and according to the dictionary, *xiaokang* (小康) was a Confucian near-ideal state of society. But we need more concretion of the meaning of *xiaokang* (小康). According to the official China’s News Agency, *xiaokang* society (小康社会 *xiaokang shehui*) means “moderately prosperous society”.¹⁰²⁸ Trying to concrete the concept even more, we have found several China’s objectives.

Since Deng Xiaoping (邓小平) Chinese leaders strive to determine the said notion. Nowadays, in the occasion of the 19th National Congress of the Communist Party of China, *xiaokang* (小康) is again in full revival as a policy goal: “The 19th National General Congress of the Communist Party of China is on

¹⁰²⁵ PERRY, E., op. cit., pp. 41-42.

¹⁰²⁶ GARCÍA PICAZO, P., op. cit., *La investigación del medio internacional...*, pp.139-140.

¹⁰²⁷ Pleco, op. cit., n. d.

¹⁰²⁸ “Secure a Decisive Victory in Building a Moderately Prosperous Society in all Respects and Strive for the Success of Socialism with Chinese Characteristics for a New Era”, delivered at the 19th National Congress of the Communist Party of China – October 18, 2017 – Xi Jinping, p. 1, available at http://www.xinhuanet.com/english/download/Xi_Jinping's_report_at_19th_CPC_National_Congress.pdf, last visited on 31/05/2018.

the decision phase of the overall establishment of the moderately prosperous society [...]”¹⁰²⁹

Michael Peters, regarding the notion of xiaokang (小康), states that Xi does not just design China’s future for the next five years, but for the fifteen years after the attainment of ‘Xiaokang’ [小康].¹⁰³⁰ Hence, xiaokang (小康) is not just a mere lofty ideal, but a real goal, and its achievement has a deadline, as well as the next phase:

“Xi Thought has provided a long-term two-stage development plan: the first stage from 2020 to 2035 devoted to the realisation of socialist modernisation, including the achievement of the Belt and Road Initiative; and the second stage from 2035 to 2050 ‘to develop China into a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious and beautiful’.”¹⁰³¹

Hence, the xiaokang (小康) is being attained. And for the year 2035 there is a change in the denomination of goals, as it will be the “realisation of socialist modernisation”. Perhaps the next goal, in the year 2050, is the equivalent to the above-mentioned datong (大同), the Confucian ideal society. But it could be understood that it also refers to the Chinese Dream (中国梦):

“Wang explains not only that the ‘Chinese Dream’ [中国梦] is here to stay but also that it is based, as Xi indicates in a variety of sources, on the rejuvenation (fuxing [复兴]) of the modern Chinese nation, a rhetorical theme utilised by many Chinese leaders in the past. Xi’s use of the narrative, building on rapid modernisation and economic success, is designed to hark back to and move on a century of hardship and humiliation, utilising the master narrative of Chinese nationalism [...]”¹⁰³²

Once again, we see the importance of the *century of hardship and humiliation* in China. It is a recurrent term in China. It shows the essential role the

¹⁰²⁹ JU, P. (鞠鹏), “Xi Jinping: decide about the comprehensive moderately prosperous society. Strive for the mighty success of the new age socialism with Chinese characteristics—Report on the 19th National General Congress of the Communist Party of China” (Unofficial translation.) Original text: “习近平：决胜全面建成小康社会 夺取新时代中国特色社会主义伟大胜利——在中国共产党第十九次全国代表大会上的报告”，“19th National General Congress of the Communist Party of China” (Unofficial translation.) Original text: 中国共产党第十九次全国代表大会, “New age New explorations New text” (Unofficial translation.) Original text: 新时代 新征程 新篇章 10/2017, available at http://www.xinhuanet.com/politics/19cpcnc/2017-10/27/c_1121867529.htm, last visited on 25/05/2018. Unofficial translation. Original text: “中国共产党第十九次全国代表大会，是在全面建成小康社会决胜阶段 [...]”

¹⁰³⁰ PETERS, M., “The Chinese Dream: Xi Jinping thought on Socialism with Chinese characteristics for a new era”, *Educational Philosophy and Theory*, Vol. 49, 2017, no. 14, pp. 1299-1304, p. 1299, available at <https://doi.org/10.1080/00131857.2017.1407578>, last visited on 31/05/2018.

¹⁰³¹ Id., p. 1300.

¹⁰³² Id., p. 1302.

Chinese attach to History. And this issue is mentioned in connection with the *rejuvenation* and the *modernization*. This could be considered strange, but it is not; it only shows the importance of the said century even nowadays, nearly seven decades after the said century finished.

Regarding the above-mentioned agenda, the Elcano Royal Institute, in its report on Spain-China's relations, considers that in 2020 China should be a relatively comfortable society, a developed country in 2035 and a first-class power in 2050.¹⁰³³

Apart from the said 2050 deadline for the *datong* (大同), there is another date: 2049, only one year earlier. Wang Yi, China's Foreign Minister, quoted by Zsuzsa Anna Ferenczy, states that China will achieve "a modern socialist country that is prosperous, strong, democratic, culturally advanced and harmonious by 2049". But China refuses to export its development model, because every country is entitled to find its own way to development.¹⁰³⁴

The choice of the year 2049 is not a mere coincidence. It marks a century since the Maoist Revolution. Moreover, it can also be considered as the *century of recuperation*, healing the wounds caused by the the century of humiliation.

Actually, given the fact that there is only one year gap between the two previous dates and the respective goals, we consider both are the same aim. In the early times of the revolution, its foundation was the so-called *iron rice bowl*, meaning "secure job, life-time employment".¹⁰³⁵ According to Neil Hughes, Deng Xiaoping, in search of an economy based on free-market, had to give up the "iron rice bowl".¹⁰³⁶

It could be said that the *iron rice bowl* (铁饭碗) is been substituted by *xiaokang* (小康).¹⁰³⁷ The substitution of the *iron rice bowl* (铁饭碗) by the *xiaokang* (小康) is due to the policies implemented by Deng Xiaoping (改革开放 *gaige kaifang*) around 1980.¹⁰³⁸ As a result, people, mostly peasants, didn't have

¹⁰³³ ESTEBAN, M. (coordinator), op. cit., p. 36.

¹⁰³⁴ FERENCZY, Z., "Human Rights in Europe-China Relations: Assessing European Normative Power Effectiveness", *Taiwan Human Rights Journal*, Unofficial translation: Taiwan Human Rights Journal, Volume IV, Issue 1, June 2017, pp. 17-71, pp. 18-19. Original text: 台灣人權學刊第四卷第一期 2017 年 6 月 頁 17~71.

¹⁰³⁵ Pleco, op. cit., n. d.

¹⁰³⁶ HUGHES, N., "Smashing the Iron Rice Bowl", *Foreign Affairs*, July/August 1998 Issue, Available at <https://www.foreignaffairs.com/articles/asia/1998-07-01/smashing-iron-rice-bowl> Last visited on 31/05/2018.

¹⁰³⁷ Ibid.

¹⁰³⁸ Pleco, op. cit., n. d.

so much security but had more possibilities to progress economically. But *iron rice bowl* (铁饭碗) was granted to everybody, while after the above-mentioned policies, people were supposed to be more enterprising, hence decided to xiahai (下海) originally meaning “go or put out to sea”,¹⁰³⁹ but here applies the second sense of the expression, “change one’s occupation to enter the market economy”.¹⁰⁴⁰

Apparently, there is a contradiction between the White Paper called “Fifty Years of Progress in China's Human Rights” (it mentions the *lofty ideals*) and the current concretion of deadlines regarding the establishment of the xiaokang (小康). But there is not such contradiction, because since the said White Paper was drafted and the current long-term two-stage development plan nearly two decades have elapsed, enough time for a change in attitude.

Trying to be even more specific, we have no alternative but to resort to statistics. According to Xinhua, China’s official news agency “China lifted 12.89 million rural people out of poverty in 2017 as it progresses towards its target of eradicating poverty, official data showed Thursday.”¹⁰⁴¹

However, there is a part of the population below the levels of poverty, and there are plans and deadlines to take them out of poverty:

“There were still 30.46 million rural people living below the national poverty line at the end of 2017, according to the National Bureau of Statistics (NBS). [...] China is aiming to eliminate poverty by 2020 in a bid to create a ‘moderately prosperous society.’”¹⁰⁴²

Obviously, the ‘moderately prosperous society.’ is the ubiquitous xiaokang (小康). According to the said statistics, provided that the said pace keeps on going, it will be nearly attained by 2020.

Xinhua news maintains that “[p]olicy makers have listed poverty alleviation as one of the country's ‘three tough battles’ for the next three years, along with risk prevention and pollution control.”¹⁰⁴³

Elizabeth Perry states that in China there is a direct connection between “livelihood” and “rights”.¹⁰⁴⁴ She adds that

¹⁰³⁹ Ibid.

¹⁰⁴⁰ Ibid.

¹⁰⁴¹ LIFANG, “China brings nearly 13 mln people out of poverty in 2017”, Xinhuanet, 01-02-2018, available at http://www.xinhuanet.com/english/2018-02/01/c_136942195.htm, last visited on 31/05/2018.

¹⁰⁴² Ibid.

¹⁰⁴³ Ibid.

“[...] it does [...] appear that today’s patterns of protest—still animated by a widespread appreciation of ‘the right to rebel’—may prove more system-supportive than system-subversive. In an authoritarian polity, where elections do not provide an effective check on the misbehavior of state authorities, protests can help to serve that function—thereby undergirding rather than undermining the political system.”¹⁰⁴⁵

Elizabeth Perry considers that this attitude is essential for political stability, and it develops more flexibility, no fragility.¹⁰⁴⁶

Another case in which we find an evident asymmetry between the EU and China regards the holder of human rights: while in the EU it is an individual right, in China the holder of human rights is the people. A relevant issue regarding this aspect is that the official name of China is People’s Republic of China. Elizabeth Perry states that one of the founders of the Chinese Communist Party, Chen Duxiu, maintained that the paramount value was the nation hence individual rights would be overshadowed.¹⁰⁴⁷

The above-mentioned paragraph shows the importance of the community in China (and in much of Asian cultures). It could be said that the significance of the community is due to the enormous magnitudes of population and population density in China. However, according to Cheng, Ni, Sin and Cheng, the 1982 Constitution marked a turning point, due to the possibility of including human rights into the Amendment implemented in 2004, which incorporated terms such as ren [人] (“person”) and rene [人格] (“personality”).¹⁰⁴⁸ This move is essential in China, as it is a shift from the community to the individual, from the people to the person.

V.2.3 *Death penalty*

The EU opposes the death penalty.¹⁰⁴⁹ This is a radical example of the asymmetries between the EU and China. Hence, we will compare China with another country where the death penalty is legal: the USA (in several States).

¹⁰⁴⁴ PERRY, E., op. cit., p. 46.

¹⁰⁴⁵ Id., p. 45.

¹⁰⁴⁶ Id., p. 44.

¹⁰⁴⁷ Id., p. 46.

¹⁰⁴⁸ CHENG, L., NI, S., SIN, K., and CHENG, W., “A sociosemiotic approach to fundamental rights in China”, p. 53, available at https://www.researchgate.net/publication/262017749_A_sociosemiotic_approach_to_fundamental_rights_in_China, last visited on 28/06/2018.

¹⁰⁴⁹ EU Guidelines on Death Penalty, Common Guidelines, Council of the European Union, 8416/13, Brussels, 12 April 2013, 8416/13, COHOM 64, PESC 403, OC 213, Political and

Mistaken criminal convictions happen all over the world, but in those countries holding the death penalty, such mistakes have far-reaching consequences. China has undertaken measures in order to avoid such mistakes, according to Kandis Scott.¹⁰⁵⁰

China's reform of the death penalty has been cautiously undertaken, according to Shaopin Li and Bin Yuan.¹⁰⁵¹ There is a key element in respect of this issue, and especially in China: the possibility of the abolition of the death penalty and its consequences. Such news would be welcomed by the EU. Kandis Scott states that such movement would be very slow, among other factors because social acquiescence would need a long time.¹⁰⁵² Hence, we can conclude that the death penalty will eventually be abolished, but it will take a long time. This is also the opinion of Roger Hood.¹⁰⁵³ It can be said that the EU and China have a convergent trend.

Comparing China's death penalty system and the American one, how will be the respective process towards a possible abolition? In this regard, Kandis Scott considers that neither China nor the US will soon abolish the death penalty. However the United States Supreme Court has already limited the scope of capital punishment. In the US, most capital executions are issued by the decision from a states' court, for which the national policies have no effects. Meanwhile in China executions area at national level.¹⁰⁵⁴

Security Committee, To Permanent Representatives Committee/ Council, No. prev. doc 8372/13 COHOM 63 PESC 393, Consultation deadline: 16.4.2013, available at https://eeas.europa.eu/sites/eeas/files/guidelines_death_penalty_st08416_en.pdf, last visited on 03/06/2018. "The European Union has a strong and unequivocal opposition to the death penalty in all times and in all circumstances. [...] Therefore, and encouraged by the growing momentum towards abolition of the death penalty worldwide, the EU will continue its long-standing campaign against the death penalty."

¹⁰⁵⁰ SCOTT, K., "Why Did China Reform Its Death Penalty?", *Pac. Rim. L. & Pol'y J.*, Vol. 19, 2010, no. 63, p. 63, available at <http://digitalcommons.law.scu.edu/facpubs/106>, last visited on 04/06/2018.

¹⁰⁵¹ LI, S. and YUAN, B., China's Human Rights, article in Xinhua (China's News Agency) exploring the reform of the death penalty---Brief report on the newly-published book "The itinerary of the Death Penalty Reform", by ZHAO, Y., 2015-02-13 09:29:37, source: People's Court of Law. Authors: Li Shaoping and Yuan Bin, available at http://www.humanrights.cn/html/2015/8_0213/4591.html, last visited on 06/06/2018. Unofficial translation of the source, Original version:死刑改革探索的新华章 ——简评赵秉志教授新著《死刑改革之路》，中国人权

2015-02-13 09:29:37 来源：人民法院报 作者：李少平 袁彬

Unofficial translation of the text. Original version:"这些主张，既充分考虑了相关国际人权公约的要求和国际社会废止死刑的基本经验，也符合我国死刑改革的社会现实背景和实际需要，为我国死刑立法改革提供了有价值的理论参考。"

¹⁰⁵² SCOTT, K., op. cit., p. 79.

¹⁰⁵³ HOOD, R., "Abolition of the Death Penalty: China in World Perspective", *City University of Hong Kong Law Review*, Vol. 1, 2009, pp. 1-21, p. 1, available at <https://deathpenaltyinfo.org/documents/RHoodOnChina.pdf>, last visited on 07/06/2018.

¹⁰⁵⁴ SCOTT, K., op. cit., p. 79.

Actually, there is international legal support for the abolition of the death penalty:

“PART III Article 6 Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”¹⁰⁵⁵

Regarding the opinion of China’s population on the death penalty, Dietrich Oberwittler and Shenghui Qi state that there is a huge gap between the view of Chinese population and the international regulation.¹⁰⁵⁶ According to Roger Hood, in respect of recent data, it is not so much the opinion of China’s population which is in favor of the death penalty, but the one of “legal practitioners and political leaders”.¹⁰⁵⁷ Hood also considers that this topic is shifting from a defensive stance to one of acceptance.¹⁰⁵⁸

Since the late 1990s the EU is dealing in negotiations with China, aiming that China abolishes the death penalty.¹⁰⁵⁹ Actually, nowadays the EU maintains the same dynamic regarding this issue.¹⁰⁶⁰

According to Roger Hood:

“Furthermore, a firm commitment was made in the UN Human Rights Council in March 2007 by China’s representative, Mr La Yifan, that ‘The death penalty’s scope of application was to be reviewed shortly, and it was expected that this scope would be reduced, with the final aim of abolishment’.”¹⁰⁶¹

¹⁰⁵⁵ General Assembly of the UN, International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A, (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, available at <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>, last visited on 03/06/2018.

¹⁰⁵⁶ OBERWITTLER, D., and SHENGHUI, Q., “Public Opinion on the Death Penalty in China”, Results from a General Population Survey Conducted in Three Provinces in 2007/08, *ResearchGate*, pp. 6-27, p. 26, available at https://www.researchgate.net/publication/45178995_Public_Opinion_on_the_Death_Penalty_in_China, last visited on 04/06/2018.

¹⁰⁵⁷ HOOD, R., op. cit., p. 1.

¹⁰⁵⁸ Ibid.

¹⁰⁵⁹ Ibid.

¹⁰⁶⁰ EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 1-295, p. 194, available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

¹⁰⁶¹ HOOD, R., op. cit., p. 1.

As a result, it is foreseen that the number of cases submitted to the death penalty will be diminishing and that one day it will be abolished. However, apparently, the said evolution will take a long time. Roger Hood maintains that the choice for or against the death penalty is proper to each State. However, Nicola Macbean, quoted by Roger Hood, considers that China can not ignore the general trend on human rights.¹⁰⁶² Regarding the statement by Nicola Macbean, quoted above there are three aspects to be considered:

- A. The first one is that what the Chinese spokesperson makes is not a claim to legitimacy, but it is strictly an implicit claim to sovereignty. There are at least two grounds supporting such statement:
 - a. The very reason given by the Chinese spokesperson:

“[...] it was each country’s right, on the basis of cultural background and other factors, when to use that punishment. Each state should be able to exercise that right without interference.”¹⁰⁶³

When it is about which rights a state might be able to exert, generally speaking, for China it is a question of sovereignty, but even more if the expression “without interference” is mentioned. This is the Westphalian system.

- b. According to the UN, the previous paragraph to the one referred to by Roger Hood and Nicola Macbean, states that

“[t]he representative of China said her delegation regretted that the Assembly must discuss the issue of a moratorium on the death penalty at plenary level. That moratorium was an end result ‘achieved through pressure’. The fact that the Third Committee had resorted to a vote reflected the level of disagreement on the issue. China was dissatisfied at the imposition of the views of some States over others, and regretted that some countries had blocked amendments.”¹⁰⁶⁴

Obviously, China considers that the death penalty issue is an internal affair, and hence is to be solved in full use of its sovereignty.

- B. China steadily maintains an unbreakable defense of its sovereignty, derived from the century of humiliation. As we analyze along our work,

¹⁰⁶² Ibid.

¹⁰⁶³ Id., p. 17.

¹⁰⁶⁴ “General Assembly Adopts Landmark Text Calling For Moratorium On Death Penalty”, United Nations – Meeting Coverage and Press Releases, GA/10678, 18/12/2007, available at <https://www.un.org/press/en/2007/ga10678.doc.htm>, last visited on 06/06/2018.

this is one of the key elements of Chinese foreign policy, and also an essential point in the asymmetry between the EU and China.

- C. Zhao Bingzhi maintains that abolition happens to be a must, but China will take its time to accomplish it. This scholar submits that it “will not lead to an instant effect.”¹⁰⁶⁵

In a millenary civilization like the Chinese one, *not an instant effect* might mean a prolonged period of time. Therefore, concurrence or symmetry in this aspect might not be awaited for. However, according to what Nicola Macbean claims, the Chinese government does not ignore the dominant discourse of human rights.

Actually, the very Zhao Bingzhi, in this occasion in an article written with Wan Yunfeng, states that the death penalty will be abolished in a sectorial and gradual way.¹⁰⁶⁶

There is a Chinese cultural tradition about death penalty. Precisely regarding historical tradition, social psychology and public opinion, Kandis Scott considers that this cultural tradition is fading. There is a reduction in the public support for the death penalty, but it is not enough as to abolish it. On the other hand, there is more support for “leniency and more judicious use of capital punishment”. Hence, the result is that there is public support for death penalty, but for a restricted use of it.¹⁰⁶⁷

And to round things off, Zhao Bingzhi and Wan Yunfeng conclude that the abolition should start with the one for economic crimes.¹⁰⁶⁸

Therefore, we can draw the following conclusions:

- A. In fact, the way to the total abolition of the death penalty in China will be a long voyage.
- B. The abolition of the death penalty will not be directly implemented, but “in a phased and gradual manner”.
- C. The first phase of the abolition should be about economic crimes.
- D. Two kind of factors will have to be taken into consideration:

¹⁰⁶⁵ Quoted by HOOD, R., op. cit., p. 17.

¹⁰⁶⁶ ZHAO, B. and WAN, Y., “On Limiting and Abolishing the Death Penalty for Economic Crimes in China”, *Chinese Sociology & Anthropology*, Vol. 41, 2009, no. 4, pp. 14-40, p. 36, available at <https://doi.org/10.2753/CSA0009-4625410401> , last visited on 06/06/2018.

¹⁰⁶⁷ SCOTT, K., op. cit., p. 68.

¹⁰⁶⁸ ZHAO, B. and WAN, Y., op. cit., p. 36.

1. The socio-legal aspects: “the degree of social civilization, the developing conditions of the rule of law, and human rights, as well as the comprehensive national conditions of China”.
2. The national idiosyncrasy: “China’s historic tradition, social psychology, and public opinion”.

Let us try and determine the ultimate reason why Chinese people are for the death penalty or at least they are not against it. According to Kandis Scott

“Today, [sic] surveys show little public objection to the tradition of capital punishment. Xingliang Chen, Professor of Law at Beijing University, attributed this to the influence of the Chinese cultural tradition of retribution and lowly-regarded individual rights.”¹⁰⁶⁹

Once again, we encounter the paramount importance of the cultural background.

V.2.4 China and the EU: mechanisms for the protection of human rights

One of the mainstays of China’s human rights system is the NHRAP. In the recent years, China is attaching importance to human rights. According to the website Human Rights in China:

“[...] in the new NHRAP [a self-assessment published on June 14, 2016 of the progress made by the PRC government in implementing its second National Human Rights Action Plan (2012-2015)], for 2016-2020, published in September 2016,²² the PRC government reiterated its commitment to participating in the work of the UN human rights mechanisms, including:

- cooperating with the special procedures by answering letters from them and inviting representatives to visit China,
- conducting exchanges and cooperation with the Office of the High Commissioner for Human Rights,
- ‘earnestly’ fulfilling its obligations to international human rights conventions by submitting reports to the CEDAW, CAT, Committee on the Elimination of Racial Discrimination (CERD), Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights, and Committee on the Rights of Persons with Disabilities,
- implementing recommendations made during the first and second cycles of the Universal Periodic Review and actively participating in the third round, and
- actively conducting international exchanges and cooperation.”¹⁰⁷⁰

¹⁰⁶⁹ SCOTT, K., op. cit., p. 67.

The National Human Rights Action Plan (NHRAP) determines the above-mentioned human rights mechanisms.¹⁰⁷¹ Regarding the petition letters, the NHRAP, within the Civil and Political Rights, (4) Rights to know and to participate, establishes

“-- Ensuring public participation in judicial mediation and hearing, and addressing petition letters and visits in relation to legal proceedings.”¹⁰⁷²

In the above-mentioned paragraph, it is remarkable the mention of public participation in judicial mediation and hearing.

Furthermore, within the (5) Rights of expression and supervision, it is stated that:

“-- Establishing a registration system for complaints about and reports of unlawful acts by state organs at all levels, smoothing out such supervisory channels as informants’ letterbox, complaint e-mail and hotline, so as to give full play to public supervision.”¹⁰⁷³

In the paragraph above, special attention should be paid to the said registration system. Furthermore, it is relevant the assumption that unlawful acts can be committed “by state organs at all levels”. Finally, three supervisory channels are established.

Within the same part, the proceeding for complaints is established:

“-- Improving the regulations regarding the people’s complaints and promoting law-based handling of such complaints. Mechanisms shall be improved to separate litigations from complaints, and bring to conclusion all petitions relating to legal proceedings lodged by way of letters or personal visits to relevant government departments. A platform integrating accusation, offence reporting, appeal, complaint, consultation and search shall be built, online processing of complaints shall be encouraged, and complaints shall be classified and handled in accordance with the law. Citizens’ rational and lawful appeals shall be resolved in accordance with legal provisions and procedures.”¹⁰⁷⁴

Deepening in the quotation above, we find that there is an interest “to separate litigations from complaints”. The mentions to the rule of law are to be taken into account: “promoting law-based handling of such complaints” and

¹⁰⁷⁰ Human Rights In China (中国人权 zhongguo renquan), The China Challenge To International Human Rights: What’s At Stake? - A China UPR Mid-Term Progress Assessment, November 2016, pp. 1-42, p. 10, available at hrichtk@hrichina.org, last visited on 26/06/2018.

¹⁰⁷¹ National Human Rights Action Plan of China (2016-2020), Updated: Sep 29, 2016, 1:57 PM Xinhua, available at http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm, last visited on 27/06/2018.

¹⁰⁷² Ibid.

¹⁰⁷³ Ibid.

¹⁰⁷⁴ Ibid.

“lawful appeals shall be resolved in accordance with legal provisions and procedures”. In this regard, there are four remarkable aspects:

- A. Conducting exchanges and cooperation with the Office of the High Commissioner for Human Rights, According to the said NHRAP of China “-- China shall conduct exchanges and cooperation with the Office of the United Nations High Commissioner for Human Rights.”¹⁰⁷⁵
- B. Earnestly fulfilling its obligations to international human rights conventions by submitting reports to the CEDAW, CAT, CERD, CRC, CESC, and CRPD. In this regard, the NHRAP states that:

“Based on experience gained in the implementation of the first and second national human rights action plans, the Chinese government has formulated the National Human Rights Action Plan of China (2016-2020) (hereinafter referred to as the Action Plan) in accordance with the constitutional principle that the state respects and protects human rights and the spirit of the Universal Declaration of Human Rights and other related international human rights conventions, and in combination with the implementation of the Outline of the Thirteenth Five-Year Plan for National Economic and Social Development of the People’s Republic of China. The Action Plan defines the objectives and tasks of respecting, protecting and promoting human rights in the period from 2016 to 2020.”¹⁰⁷⁶

The protection of human rights in China is gaining experience, after two NHRAPs, and this is the reason for its development. Furthermore, regarding the mention to China’s Constitution, according to paragraph 3 of Article 33, included in Chapter II, named The Fundamental Rights and Duties of Citizens “The State respects and preserves human rights.”¹⁰⁷⁷ Nonetheless, the question is what each side understands for human rights.

In this regard, the EU maintains that

“The EU continued to hold China to its obligations under the UN Charter and international law, which are also reflected in China’s constitution, and urged China to implement policies in line with these obligations.”¹⁰⁷⁸

¹⁰⁷⁵ Ibid.

¹⁰⁷⁶ Ibid.

¹⁰⁷⁷ Constitution of the People’s Republic of China (Full text after amendment on March 14, 2004), Chapter II The Fundamental Rights and Duties of Citizens, The National People’s Congress of the People’s Republic of China, available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372964.htm, last visited on 28/06/2018.

¹⁰⁷⁸ EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 1-295, p. 194, available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

Regarding the above-mentioned Article 33, Chen Jianfu states that this declaration might have some meaningful consequences: first, maybe China is eventually accepting the universal notion of human rights; second, perhaps the range of human rights might be not only the ones included in the Constitution (Chapter Two), but also the ones included in the two Covenants signed by China; third, the incorporation of this declaration in Article 33 could be relevant, as this article determines the attributes of rights in China.¹⁰⁷⁹ Apparently regarding this issue there is some terminological approach. However, there is still the everlasting difference in *Weltanschauungs*, according to which the same term has completely different meanings.

According to Björn Ahl, China represents an alternative to the Western liberal framework. Beijing consensus attracts many developing states.¹⁰⁸⁰ The two *Weltanschauungs* regarding State sovereignty and human rights, among other aspects, are not just about the EU and China, but are spreading to other States around the world.

According to Qing Cao, actually, China stands firmly on its own foundations, due to the ample philosophical horizons of Confucianism, which allows China to represent a substitute *Weltanschauung* to the Western framework.¹⁰⁸¹

- C. Implementing recommendations made during the first and second cycles of the Universal Periodic Review and actively participating in the third round
- D. “Actively conducting international exchanges and cooperation.”

Regarding the United Nations human rights mechanism, according to the NHRAP:

“-- Actively participating in international human rights work. China will fulfill [sic] its obligations to international human rights conventions, get actively involved in the work of the United Nations human rights mechanism; conduct extensive human rights dialogues,

¹⁰⁷⁹ CHEN, J., “The Revision of the Constitution in the PRC”, *China Perspectives* [En ligne], 53 | May June 2004, mis en ligne le 29 décembre 2008, consulté le 02 mai 2017, p. 6, available at <http://chinaperspectives.revues.org/2922>, Last visited on 21/07/2018.

¹⁰⁸⁰ AHL, B., “The Rise of China and International Human Rights Law”, *Human Rights Quarterly*, Vol. 37, 2015, 23 Pages Posted: 27 Aug 2016, p. 637–661, p. 638, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2830215, last visited on 21/07/2018.

¹⁰⁸¹ CAO, Q., “Confucian Vision of a New World Order? Culturalist Discourse, Foreign Policy and the Press in Contemporary China”, *International Communication Gazette*, Vol. 69, no. 5, pp. 431–450, p. 436, available at <http://gaz.sagepub.com>, last visited on 22/07/2018.

exchanges and cooperation, and provide technical aid related to human rights to those developing countries that need it.”¹⁰⁸²

Apparently, China will make its contributions to the international system and wait that they will be taken into consideration.

Furthermore, regarding the HRC, the NHRAP maintains that

“-- China shall fully participate in the work of the UN’ s human rights mechanisms, and promote the United Nations Human Rights Council (HRC) and other mechanisms to attach equal importance to economic, social and cultural rights as well as civil and political rights, and function in a fair, objective and non-selective manner.”¹⁰⁸³

In fact, the above-mentioned paragraph clearly shows our previous statement. China is no longer satisfied with the exclusive accomplishment of political rights but considers that UN’s human rights mechanisms should attach equal importance to what could be called “the other human rights”. This is a paradigmatic example showing that China is not any longer content with the role of a mere international order taker, but starting its role as an international order shaper.¹⁰⁸⁴

Furthermore, precedents of HRC are taken into consideration and the continuity is foreseen:

“-- China shall implement the related proposals offered during the HRC’s first- and second-round Universal Periodic Review for China, and is actively participating in the third round.”¹⁰⁸⁵

International cooperation regarding the said HRC is on the run:

“-- China shall cooperate with the Special Procedures of the HRC, answer letters from it, and invite representatives of that body to visit China, as appropriate. China will continue to recommend Chinese experts for the posts in the Special Procedures.”¹⁰⁸⁶

¹⁰⁸² National Human Rights Action Plan of China (2016-2020), Updated: Sep 29, 2016, 1:57 PM Xinhua, available at http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm, last visited on 27/06/2018.

¹⁰⁸³ National Human Rights Action Plan of China (2016-2020), Updated: Sep 29, 2016, 1:57 PM Xinhua, available at http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm, last visited on 27/06/2018.

¹⁰⁸⁴ CHEN, Z., “China, the European Union and the ...”, pp. 775–792, p. 775.

¹⁰⁸⁵ “National Human Rights Action Plan of China (2016-2020)”, The State Council Information Office of the People’s Republic of China, available at http://english.scio.gov.cn/m/whitepapers/2016-09/29/content_40535889_6.htm, last visited on 14/05/2019.

¹⁰⁸⁶ “National Human Rights Action Plan of China (2016-2020)”, The State Council Information Office of the People’s Republic of China, available at

In order to check the degree of progress of the NHRAP, China has issued an Assessment Report, which result, regarding the joint meeting mechanism for the National Human Rights Action Plan, is:

“As stipulated in the Action Plan, a “joint meeting mechanism for the National Human Rights Action Plan” was created, consisting of the Information Office of the State Council and the Ministry of Foreign Affairs—they jointly take the leading role in this mechanism—and relevant state legislative and judiciary organs, departments of the State Council, mass organizations and social groups, and is responsible for coordinating the implementation, supervision and assessment of the Action Plan.”¹⁰⁸⁷

From the paragraph above, several points are noteworthy: the said joint meeting mechanism is managed by the Information Office of the State Council and the Ministry of Foreign Affairs. The said co-leadership reflects at least two issues: the first mentioned body belongs to China’s highest hierarchy, which shows the importance China attaches to the joint meeting mechanism. The choice of the second body, the Ministry of Foreign Affairs, displays the international consideration this matter has for China; the reason for choosing this body as co-leader of the mechanism may be the fact that China is joining several international covenants on human rights.

There is a continuous assessment of the joint meeting mechanism:

“In the second half of 2014, the joint meeting mechanism launched a mid-term assessment of the implementation of the Action Plan, instructed relevant departments and government institutions to deliver reports on the implementation of the Action Plan, organized experts and scholars to carry out corresponding research and investigations, convened a mid-term assessment meeting on the implementation of the Action Plan to appraise and review the implementation of the Action Plan for the earlier period, and made arrangements on how to better carry out the Action Plan in the next phase.

In July 2015, the joint meeting mechanism launched the final assessment of the implementation of the Action Plan. The final assessment was conducted in three stages—investigation, evaluation and summary.

From July to December 2015, the Information Office of the State Council took representatives of media agencies and human rights experts on multiple tours of investigation in Beijing, Liaoning, Shanghai, Jiangsu, Jiangxi, Guangdong, Guangxi, Qinghai, Xinjiang and other regions where they conducted interviews and research and

http://english.scio.gov.cn/m/whitepapers/2016-09/29/content_40535889_6.htm, last visited on 14/05/2019.

¹⁰⁸⁷ Assessment Report on the Implementation of the National Human Rights Action Plan of China (2012-15), China Daily, Updated: Jun 15, 2016, 8:41 AM, The State Council, The People's Republic Of China, english.gov.cn, available at http://english.gov.cn/archive/white_paper/2016/06/15/content_281475372197438.htm, last visited on 01/07/2018.

listened to comments and suggestions of people from all walks of life and the general public.

Entrusted by the joint meeting mechanism, the China Society for Human Rights Studies arranged multiple trips for human rights experts and representatives of social groups to Beijing, Tianjin, Shanghai, Chongqing, Dalian, Jinan, Wuhan and other places to conduct investigations on the implementation of the Action Plan.

The joint meeting mechanism instructed relevant departments and institutions to make a self-assessment of the completion of their respective tasks concerning the Action Plan, and to submit written reports.

On this basis, the joint meeting mechanism organized a team of human rights experts from relevant departments and institutions of the central government, mass organizations and social groups as well as the Party School of the CPC Central Committee, Nankai University, Shandong University, Southwest University of Political Science and Law, Shanghai Academy of Social Sciences, and other universities and research institutions.

The team examined and analyzed the self-appraisals of each department and institution in accordance with the targets set by the Action Plan, solicited opinions and suggestions from member organizations of the joint meeting mechanism and all social sectors and finally formulated the Assessment Report on the Implementation of the National Human Rights Action Plan of China (2012-15). [...]”¹⁰⁸⁸

According to the China’s review on human rights progress:

“The central government on June 14 released a report reviewing China’s human rights progress from 2012 to 2015, accompanied by a commitment to furthering the cause.

China launched the National Human Rights Action Plan (2012-2015) in June 2012, following the inaugural plan for the 2009-2010 period.

The major targets and tasks outlined in the 2012-2015 plan had been fulfilled, as scheduled, by the end of 2015, according the report issued by the State Council Information Office.

About 48 percent of the binding targets and over 50 percent of the targets concerning the public’s livelihood had been met or exceeded ahead of schedule, the report says.”¹⁰⁸⁹

In the above-mentioned quotation it is remarkable the determination to carry on with the human rights progress.

Moreover, probably the following statement by the NHRAP also plays here a role:

“-- China shall fully participate in the work of the UN’ s human rights mechanisms, and promote the United Nations Human Rights Council (HRC) and other mechanisms to

¹⁰⁸⁸ Ibid.

¹⁰⁸⁹ “China reviews human rights progress, pledging greater effort”, Xinhua, Updated: Jun 15,2016 7:45 AM, The State Council, The People’s Republic Of China, english.gov.cn, available at http://english.gov.cn/news/top_news/2016/06/15/content_281475372332566.htm, last visited on 01/07/2018.

attach equal importance to economic, social and cultural rights as well as civil and political rights, and function in a fair, objective and non-selective manner.”¹⁰⁹⁰

China, as can be seen in the above-mentioned paragraph, is not a mere order taker, but an order shaper. The above-mentioned China’s review on human rights progress actually states that

“China is one of 34 countries in the world to adopt an action plan on human rights protection, indicating that this issue is of great importance to China, said Zhang Xiaoling, director of the human rights research center of the Party School of the Communist Party of China Central Committee.

‘We Chinese have made great contributions to the global effort of human rights protection,’ Zhang said.”¹⁰⁹¹

Nonetheless, the report concedes that the situation is not yet optimal:

“However, the report admits that the government is keenly aware of many challenges, for instance, China’s economic development mode is still crude and it is still fraught with problems from unbalanced, uncoordinated and unsustainable development.

The country is still struggling to deal with a big gap between urban and rural areas as well as issues related to medical, education, and elderly care; food and drug safety; income distribution; and environment.

‘There is still a long way to go,’ it says.”¹⁰⁹²

Out of the text above the following conclusions can be drawn:

- The report concedes that the situation can still be improved
- China’s economy is not yet ready to offer, as a minimum standard, a sustainable comparatively well off economy (小康 xiao kang) for all the population
- In the text above, second paragraph, the report admits that there are several aspects hampering the access to the said 小康 xiao kang.¹⁰⁹³

According to the report “‘The priority of human rights protection in China will remain to be the right to life and development. We want all Chinese to have a share in economic and social development,’ Zhang said.”¹⁰⁹⁴

¹⁰⁹⁰ National Human Rights Action Plan of China (2016-2020), Updated: Sep 29, 2016, 1:57 PM Xinhua, available at http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm, last visited on 27/06/2018.

¹⁰⁹¹ “China reviews human rights progress, pledging greater effort”, Xinhua, Updated: Jun 15, 2016 7:45 AM, The State Council, The People’s Republic Of China, english.gov.cn, available at http://english.gov.cn/news/top_news/2016/06/15/content_281475372332566.htm, last visited on 01/07/2018.

¹⁰⁹² “China reviews 2012-2015 human rights progress”, China.org, available at http://www.china.org.cn/china/2016-06/14/content_38662642.htm, last visited on 14/05/2019.

¹⁰⁹³ Índice de Gini, China, Banco Mundial-Datos, available at <https://datos.bancomundial.org/indicador/SI.POV.GINI?locations=CN>, last visited on 17/06/2018.

In other words, xiao kang (小康) reflects the essence of China's vision of a human rights standard, but even more, it is considered a desirable standard. However, the said document acknowledges that "[t]he country will need to do more to alleviate poverty as around 50 million people still live under the poverty line, meaning they have a per capita net income of less than 2,800 yuan (\$427) a year."¹⁰⁹⁵

According to the said review on human rights:

"It will also need to push forward the rule of law so that legislation and law enforcement protects the rights and interests of ordinary citizens, while more resources are needed to protect women, children, senior citizens, ethnic minorities and people with disabilities, Zhang said."¹⁰⁹⁶

The paragraph above makes a division between ordinary citizens and what officially is known as "special groups": women, children, senior citizens, ethnic minorities and people with disabilities. The review considers that ordinary citizens need the rule of law, while the said special groups will require "more resources".

Regarding China's international activity about human rights, the report called "China reviews human rights progress, pledging greater effort" specifies all the developments in the said issue:

"From 2012 to 2015, China has maintained constructive dialogues with several treaty bodies on its implementation of international conventions about human rights.

In 2014, China participated and passed the second round of the UN Human Rights Council's Universal Periodic Review. It also took an active part in multilateral human rights meetings hosted by the third committee of the UN General Assembly and the UN Human Rights Council.

From 2012 to 2015, the country held more than 20 human rights dialogues with the United States, the European Union, the United Kingdom, Germany, Australia and Switzerland, as well as more than 10 human rights consultations and exchanges with countries including Russia, Brazil, Pakistan and Cuba."¹⁰⁹⁷

According to the above-mentioned text, there are three kinds of meetings in respect of human rights:

- The ones regarding the UN, including the multilateral ones

¹⁰⁹⁴ "China reviews human rights progress, pledging greater effort", Xinhua, Updated: Jun 15, 2016 7:45 AM, The State Council, The People's Republic Of China, english.gov.cn, available at http://english.gov.cn/news/top_news/2016/06/15/content_281475372332566.htm, last visited on 01/07/2018.

¹⁰⁹⁵ Ibid.

¹⁰⁹⁶ Ibid.

¹⁰⁹⁷ Ibid.

- The ones with the EU and developed states, as “the United Kingdom, Germany, Australia and Switzerland”
- The ones held with States rather under Chinese influence, as “Russia, Brazil, Pakistan and Cuba.”

Finally, the website includes links to other websites:

- Full text: Chronology of Human Rights Violations of the United States in 2015
- China issues report on US human rights

Duncan Freeman and Gustaaf Geeraerts maintain that China has usually kept a low profile, not assuming the role of master.¹⁰⁹⁸

This makes us consider that probably the so-called 28 characters of Deng Xiaoping (邓小平) are still valid:

“[...]observe and analyze (developments) calmly; [...] secure (our own) position; [...] deal (with changes) patiently and confidently; [...] conceal our capabilities and avoid limelight; [...] be good at keeping a low profile; [...] never become a leader; [...] strive to make achievements.”¹⁰⁹⁹

Furthermore, according to Sonya Sceats and Shaun Breslin, China in the late 1990s has avoided confrontation into bilateral institutions with the West regarding human rights. Afterwards, China paid attention to manage the same aim at UN’s level.¹¹⁰⁰ These attitudes show China’s determination to keep this issue within the control range of its sovereignty. Moreover, it insists that China’s human rights records will have to be kept off the agenda of UN bodies, which persistently leads us to the Chinese vision of International Law, with sovereignty as its paramount.

¹⁰⁹⁸ FREEMAN, D. and GEERAERTS, G., “China, the EU and Global Governance in Human Rights”, *The Chinese Journal of International Politics*, June 2011, p. 11, available at https://www.researchgate.net/publication/275123643_Europe_China_and_Expectations_for_Human_Rights, last visited on 06/09/2019.

¹⁰⁹⁹ “Deng Xiaoping’s 28 character strategy” (Original title: “邓小平的二十八字方针”, translation taken from <http://huwegongmgatipo.blogspot.com.es/2009/02/deng-xiaoping-famous-28-characters.html>, last visited on 05/07/2017. Available at http://www.360doc.com/content/14/0424/20/10966260_371815914.shtml, last visited on 05/07/2017. Unofficial translation. Original text: “冷静观察、稳住陈脚、沉着应付、韬光养晦、善于守拙、决不当头、有所作为”. Probably, the basis of the said 28 characters can be found in Sun Tzu’s “Art of War” (孙子兵法): “Conceal your dispositions, and your condition will remain secret [...]” Original text: “隐藏你的性格, 你的状况将保密”. SUN, Z., Introduction Table of content – The Art of War (孙子兵法), Tactical Dispositions, available at <http://wengu.tartarie.com/wg/wengu.php?l=Sunzi&c=7&s=4>, last visited on 07/07/2018.

¹¹⁰⁰ SCEATS, S. and BRESLIN, S., “China and the International Human Rights System”, *Chatham House*, October 2012, p. 55, available at https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf, last visited on 04/07/2018.

Han Yanlong, quoted by Pinghua Sun, believes that the Asian giant has managed a moderately thorough legal system regarding human rights, suitable to its contemporary standard of general development. Such system consists of four parts: “the Constitution, the laws, the administrative regulations, and local regulations.”¹¹⁰¹

Furthermore, the said author considers that the China’s human rights law system has the following three characteristics:

“(1) It consists of both provisions stipulated in the Constitution and provisions stipulated in general law. It should be mentioned that China belongs to the continental law system, and legal precedents could not be taken as the basis for the administration of law, but only as references. The judicial interpretations of the Supreme People’s Court and the Supreme People’s Procuratorate should be regarded as a part of China’s human rights law system, playing an important role in the judicial practice. ... (2) It consists of both comprehensive or principled legislations and specific human rights protection laws. ... (3) It consists of both the legislations of the Central Government and those of local governments. A wide range of issues is dealt with by local regulations, which are formulated under the premise that they shall not contravene the Constitution and the laws”.¹¹⁰²

From the EU legal point of view, what draws one’s attention is the fact that local regulations cover an ample scope of cases. However, the local regulations are not to break the Constitution and the law. Hence, regarding the legal range, the Chinese system is similar to the ones of the EU member States, but with the difference that in the EU member States there is no local regulations about human rights. Elizabeth Perry maintains that land seizure is a considerable issue in China.¹¹⁰³

In the issue of land disputes there is a link between land and livelihood, and in China this issue especially affects human rights.

In respect of the protection of human rights in Europe, according to the Council of Europe, its mechanism for the defence of human rights is reliable:

“Over the past fifty-five years, the 46-member Council of Europe has developed a considerable human rights acquis, encompassing not only standards on civil and political rights, social rights, minority rights, treatment of persons deprived of their liberty and the fight against racism, but also active European monitoring of respect of these standards by its member States. Such monitoring is carried out by several well-established human rights

¹¹⁰¹ SUN, P., “The Dynamics of Human Rights Protection in China”, in SUN, P. (ed.) *Human Rights Protection System in China*, Springer-Verlag Berlin Heidelberg 2014, p. 30, available at <https://link.springer.com/book/10.1007/978-3-642-39663-2>, last visited on 04/07/2018.

¹¹⁰² SUN, P., op. cit., “Human Rights Protection System in ...”, p. 30.

¹¹⁰³ PERRY, E., op. cit., p. 44.

bodies with recognised expertise and professionalism, both on a country-by country basis (including through country visits and on-the-spot investigations) and, increasingly, also thematically, with the common feature that these bodies are all independent.”¹¹⁰⁴

Three aspects in the paragraph above are remarkable:

- The first one is the order of the kinds of the groups of human rights, among which social rights come third, after civil and political rights, while in China is the other way round, but China usually makes the express reference to “socio-economic rights”. A typical case of the asymmetry between two sides not only of the world, but also of the *Weltanschauung*
- The paragraph above makes an express mention to an important aspect regarding European bodies, and especially judicial bodies: “these bodies are all independent”
- The said mechanisms are the following ones:
 - The European Convention on Human Rights
 - The European Social Charter
 - The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
 - The Framework Convention for the Protection of National Minorities
 - The European Commission against Racism and Intolerance
 - The Council of Europe Commissioner for Human Rights

On 26.10.2012, the Treaty of the EU “RESOLVED to establish a citizenship common to nationals of their countries [...]”¹¹⁰⁵

According to Title II of the Treaty of the EU (Provisions on Democratic Principles), Article 9

“In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union.

¹¹⁰⁴ DGII – Human Rights: Council Of Europe Independent Human Rights Mechanisms And Institutions, Council of Europe F-67075 Strasbourg Cedex, available at <http://www.coe.int/>, last visited on 13/09/2018.

¹¹⁰⁵ Consolidated Version of the Treaty on European Union, 26.10.2012, Official Journal of the European Union, C 326/13, available at https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF, last visited on 11/06/2018.

Citizenship of the Union shall be additional to and not replace national citizenship.”¹¹⁰⁶

The EU citizenship was created in 1993 by the Treaty of Maastricht:

“In 1993, the Treaty of Maastricht established the citizenship of the European Union, and set out a clear set of rights available to nationals of all EU Member States. European citizenship does not replace citizenship of a Member State. Instead, it confers additional rights to those already granted via national citizenship.”¹¹⁰⁷

Actually, as we see, EU citizenship is part of a double-layered nationality system: the EU nationality and simultaneously the EU citizen also enjoys its country’s nationality.

According to the “24 Years of EU Citizenship: Removing the Obstacles to Full Potential” policy brief, the EU Citizenship is perhaps the main achievement of the EU, and to strengthen the rights involved is an objective of the EU:

“EU Citizenship and the rights that come with it are one of the cornerstones of the European project, if not the main achievement. European citizenship, enshrined in the EU Treaties, has formed part of the EU aquis since 1992 when the Maastricht Treaty was adopted, making it an objective for the Union ‘to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union’. The ultimate aim of EU Citizenship was to increase the citizens’ sense of identification and belonging to the European Union, and thereby to create a European identity by outlining a number of rights which citizens could enjoy in the same way as national citizenships do.”¹¹⁰⁸

Thanks to the EU Citizenship, EU citizens are entitled to the following rights:

“The right to travel and to live freely within the EU, subject to certain conditions, commonly known as ‘freedom of movement’

The right not to be discriminated on grounds of nationality

The right to vote and to stand as candidates in EU and in local elections

The right to be assisted by another EU country’s embassy or consulate outside the EU if their country does not have diplomatic representation there

¹¹⁰⁶ Ibid.

¹¹⁰⁷ European Union Citizenship, Flash Eurobarometer 365, Report, Fieldwork: November 2012, Publication: February 2013, p. 2, this survey has been requested by the European Commission, Directorate-General Justice and coordinated by Directorate-General for Communication, Flash Eurobarometer 365 - TNS Political & Social, Conducted by TNS Opinion & Social at the request of the European Commission, Directorate-General Justice, Survey coordinated by the European Commission, Directorate-General for Communication (DG COMM “Research and Speechwriting” Unit), available at http://ec.europa.eu/commfrontoffice/publicopinion/flash/fl_365_en.pdf, last visited on 13/06/2018.

¹¹⁰⁸ “24 Years of EU Citizenship: Removing the Obstacles to Full Potential”, *Policy Brief*, ECAS Brussels, May 2016, p. 6, available at <https://ecas.org/wp-content/uploads/2016/05/24-years-of-EU-Citizenship-policy-brief.pdf>, last visited on 09/06/2018.

The right to petition the European Parliament, to file a complaint to the Ombudsman and to address EU institutions in any EU official language

The right to access European Parliament, Council and Commission documents, subject to certain conditions

The right to organise or support a citizens'-led initiative to invite the European Commission to bring forward new EU legislation, through the so-called "European Citizens' Initiative", the legal basis of which was recently established in the Lisbon Treaty."¹¹⁰⁹

The above-mentioned policy brief itself admits the gaps of the EU citizenship within the EU:

"While all these rights are duly protected in the Treaties, important gaps still remain between the applicable legal norms and the reality that citizens face in their daily lives, particularly in cross-border situations. The pitfalls are explained by various reasons: lack of information and of awareness of citizens about the rights they are entitled to as Union citizens; Member States' lengthy or unclear administrative procedures; EU's own opaque decision-making processes, or lack of instruments that would facilitate the enjoyment of such rights."¹¹¹⁰

The said text admits the gaps between the legal norms and the everyday reality or, in other words, "easier said than done". On one side, the gap is due to the lack of information, because perhaps the EU does not give enough publicity to the EU citizenship. On the other side, the EU must put in place the arrangements to make possible the exercise of the EU citizenship. However, we find plausible that the EU, in the above-mentioned policy brief is self-critical, which is a realistic way to improve its performance:

"This paper aims to take stock of the key achievements of EU citizenship, almost 25 years after the concept was introduced, but most importantly it aims to identify the pending challenges where more work remains to be done in order to remove the obstacles standing in the way of citizens' enjoyment of their rights. This analysis will be then used to formulate a set of policy recommendations to EU institutions, calling them to take the appropriate actions."¹¹¹¹

2009 was the year of the Lisbon Treaty, which set down relevant innovations for the EU:

"After the entry into force of the Lisbon Treaty in 2009, which significantly upgraded the EU Citizenship concept, the European Commission started developing a triennial report on the status of EU Citizenship in order to monitor progress and identify remaining gaps in this area. The first Citizenship Report, published in October 2010, identified three main areas where further work was needed in order for citizens to tap the potential of EU Citizenship:

¹¹⁰⁹ Ibid.

¹¹¹⁰ Ibid.

¹¹¹¹ Ibid.

- 1) Effectively enforce EU rights, paying attention in particular to the transposition of EU Directives into national law;
- 2) Make the exercise of individual rights simpler by eliminating unnecessary complications and in particular reducing administrative burden generated by national practices and procedures;
- 3) Raise citizens' awareness about their rights.

In order to address these gaps, the Commission put forward 25 concrete actions to improve the enforcement of citizens' rights."¹¹¹²

According to the said policy brief, the Lisbon Treaty represented a boost for the EU citizenship. Furthermore, it was also the occasion in which the EU gained personality. Probably, the two achievements were not mere coincidence, but a parallel progress on both ends of the democratic process, i.e. from the citizens to their EU representatives and bodies. A remarkable aspect of the EU citizenship is that, according to Dimitry Kochenov, there are no duties linked to it.¹¹¹³

Actually, the word *duty* appears in the EU Treaty only once. And there is only concretion of the rights, but there is no example of the duties.¹¹¹⁴

Dimitry Kochenov concludes by stating that the choice to develop a legal system on the basis of rights is not attained by chance, but on purpose, because it refers to freedom, which affects the determination of values. Furthermore, he maintains that duties are at a different level.¹¹¹⁵

Regarding the above-mentioned statements, we would like to make the following remarks:

- A. We concur with Dimitry Kochenov regarding freedom, as it could not be on the same level as duties. The traditional balance pair has been

¹¹¹² Ibid.

¹¹¹³ KOCHENOV, D., "EU Citizenship without Duties", *European Law Journal*, Vol. 20, July 2014, No. 4, pp. 482-498, p. 483, available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/eulj.12095>, last visited on 11/06/2018.

¹¹¹⁴ Consolidated Version of the Treaty on the functioning of the European Union, 9.5.2008, Official Journal of the European Union, C 115/47, p. 56, available at https://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF, last visited on 11/06/2018.

"Article 20 (ex Article 17 TEC) 1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship. 2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: (a) the right to move and reside freely within the territory of the Member States; (b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State; (c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State; (d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language".

¹¹¹⁵ KOCHENOV, D., op. cit., p. 497.

rights-duties. According to the Treaty on the functioning of the European Union: “Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties.”¹¹¹⁶

And immediately the said Treaty enumerates four rights which the EU citizens enjoy, but it enumerates no duties:

“They shall have, inter alia:

- (a) the right to move and reside freely within the territory of the Member States;
- (b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
- (c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- (d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.”¹¹¹⁷

Deepening the above-mentioned reasoning, the EU is an international body to which all members belong freely. Perhaps the enumeration of EU rights and the total absent of duties is an attempt to increase the popular perception of the EU within the member States.

B. Naturally, the above-mentioned Treaty on the functioning of the European Union is not a Constitution, but we will have no choice but to analyse the said Treaty on the functioning of the European Union compared to a Constitution, i.e. the German constitution. German Constitution includes the term *rights and duties* (*Rechte und Pflichten*) or its derived words which appear eight times.¹¹¹⁸ Let us have a look at another Constitution of an EU member state: Spain. In the Spanish Constitution we find a similar result: the term *rights and duties*

¹¹¹⁶ Consolidated Version of the Treaty on the functioning of the European Union, op. cit., C115/56, Article 20 (ex Article 17 TEC), p. 56.

¹¹¹⁷ Treaty of Lisbon, available at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12007L%2FTXT>, last visited on 30/03/2016.

¹¹¹⁸ Fundamental Law of the Federal Republic of Germany, dated 23/05/1949, as last amended on 13/07/2017, German Federal Republic. Unofficial translation; original text: Grundgesetz für die Bundesrepublik Deutschland, vom 23. Mai 1949 zuletzt geändert am 13. Juli 2017, Deutscher Bundestag, available at <https://www.btg-bestellservice.de/pdf/10060000.pdf>, last visited on 13/06/2018.

(*derechos y deberes*) appears seven times.¹¹¹⁹ These two examples lead us to the effective conclusion that our previous thought might well be right. The concretion of duties would not be positive for the EU, and is left for the EU member states. Hence, as we have found out in other aspects, apart from the asymmetry between the EU and China, which we analyze in our work, there is also asymmetry within the EU itself.

- C. Furthermore, we must compare the above-mentioned Constitutions with the Constitution of the other side in the main comparison: China. China's Constitution uses the term *rights and duties* (权力和义务 *quanli he yiwu*) four times¹¹²⁰. Hence, we see that both in the EU and in China, it is a common occurrence. But it is actually the EU Constitution the one which is innovative: it mentions both rights and duties, but only enumerates rights. Perhaps the enumeration is expressly left for the EU member states to fill them.

V.2.5 “European” human rights in China and the “Chinese” ones in the EU: a comparative analysis

What is the meaning in China of what in the EU is understood by human rights? According to Elizabeth Perry, the claims of Chinese protesters should not be understood as nothing similar to “an Anglo-American ‘rights revolution’”.¹¹²¹

Elizabeth Perry, quoting Stephen Angle's analysis of the philosophical aspects of human rights in China since the Song Neo-Confucianists, also considers that this topic has its own Chinese framework, differentiated from the Western one.¹¹²²

¹¹¹⁹ Spanish Constitution, passed by The Spanish Parliament in Plenary Meetings of the Congress of Deputies and the Senate held on 31/10/1978, ratified by the Spanish People in the Referendum of December 7, 1978, enacted by H. M. the King before the Spanish Courts. Unofficial translation; original text: Constitución Española, aprobada por Las Cortes en sesiones plenarias del Congreso de los Diputados y del Senado celebradas el 31 de octubre de 1978, ratificada por el pueblo español en referéndum de 6 de diciembre de 1978, sancionada por S. M. el Rey ante Las Cortes el 27 de diciembre de 1978, available at <https://www.boe.es/legislacion/documentos/ConstitucionCASTELLANO.pdf>, last visited on 13/06/2018.

¹¹²⁰ Constitution of the People's Republic of China, National People's Congress, source: website of the Xinhua (News Agency), 22/3/2018, 08:40:40, Xinhua Agency, Beijing 21/3, Unofficial translation; original text: 中华人民共和国宪法, 中国人民代表大会, 来源: 新华网 2018年3月22日 08:40:40, 新华社北京3月21日电, available at http://www.npc.gov.cn/npc/xinwen/2018-03/22/content_2052621.htm, last visited on 13/06/2018.

¹¹²¹ PERRY, E., op. cit., p. 47.

¹¹²² PERRY, E., op. cit., p. 46.

Then, what in the EU is known as human rights, what does it mean in China? According to the White Paper named Fifty Years of Progress in China's Human Rights (hereinafter, the White Paper) issued by the State Council Information Office of the P. R. of China, human rights in courts have improved considerably:

“Over the past few years, in a bid to strictly enforce laws and strengthen the protection of human rights during the judicial process, people's courts have carried out an in-depth reform of adjudication methods. Efforts have been made according to law to promote public adjudication in an all-round way, and strengthen the supervision of adjudication by society and public opinion so as to ensure judicial fairness. Except for those unsuitable for public hearing as prescribed by the law, all first instance cases are now subject to public trial.”¹¹²³

However, according to the very document

“First, to fully realize human rights is a basic goal of China's cross-century development. After China adopted the policy of reform and opening-up, it worked out a cross-century economic development strategy to realize modernization in three stages, each stage being aimed at enhancing China's overall national strength and improving the Chinese people's living standards. This inevitably entails improving the human rights situation. The goals of the first and second stages -- to solve the problems of food and clothing of the entire Chinese people and to enable them to live a relatively comfortable life -- have already been basically achieved; the goal of the third stage -- to reach the level of the medium-developed countries in the mid-21st century, so that the entire Chinese people can realize common prosperity -- already has a relatively good foundation.”¹¹²⁴

Hence, it could be deducted that the “relatively comfortable life” standard (小康 xiaokang) is already been attained. Furthermore, full human rights rather belong to “the mid-21st century”, linked to “common prosperity” (大同 datong). However, it can be guessed whether the above-mentioned paragraph refers to socio-economic human rights or to the EU's vision of human rights. In this regard, the very White Paper states that

“[...] we must guarantee human rights in the country's laws and systems. Therefore, the implementation of the strategy of exercising the rule of law and the realization of the goal of building a country governed according to law possess important and essential significance in guaranteeing human rights and promoting China's cross-century development of human rights.”¹¹²⁵

¹¹²³ “White Paper--Fifty Years of Progress in China's Human Rights”, 01/02/2000, The State Council Information Office of the P. R. of China (February 2000, Beijing), available at <http://www.china-un.org/eng/zt/rqwt/t28675.htm>, last visited on 23/06/2018.

¹¹²⁴ Ibid.

¹¹²⁵ Ibid.

The key of the above-mentioned paragraph is the rule of law as governing element of the country. All seems to be correct, even in the eyes of Europeans. The differentiated cultures, in all domains, shouldn't be forgotten. And the result comes immediately in the said White Paper:

“[...] since China introduced the policy of reform and opening-up [改革开放 gaige kaifang], it has found a road for the promotion and development of human rights that suits its reality. China is a developing country in the East with a long history and a huge population, but with a relative shortage of resources and wealth. To promote human rights in such a country, China cannot copy the mode of human rights development of the developed Western countries, nor can it copy the methods of other developing countries. China can only start from its own reality and explore a road with its own characteristics. Since the introduction of the policy of reform and opening-up, China has, on the basis of summing up its historical experiences and drawing lessons from them, found a road to building socialism with Chinese characteristics, and therefore has found a road to promoting and developing human rights which is in line with the country's reality. This means putting the rights to subsistence and development in the first place, under the conditions of reform, development and stability, and thus promoting human rights development in an overall way.”¹¹²⁶

Regarding the paragraph above, three remarks:

- The policy of reform and opening-up [改革开放 gaige kaifang] undertaken by Deng Xiaoping [邓小平] is considered as the starting point of the way to human rights. Following the Chinese vision of human rights, the improvement of economic conditions is considered as the key for human rights.
- According to the said White Paper, China has limited resources; hence it cannot copy the Western model of human rights. China follows its own way to human rights.
- Human rights according to China's own reality: subsistence and development first, “under the conditions of reform, development and stability”, and only then will it be high time for the overall development of human rights. Hence, the previous reference to the three stages. The first and second stages go as follows:

“The goals of the first and second stages -- to solve the problems of food and clothing of the entire Chinese people and to enable them to live a relatively comfortable life -- have already been basically achieved;”¹¹²⁷

¹¹²⁶ Ibid.

¹¹²⁷ Ibid.

Hence, the achievement of the first stage would be the iron rice bowl (铁饭碗 tie fan wan) and the second, the Xiaokang (小康). The third stage is as follows:

“[...] the goal of the third stage -- to reach the level of the medium-developed countries in the mid-21st century, so that the entire Chinese people can realize common prosperity -- already has a relatively good foundation.”¹¹²⁸

The third stage is, therefore, the Great Harmony (大同 datong). But there is also another concept linked to the Great Harmony: the Chinese dream (中国梦 zhongguo meng). According to William Callahan:

“Xi’s ‘China dream’ is for the ‘great rejuvenation of the Chinese nation,’ which, as he later explained, means ‘achieving a rich and powerful country, the revitalization of the nation, and the people’s happiness.’”¹¹²⁹

The said White Paper goes as follows:

“The characteristics of this road are, in terms of the basic orientation of developing human rights, that we stick to the principle of developing the productive forces and promoting common prosperity, based on the improvement of the living standards of the entire people and promoting the human rights of the entire people; in terms of the order of priority, the top priority is given to the rights to subsistence and development, while taking into consideration the people’s political, economic, social and cultural rights and the overall development of individual and collective rights; in terms of the methods of promoting and guaranteeing human rights, we stress that stability is the prerequisite, development is the key, reform is the motive power, and government according to law is the guarantee. Over the past 20 years, China has stuck to this correct road of development. As a result, not only have the living standards and mental outlook of the Chinese people changed greatly, but a set of relatively complete political and legal systems that guarantee the people’s democratic rights have been formed. Thus, great progress has been made in putting human rights into a legal and institutional framework, and China’s human rights development has been improving constantly. Practice has proved that building socialism with Chinese characteristics is a road of development that is in accordance with the fundamental interests of the Chinese people, and also the only road which can effectively promote human rights in China.”¹¹³⁰

The following two remarks can be made after reading the paragraph above:

¹¹²⁸ Ibid.

¹¹²⁹ CALLAHAN, W., “History, tradition and the China dream: socialist modernization in the world of great harmony”, *Journal of Contemporary China*, Vol. 24, 2015, num. 96, pp. 983-1001, p. 984, available at http://eprints.lse.ac.uk/64456/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Callahan,%20W_History%20tradition%20China_Callahan_History%20tradition%20China_2015.pdf, last visited on 15/05/2019.

¹¹³⁰ “White Paper--Fifty Years of Progress in China’s Human Rights”, 01/02/2000, The State Council Information Office of the P. R. of China (February 2000, Beijing), available at <http://www.china-un.org/eng/zt/rqwt/t28675.htm>, last visited on 24/05/2018.

- Steadily, subsistence and development come first, although other aspects are taken into consideration, as political, economic, social and cultural rights, as both individual and collective rights. Economic aspects are paramount.
- Since the policy of reform and opening-up [改革开放 gaige kaifang] undertaken by Deng Xiaoping [邓小平], the living standard of the Chinese population has been considerably improved, and thus the system has been satisfactorily tested, and it is the system China will follow.

Nonetheless, is there any sign of movement in China towards what in the EU is known as human rights? Yes, there is. China, according to Chen Dingding, has undertaken a considerable scheme in the direction of human rights.¹¹³¹

Some could consider that the above-mentioned paragraph contradicts the White Paper--Fifty Years of Progress in China's Human Rights. However, China is following a plan to be a world leader, but there is still plenty to be seen in the implementation of the said covenants. What is remarkable is that not few of the said conventions are about the protection of minorities and weak social groups.

Moreover, Chen Dingding insists and highlights the role of China in the improvement of human rights, detailing the human rights fora in which China participates.¹¹³²

The following remarks are noteworthy:

- China is going to great lengths in order to improve its human rights standard. Apparently, this is due to the wish to play the role of a world player.
- China considers that this issue falls within the domain of international cooperation.
- Although China strives to improve its human rights standard, it still encounters an obstacle. According to the above-mentioned author:

“[...] international human rights treaties could have impact on state sovereignty, which implies a more complex relationship between sovereignty and international human rights norms.”¹¹³³

¹¹³¹ CHEN, D., “China’s Participation in the International Human Rights Regime: A State Identity Perspective”, *Chinese Journal of International Politics*, Vol. 2, 2009, pp. 399–419, p. 402, available at doi:10.1093/cjip/pop002, last visited on 22/06/2018.

¹¹³² CHEN, D., op. cit., p. 402.

¹¹³³ Ibid.

Sovereignty, as ascertained above, plays a key role in China's international relations. In this regard, Chen Dingding makes certain considerations:¹¹³⁴

- The century of humiliation, according to Chen Dingding, also has an impact on China's activity regarding human rights. And this influence is also linked to China's notion of sovereignty. Not even human rights should affect sovereignty, considered by Carlson, quoted by Chen Dingding, as "a sacred right not to be compromised under any circumstances".
- China's notion of human rights is completely different from the EU's one.

Chen Dingding submits that, since 1978, China has evolved towards the international human rights regime.¹¹³⁵ The transition China is undergoing regarding human rights covers from the absence till the adaptation to the international human rights system.

Human rights also belong to the category of aspects showing the modernity of a state. China strives to adapt to international standards also in this realm.

Finally, Chen Dingding, among others, considers that China's vision of human rights is determined by national idiosyncrasy.¹¹³⁶

According to Elizabeth Perry, about the difference between America (in this regard, it could be similar to the EU) in respect of their conceptions of rights, neither political rights can be excluded from the Chinese view of human rights, nor the socioeconomic aspect is out of the human rights claim in the US.¹¹³⁷ What Elizabeth Perry states about America, in this regard, could also be said, to a great extent, about the EU, for example, regarding women pay equity campaign, among others.

Zou Keyuan states that "[...] commonly known 'Chinese characteristics,' [...] refer to the PRC's neo-Confucian approach that focuses on the Westphalian concept of absolute sovereignty",¹¹³⁸

Javier Telletxea Gago disagrees with Tu Weiming and the fans of Confucian capitalism (among them, for example, Anna Sun), on the base of the theories of Max Weber, despite all its flaws, recognized by Telletxea.¹¹³⁹

¹¹³⁴ Id., p. 417.

¹¹³⁵ Id., p. 401.

¹¹³⁶ Id., p. 418.

¹¹³⁷ PERRY, E., op. cit., p. 46.

¹¹³⁸ ZOU, K., op. cit., P. 935.

Joseph Chan considers that at least there are two basic regards in order to advocate for human rights: the one is from “universal values and moral principles” (what the author calls the “fundamentalist approach”); the other one is to reach an agreement on human rights “from within cultural perspectives” (what he names the “ecumenical approach”). He uses the second approach as a method to analyze his hypothesis: a Confucian perspective on human rights for contemporary China. Joseph Chan concludes by stating that Western liberalism and Confucianism could coincide in several basic human rights.¹¹⁴⁰

Sébastien Billioud maintains that China’s view of its own civilization has evolved drastically, resulting in a great interest in its own tradition nowadays.¹¹⁴¹

As we can see in the above-mentioned quotations, there are some streams approaching to the European view of human rights. However, in Europe the movements approaching the Chinese views are not so conspicuous.

V.3 China’s human rights

V.3.1 *Safeguard of international community interest according to the UN. Environmental protection*

The State Council, in the White Paper named Fifty Years of Progress in China's Human Rights, declares that

“Realizing and upholding genuine and complete national independence, and creating the requisite premise for the progress of human rights. Invaded and enslaved by various foreign powers, old China lost its state sovereignty, and its people's human rights lost their minimum guarantee. The first important achievement of the Communist Party of China (CPC), which led the Chinese people to victory in the people's democratic revolution, was to drive the imperialist invaders out of China, paving the way for China to realize real independence. New China, after its founding, promptly abolished all unequal treaties which had been imposed on China by various imperialist countries and all the privileges they had grabbed from China, resolutely confiscated the property of fascist countries in China,

¹¹³⁹ TELLETXEA GAGO, J., *El capitalismo y las religiones de China: revisión de los postulados de Max Weber en la China del nuevo siglo*, Tesis Doctoral, Universidad Pública de Navarra, Departamento de Sociología, 2015, p. 480, available at <https://academica-e.unavarra.es/handle/2454/16093>, last visited on 23/05/2018.

¹¹⁴⁰ CHAN, J., “A Confucian perspective on human rights for contemporary China”, in BAUER, J. and BELL, D. (eds.), *The East Asian challenge for human rights*, New York, 1st ed., Cambridge University Press, pp. 212-237, p. 237, available at [http://www3.nccu.edu.tw/~kangchan/readings/CP/Chan_J\(1999\).pdf](http://www3.nccu.edu.tw/~kangchan/readings/CP/Chan_J(1999).pdf), last visited on 23/05/2018.

¹¹⁴¹ BILLIUD, S., “Carrying the Confucian Torch to the Masses: The Challenge of Structuring the Confucian Revival in the People’s Republic of China”, *Oriens Extremus* 49, 2010, p. 201.

completely uprooted the political and economic privileges of the imperialists' colonial rule in China and realized complete state independence.”¹¹⁴²

In the above-mentioned statement we find the following remarkable aspects:

- The notion of sovereignty in China, in this case connected to independence, is “the requisite premise for the progress of human rights”. In China, regarding human rights, sovereignty is paramount. For the EU mentality, it could sound peculiar, but the logic of the statement is basic: only by the exercise of sovereignty can human rights be reflected on people.
- The one to blame for the ailing circumstances suffered by the Chinese population was not the Qing dynasty, but the oppression inflicted by the “imperialist invaders”, who “invaded and enslaved” China. The whole of this paragraph reflects one of the steady arguments in Chinese international law, and it is directly connected to the above-mentioned aspect: sovereignty.
- The Unequal Treaties are also mentioned in the said paragraph. This is probably the element reflecting both the miserable situation suffered by China in the famous century of oppression as well as the usual term used in China’s narrative: the humiliation.

According to Elizabeth Perry, the said White Paper caused criticism by the USA authorities, and China reacted by criticizing the USA human rights record.

In the EU, human rights are inextricable linked to democracy. It is remarkable that in the above-mentioned official document, the term “democracy” We encounter the well-known cultural differences, as well as the addition “with Chinese characteristics”.

But the essence of the above document is the economic progress, culture and even democracy:

“The year 1999 witnessed the 50th anniversary of the founding of the People's Republic of China (PRC). For the previous half century, the Chinese people, led by the Chinese government, had unswervingly probed into and fought for the elimination of poverty and backwardness, the building of a strong and prosperous, culturally advanced, democratic

¹¹⁴² “White Paper--Fifty Years of Progress in China's Human Rights”, 01/02/2000, The State Council Information Office of the P. R. of China (February 2000, Beijing), available at <http://www.china-un.org/eng/zt/rqwt/t28675.htm>, last visited on 24/05/2018. Quoted by PERRY, E., op. cit., p. 38.

country, and the achievement of the lofty ideal of complete human rights. As a result, the situation of human rights in China has seen tremendous changes.”¹¹⁴³

The “achievement” of “complete human rights” is considered in the said document as “a lofty ideal”. Actually, such term might be more concrete than the approach to human rights usual in the EU, where in fact in several aspects the term is also regarded as a “a lofty ideal”, but only implicitly. We refer here, for example, to what Constitutions of EU member States usually recognize as *right to housing* and *right to work*. However, Samuel Fleishacker maintains that a complete satisfaction of such rights cannot be considered even as an ideal.¹¹⁴⁴

T. H. Marshall maintains that the reason why in China human rights are considered as “lofty ideals” is because countries where citizenship is in development build the illusion of a high citizenship as a goal.¹¹⁴⁵

Here are some aspects worth analyzing:

- This apparent contradiction is not necessarily such contradiction. Perhaps it is only another case of the asymmetry we analyze in our work. In China human rights are considered as *lofty ideals*, but in Europe, according to Samuel Fleishacker, they cannot even be considered as *ideals*.
- Note that the comparison is not perfect, as even though the signifier is the same but, as we have already proved, the signified is quite different in both sides.
- However, the mere difference regarding the *ideability* of human rights has implications.

From the point of view of the State, what is the difference between the EU and China regarding citizenship? Elizabeth Perry, quoting R. Bin Wong, states that the key element is that traditionally in China a more dynamic attitude of the government is taken for granted.¹¹⁴⁶

Furthermore, R. Bin Wong develops a further reason why there is a huge gap, i.e. asymmetry between Europe’s and China’s societies: he maintains that the Western vision of identity is univocal, while the rest of the world has a polyhedral

¹¹⁴³ “White Paper--Fifty Years of Progress in China's Human Rights”, 01/02/2000, The State Council Information Office of the P. R. of China (February 2000, Beijing), available at <http://www.china-un.org/eng/zt/rqwt/t28675.htm>, last visited on 24/05/2018. Quoted by Elizabeth Perry. PERRY, E., op. cit., p. 38.

¹¹⁴⁴ FLEISCHACKER, S., *A Short History of Distributive Justice*, Cambridge, Massachusetts, Harvard University Press, 2004, p. 2. Quoted by PERRY, E., op. cit., pp. 38-39.

¹¹⁴⁵ MARSHALL, T., *Citizenship and social class*, Cambridge, Cambridge University Press, 1950, p. 29.

¹¹⁴⁶ PERRY, E., op. cit., p. 39.

view of culture and civilization.¹¹⁴⁷ And it could also be said that non-Western societies strive to be distinct and keep their peculiarities and idiosyncrasy.

According to Article 25.1 of the Universal Declaration of Human Rights:

“1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹¹⁴⁸

The Declaration of the United Nations Conference on the Human Environment is more specific, as it refers straight to the environment as a human right.

“The United Nations Conference on the Human Environment, having met at Stockholm from 5 to 16 June 1972, having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment,

Proclaims that:

1. Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.”¹¹⁴⁹

As we see in the paragraph above, in the same way as human life and health are human rights, the environment (“essential to his well-being and to the enjoyment of basic human rights the right to life itself”) is also a human right. The common aspect of all the above-mentioned human rights is the well-being, which is linked not only to the standard of living, but to life quality, which is a much ampler notion, comprising many other concepts.

Air pollution is one of the issues affecting the health of part of the Chinese population. Furthermore, lately a good deal of the Chinese has gained conscience

¹¹⁴⁷ BIN WONG, R., *China transformed-Historical change and the limits of historical experience*, Ithaca, Cornell University Press, 1997, p. 1.

¹¹⁴⁸ Universal Declaration of Human Rights, United Nations. Human Rights Office of the High Commissioner, p. 6, available at [http://undocs.org/A/RES/217\(III\)](http://undocs.org/A/RES/217(III)), last visited on 09/09/2018.

¹¹⁴⁹ Declaration of the United Nations Conference on the Human Environment, UN Documents Gathering a body of global agreements, UN Documents: Gathering a Body of Global Agreements has been compiled by the NGO Committee on Education of the Conference of NGOs from United Nations web sites and made possible through freely available information & communications technology, available at <http://www.un-documents.net/unchedec.htm>, last visited on 09/09/2018.

of the environmental question, according to Kristin Aunan, Mette Halskov Hansen and Shuxiao Wang.¹¹⁵⁰

Obviously, for decades, pollution has been affecting China's population. But only lately have the Chinese realized the magnitude of the issue. So has the Chinese government, but in order to be implemented, it needs the collaboration of local authorities.

The EU is also concerned by China's environmental issue. China has enacted several pieces of legislation in this regard:

"A particular area of concern for Chinese citizens is the state of the environment, including air quality and water safety. In response, China's government continued to place significant emphasis on the issue, introducing a number of new pieces of legislation which set ambitious targets and created new provisions for enforcement and implementation, including on the public's access to information and the right of NGOs to bring public-interest cases against private entities responsible for environmental damage. Nevertheless, China still faces major implementation challenges. There is progress on curbing air pollution in cities like Beijing, although air pollution levels remain well above WHO standards with regular severe smog episodes still occurring. Water availability and pollution remain a challenge."¹¹⁵¹

Regarding the dimension of China's environmental pollution, Anna Ahlers and Yongdong Shen state that it is still unclear the degree of environmental consciousness present in China.¹¹⁵²

Lei Liu and Tong Wu analyze China's environmental status, specifically within the EU-China relations. They submit that one of the requirements needed regarding international cooperation exists already between the EU and China regarding the environmental issue: to have common interests.¹¹⁵³ It is clear that the two partners involved in this issue are mighty enough and their contributions

¹¹⁵⁰ AUNAN, K., HALSKOV HANSEN, M., and WANG, S., "Introduction: Air Pollution in China", *The China Quarterly*, pp. 1–20, p. 2, available at <https://www.cambridge.org/core/terms>. <https://doi.org/10.1017/S0305741017001369>, available at <https://www.cambridge.org/core>, last visited on 07/07/2018.

¹¹⁵¹ EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 1-295, p. 196, available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

¹¹⁵² AHLERS, A. and SHEN, Y., "Breathe Easy? Local Nuances of Authoritarian Environmentalism in China's Battle against Air Pollution", *The China Quarterly*, Vol. 234, June 2018, pp. 299-319, p. 316, available at <http://creativecommons.org/licenses/by/4.0/>, last visited on 08/09/2018.

¹¹⁵³ LIU, L. and WU, T., "EU-China relationship in a new era of global climate governance", p. 2, Available at <https://www.eui.eu/Documents/RSCAS/JMF-25-Presentation/EU-China-relationship-Jul-14.pdf>, last visited on 08/09/2018.

can be meaningful enough to the energy transition as a means to improve the global climate.¹¹⁵⁴

One of the competitive advantages of China nowadays is its position as source of rare earth, because these resources are essential for the hi-tech sector: automobile, electronic, petrochemical industries use rare earth, according to Chen Zhanheng.¹¹⁵⁵ But such an advantage also has a high environmental cost.¹¹⁵⁶

The fact that USA has given up its participation in international bodies regarding environmental issues has changed the role and relevance of the EU-China environmental relations.¹¹⁵⁷

The Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) happened to be a turning point for the environment as human right, but its completion, according to Günther Handl, was not smooth at all.¹¹⁵⁸ There is a long standing conflict between environment and development. For the G-77 and China, environment should not be over development. On the other side are the developed countries, which at least theoretically set the environment above the development.

Furthermore, according to the U.S. appraisal on the Stockholm Declaration:

“Adoption almost unanimously-with the exception of the People's Republic of China-of the ‘Declaration on the Human Environment’ is considered another important conference achievement. The declaration, drafted by an ad hoc committee of the whole during the conference, contains important principles of conduct for states in dealing with international environmental problems.”¹¹⁵⁹

¹¹⁵⁴ LIU, L. and WU, T., op. cit., p. 2.

¹¹⁵⁵ CHEN, Z., “Global rare earth resources and scenarios of future rare earth industry”, *Journal of Rare Earths*, Vol. 29, No. 1, Jan. 2011, p. 4, available at https://www.researchgate.net/profile/Zhanheng_Chen/publication/251633593_Global_Rare_Earth_Resources_and_Scenarios_of_Future_Rare_Earth_Industry/links/5a1ccf944585153731892d22/Global-Rare-Earth-Resources-and-Scenarios-of-Future-Rare-Earth-Industry.pdf, last visited on 20/06/2019.

¹¹⁵⁶ HUANG, X., LONG, Z., WANG, L. and FENG, Z., “Technology development for rare earth cleaner hydrometallurgy in China”, *Rare Met.*, Vol. 34, 2015, no. 4, pp. 215-222, p. 217, available at https://www.researchgate.net/profile/Liangshi_Wang/publication/277576255_Technology_development_for_rare_earth_cleaner_hydrometallurgy_in_China/links/56ce690108ae4d8d649992fa.pdf, last visited on 20/06/2019.

¹¹⁵⁷ LIU, L. and WU, T., op. cit., p.2.

¹¹⁵⁸ HANDL, G., “Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration On Environment And Development, 1992”, *United Nations Audiovisual Library of International Law*, p. 3, available at http://legal.un.org/avl/pdf/ha/dunche/dunche_e.pdf, last visited on 12/09/2018.

¹¹⁵⁹ Stockholm Conference on the Human Environment: the U.S. Appraisal, p. 5, available at <https://esajournals.onlinelibrary.wiley.com/doi/pdf/10.2307/20165916>, last visited on 12/09/2018.

Dealings are necessary, but once treaties are signed, a principle must be followed: *pacta sunt servanda*. Otherwise, non-compliance is the source of conflicts, as expressed by Yoshifumi Tanaka.¹¹⁶⁰

The fact that obligations regarding the protection of the environment are not exclusively sustained by the principle of reciprocity should be taken into account. The logic of international law appoints to environment as a single good, which actually is common to the whole humankind. However, the views of environment and the priority given to it differ depending on the degree of development of the country. China, as a leading developing country, in its Position Paper of the People's Republic of China on the United Nations Reforms states that:

“[d]evelopment is the common pursuit of people from all countries and bedrock for a collective security mechanism and the progress of human civilization. Poverty, diseases, environmental degradation are also grave challenges to the international community. Serious attention must be given to the needs of developing countries, with a view to achieving coordinated, balanced and universal development around the world.”¹¹⁶¹

The then United Nations Secretary-General Kofi Annan had previously stated that

“[United Nations Secretary-General Kofi Annan] stressed that development must be sustainable, saying that all efforts would be in vain if their results were reversed by continued degradation of the environment and depletion of natural resources. While pleased that the Kyoto Protocol had now entered into force, he noted that it was extended only until 2012, and that some major emitters of carbon remained outside it. He asked all States to agree that scientific advances and technological innovation must be mobilized now to develop tools for mitigating climate change, and that a more inclusive international framework must be developed for stabilizing greenhouse gas emissions beyond 2012, with broader participation by all major emitters and both developed and developing countries.”¹¹⁶²

In the paragraph above, United Nations Secretary-General Kofi Annan attached great importance to the environment, but he first stated the relevance of

¹¹⁶⁰ TANAKA, Y., “Protection of Community Interests in International Law: The Case of the Law of the Sea”, in VON BOGDANDY, A. and WOLFRUM, R. (eds.), *Max Planck Yearbook of United Nations Law*, Volume 15, 2011, p. 329-375, p. 336, available at http://www.mpil.de/files/pdf3/mpunyb_07_Tanaka_15.pdf, last visited on 12/09/2018.

¹¹⁶¹ Position Paper of the People's Republic of China on the United Nations Reforms, Permanent Mission of the People's Republic of China to the UN (Official translation. Original text: 中华人民共和国常驻联合国代表团), June 7, 2005, 07/06/2005, available at <http://www.china-un.org/eng/chinaandun/zzhgg/t199101.htm>, last visited on 13/09/2018.

¹¹⁶² Secretary-General Presents Report ‘In Larger Freedom’ To General Assembly, Outlining Ambitious Plan For United Nations Reform, General Assembly Plenary, GA/10334, 21 March 2005, Says Package Gives Equal Weight to Organization's Three Great Purposes – Development, Security, Human Rights – Underpinned by Rule of Law, available at <http://www.un.org/press/en/2005/ga10334.doc.htm>, last visited on 13/09/2018.

development, however on the condition that it must be sustainable, which in fact makes the development depend on the environment; furthermore, all major gas emitters must participate, and he makes no difference between developed and developing countries. Meanwhile, the above-mentioned Position Paper of the People's Republic of China on the United Nations Reforms lays the stress on development, but environmental degradation, among other aspects, is also considered.

In general terms, the EU follows the steps of the UN:

“Luxembourg’s delegate, speaking on behalf of the European Union and associated countries, said [...] that environmental sustainability was crucial to meeting virtually all the other Millennium Development Goals. Funding national development strategies would create the optimal conditions for sustainable human development. The Union had agreed with the report’s emphasis on ownership through bold national development strategies, which should provide the framework for national action, supported by the international community. The Union fully accepted its share of common responsibility for development, and was strongly committed to implementing the Millennium Declaration and the Millennium Development Goals.”¹¹⁶³

Actually, as stated in the paragraph above, the EU agrees with the UN Secretary-General that the environmental sustainability is essential.

The above-mentioned Position Paper of the People's Republic of China on the United Nations Reforms, within its Environmental Issues, states that

“- China stands for a scientific concept of development encompassing, inter alia, incorporating sustainable development and environmental protection into national development strategy and coordinating relations between economic, social development and environmental protection.

- Countries ought to engage in international cooperation for sustainable development according to the principle of Common but Differentiated Responsibilities, focusing on helping developing countries cope with environmental challenges effectively, especially such urgent issues as water scarcity, urban air pollution, ecological degradation and desertification. Developed countries ought to honour their commitments through technological transfer and provision of financial support aimed at capacity-building of developing countries.”¹¹⁶⁴

¹¹⁶³ Secretary-General’s Reform Recommendations ‘did not go far enough’, General Assembly told, as debate begins on ‘in larger freedom’, Plenary 85th & 86th Meetings (AM & PM), Speakers Address Wide Range of Issues, including Failure To Meet Past Commitments, Inequitable Global Trade, Foreign Debt, GA/10337, 6 April 2005, available at <https://www.un.org/press/en/2005/ga10337.doc.htm> , last visited on 13/09/2018.

¹¹⁶⁴ Position Paper of the People's Republic of China on the United Nations Reforms, Permanent Mission of the People’s Republic of China to the UN (Official translation. Original text: 中国人

As we have stated, for China, development comes first. But the paragraph above concretises the term “sustainable development and environmental protection” to be included in China development’s strategy.

A probable way out of such a circumstance should be based on the mutual confidence, in which developed countries would help developing countries to develop on the base of the green technologies attained by developed countries. This idea encounters a further problem: how to finance such high-tech green solutions? A possible solution could be to cooperate in the finance of green technologies:

“[...] there is much to be gained from intensifying cooperation on issues of global concern, in particular climate change, energy and resource efficiency, and facilitating trade in environmental goods in which both sides have significant stakes.”¹¹⁶⁵

Perhaps this question could have other solutions, but they may well differ from country to country, within the EU. The possibilities within the developing countries will also differ from country to country.

V.3.2 Human rights in China, seen from the EU

Jing Men considers that the EU-China relations are determined by the balance between human rights and sovereignty. According to Jing Men

“In the post-Cold War era, the EU is generally regarded as a normative power. All the Member States have transferred part of their national sovereignty to this regional organisation to make decisions for the common market at the European level. [...] Since 1997, the two sides have maintained a biannual human rights dialogue to facilitate mutual understanding on the issue. Nevertheless, the disagreement on human rights is much stronger than consensus between the two sides. The EU is frustrated in its political relations with China due to limited progress in the human rights dialogue.”¹¹⁶⁶

The paragraph above displays two of the basic conceptual gaps of the EU-China relations from the Chinese point of view. The first one is their very asymmetrical view of sovereignty, as the EU has a very flexible one, according to which the EU Member States do not mind giving up part of the exercise of their sovereignty in favor of the EU, but its titularity remains untouched, and they do

民共和国常驻联合国代表团), June 7, 2005, 07/06/2005, available at <http://www.china-un.org/eng/chinaandun/zzhgg/t199101.htm>, last visited on 13/09/2018.

¹¹⁶⁵ EU-China relations, European Union External Action, Updated 01/06/2017, p. 4, available at https://eeas.europa.eu/sites/eeas/files/eu-china_factsheet_1.pdf, last visited on 14/07/2018.

¹¹⁶⁶ MEN, J., op. cit., “Between Human Rights and ...”, p. 534.

not find fault in demanding from third party States aspects affecting their sovereignty. However, actually, the EU's concept of sovereignty is based on the principle of attribution of competences, according to which the exercise of competences is granted freely and voluntarily from the European Member States to the EU "temporarily" and "conditioned", but the titularity of the competences remains as proper to the EM. Meanwhile, China considers that sovereignty is essential, and is not ready to cede the least of it. The second one is the very notion of human rights, which in the EU has mostly the sense of civil and political rights, while in China under human rights mostly are understood the socio-economic rights.

Jing Men states that it depends on the state to give priority to the one or the other principle, but human rights, according to Jing Men, is gaining relevance.¹¹⁶⁷ Nonetheless, China is claiming that its vision of human rights has to be taken into consideration as well. In this regard, Manuel Montobbio, among others, supports a wider vision of human rights than the Western-centered one.¹¹⁶⁸

According to the European Union External Action "[w]hat the EU wants to see from China: [...] Greater respect for human rights and the rule of law [...]"¹¹⁶⁹

There are several noteworthy aspects in the text above: such a relevant statement is issued by a top body as the EU External Action; the said wish is only second to the wish that China becomes a market-led economy. This point is extremely important, as it shows the priority order given by the EU to human rights, but it happens to be that when dealings between the EU and China on human rights stagnate, the EU resorts to restrictive measures on trading, according to Fitzpatrick et al.¹¹⁷⁰ This could be is an example of the expansive notion and practice of the EU, from the Chinese point of view.

Furthermore, according to the said EU External Action

"The EU is committed to the promotion of human rights around the world and regularly voices concerns over the human rights situation in China. The EU will continue to work with China and its people to promote human rights and to foster the rule of law and civil

¹¹⁶⁷ Ibid.

¹¹⁶⁸ MONTIOBBIO, M., op. cit. "El ascenso global de China y...", pp. 10-11.

¹¹⁶⁹ EU-China relations, European Union External Action, updated 01/06/2017, p. 4, available at https://eeas.europa.eu/sites/eeas/files/eu-china_factsheet_1.pdf, last visited on 14/07/2018.

¹¹⁷⁰ FITZPATRICK, K., at al., 11th Informal ASEM Seminar on Human Rights "National and Regional Human Rights Mechanisms", *Background Paper*, p. 22, available at https://www.asef.org/images/docs/11th%20Human%20Rights%20Publication_110612_v11%20complete.pdf, last visited on 14/07/2018.

society. A dedicated EU-China Human Rights dialogue is held every year. EU Special Representative for Human Rights Lambrinidis has paid regular visits to China.”¹¹⁷¹

The remarkable point in the paragraph above is that it expresses the commitment by the EU (or its member states) to exert its sovereignty beyond their borders. The EU’s thought is that human rights are a reason strong enough as to go beyond a state’s border. China is not in favor of such attitude, because it usually follows the principle of non-interference in internal affairs, given the preponderance of sovereignty in Chinese Public International Law.

Apart from their different views on sovereignty, they even differ in their interpretation of the international human rights regime. Duncan Freeman and Gustaaf Geeraerts consider that there is a great divide between EU’s and China’s rhetorics in this regard.¹¹⁷² The only way to try and attain a good understanding of terms in the realm of International Law is to resort to their respective historical and cultural backgrounds. Naturally, such difficulties reach more than ever their divergent notions on the international human rights regime.

In this respect, Zsuzsa Ferenczy considers that the future of diplomacy states that one of the main differences between the EU and China regards “external norm projection”: the earlier makes outward claims, while the latter does not.¹¹⁷³

According to Freeman and Geeraerts, China has made a great effort to catch up the EU’s grade of human rights.¹¹⁷⁴ But the EU, among other international bodies, considers that there is still much gap to reduce.

In fact, the EU Annual Report on Human Rights and Democracy in the World in 2016 states that

“[A] EU priority is the ratification of the International Covenant on Civil and Political Rights (ICCPR), which China signed in 1998 and committed to ratifying during the two Universal Periodic Review exercises (in 2009 and 2013).”¹¹⁷⁵

¹¹⁷¹ EU-China relations, European Union External Action, updated 01/06/2017, p. 3, available at https://eeas.europa.eu/sites/eeas/files/eu-china_factsheet_1.pdf, last visited on 14/07/2018.

¹¹⁷² FREEMAN, D. and GEERAERTS, G., op. cit., “China, the EU and Global Governance in ...”, p. 2.

¹¹⁷³ FERENCZY, Z., op. cit., p. 19.

¹¹⁷⁴ FREEMAN, D. and GEERAERTS, G., op. cit., “China, the EU and Global Governance in ...”, pp. 7-8.

¹¹⁷⁵ EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 1-295, p. 194, available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

Despite considering it a peripheral concern, China has made progress in this regard. The question is how this issue will progress in the future. Moreover, China is not content with the mere role of an order taker. Hence, we should consider that it will take the necessary steps to gain consideration as an order shaper and, therefore, its notion of human rights (mostly socio-economic) will expand.

Actually, China's dynamic attitude regarding international institutions is also linked to its path of development. But it is also connected to its participation in international initiatives regarding human rights. According to Matthias Vanhullebusch, it is well known that China is doing a great effort in order to enhance its foreign action. It is not in favor of unilateral institutions, as well as the EU, but there are differences between both attitudes, mostly that the EU's multilateralism underpins multilateral institutions. The Asian giant also develops this attitude regarding development banks, following the principle of sovereign equality, paramount for China's International Law. However, there is a nuance: there is a difference between multilateralism and multipolarism, according to Benita Ferrero-Waldner and Peter Mandelson.¹¹⁷⁶ Matthias Vanhullebusch fears that the said financial activity could affect labor and environment protection. The EU should keep an eye on this point and try to keep its own standards. The said author also fears that the above-mentioned circumstances could also lead to "a greater fragmentation of international norms". Nonetheless, as we have analyzed in other parts of this thesis, China, as an order-shaper has taken the role of advocating for socioeconomic human rights, and tries to improve their application in international declarations of human rights.¹¹⁷⁷

According to Jing Men, there are two opposite Weltanschauungs: the one considers that in international relations, the sacred point is the unrestricted exercise of sovereignty; the other one maintains that there are certain cases in which there should not be unrestricted sovereignty, and among them, the most important issue is precisely human rights, an issue in which state sovereignty shouldn't be infringed under no circumstances.¹¹⁷⁸

Jing Men adds that the Chinese don't combine the coexistence of sovereignty and human rights, but give full priority to sovereignty. China adopts

¹¹⁷⁶ FERRERO-WALDNER, B. and MANDELSON, P., op. cit.

¹¹⁷⁷ VANHULLEBUSCH, M., "China's Development Banks in Asia: A Human Rights Perspective", in NAKANISHI, Y. (Ed.), *Contemporary Issues in Human Rights Law-Europe and Asia*, (eBook), pp.1-219, p. 205, available at <https://link.springer.com/content/pdf/10.1007%2F978-981-10-6129-5.pdf>, last visited on 14/07/2018.

¹¹⁷⁸ MEN, J., op. cit., "Between Human Rights and ...", p. 536.

the above-mentioned attitude due to the century of humiliation. The Five Principles of Peaceful Coexistence (和平共处五项原则 *heping gongchu wu xiang yuanze*) are: mutual respect for territorial integrity and sovereignty, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence.¹¹⁷⁹

Obviously, the first principle is about sovereignty. But the rest of the Five Principles are also related to sovereignty. Montserrat Pintado Lobato states that several Chinese scholars, in a clear support of pacifism, maintain that the Five Principles of Pacific Coexistence are one of the key elements of the so-called International Relations Theory with "Chinese characteristics".¹¹⁸⁰ Ni Shixiong, Jin Yingzhong, and Feng Shaolei, quoted by Song Xinning, who is cited by Pintado Lobato, "maintain that Chinese characteristics should include: (1) standing on the side of peace-loving people in the world; (2) adhering to the 'Five Principles of Peaceful Coexistence'; and (3) using the Chinese style of language, expression, and thinking."¹¹⁸¹ Hence, apart from the support of pacifism, the third point shows that Chinese cultural background is also essential for the said Theory.

According to Jing Men:

"Deng Xiaoping followed the line developed by the first generation of Chinese leadership. At the opening ceremony of the 12th Party Congress in 1982, he stressed that 'the Chinese people appreciate friendship and cooperation with other countries and people, appreciate more the right of independence and self-determination through our long-term struggle. Any foreign countries should not expect that China will be dependent on them, not expect that China will damage its interest'. His speech demonstrated that China takes its state sovereignty very seriously. Sovereignty and national independence rank as the top national interest."¹¹⁸²

Along the line of history, there is a common factor in the recent Chinese History: sovereignty is top-ranked. The result is that the divergent optics of both sides are so different that the understanding between both sides is gravely hindered. Jing Men states that there is a great gap between the Chinese and Europeans regarding sovereignty and human rights, which is blocking their relations.¹¹⁸³ Perhaps a possible way out of the said blockage could be to promote

¹¹⁷⁹ Id., p. 541.

¹¹⁸⁰ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 124.

¹¹⁸¹ SONG XINNING, "Building International Relations Theory with Chinese Characteristics", *Journal of Contemporary China*, 2001, 10/26, pp. 61-74.

¹¹⁸² MEN, J., op. cit., "Between Human Rights and ...", p. 541-542.

¹¹⁸³ Id., p. 545.

the study of the other's side culture and language. Probably this way the gap between both sides could be reduced.

Jing Men adds a further vision on the balance between sovereignty and human rights: each other positions are quite distant. But the predicament is blocked not only due to the distance between both sides, but also because the divergent notions are basic, and hence all the derived aspects will also be diverse.¹¹⁸⁴ Jing Men states that the rift is so big on sovereignty and human rights that it caused the diplomatic crisis between the EU and China in winter of 2008.”¹¹⁸⁵ There is also mistrust in the bilateral relation, according to Jing Men.¹¹⁸⁶

There is a historical connection between sovereignty and human rights. Jing Men offers the explanation. Historic developments are sometimes paradoxical. Europe created the Westphalian sovereignty notion of the world, and exported it to China, while exerting imperialism on it, breaking China's own sovereignty, hence contradicting Europe's vision of sovereignty. A century later, China adopts the European concept of sovereignty which is long given up by Europe, which now considers that sovereignty can be expanded in certain situations, e.g. human rights violations, but this is rejected by China, which expressly attaches to sovereignty, the concept that Europe had exported to China.¹¹⁸⁷ Zsuzsa Ferenczy concurs with this vision of the gap regarding human rights and sovereignty, among other issues, blocking effectiveness.¹¹⁸⁸

The said author considers that the conceptual divergence is one of the main reasons for the gap between the EU and China. However she maintains that EU's fragmented stance regarding human rights also poses a hampering element against understanding.¹¹⁸⁹ Despite crises in the EU and in third states, which has affected the EU as an ideal example for a herald of human rights, it still remains as a world player in this regard.¹¹⁹⁰

The legal foundation of the EU's human rights policy is the “Charter of Fundamental Rights of the European Union”: “The EU adheres to international

¹¹⁸⁴ Id., p. 548

¹¹⁸⁵ Id., p. 545.

¹¹⁸⁶ Id., p. 548-549.

¹¹⁸⁷ Id., p. 549.

¹¹⁸⁸ FERENCZY, Z., op. cit., p. 17.

¹¹⁸⁹ Ibid.

¹¹⁹⁰ Id., p. 18.

rules and norms, and respect for human rights, as set out in the Charter of Fundamental Rights of the European Union.”¹¹⁹¹

The key element regarding the establishment of ideal standards in China will be time, according to Jing Men.¹¹⁹² The statistic satisfaction reflects a success for China, which shows the path to the Chinese vision of human rights, i.e. the socio-economic aspects.

Jing Men maintains that there are reasons for optimism, because the relations between the EU and China are improving. Moreover, there are reciprocal benefits.¹¹⁹³

China has started a campaign in favor of changing international bodies and covenants in favor of a not so Western-centric vision of human rights. This might well show that China, not any longer a mere order-taker, but already an order-shaper, is able to support a multicultural vision of certain worldwide notions.

Meanwhile, the EU cooperates with China in order to enhance its record of human rights:

“In 2016, the EU continued to pursue its commitment to promoting the universality of human rights and to help improve the human rights situation in China in an active and sustained way.”¹¹⁹⁴

Nonetheless, it could be concluded that a radical approach from the EU demanding the acceptance of European-styled human rights widens the gap between each other, according to Jing Men.¹¹⁹⁵

Furthermore, regarding the far reaching consequences of this issue, Jing Men submits that “despite the fact that since the end of 2003, both sides started to talk about EU-China strategic partnership, there is no evidence that the two have become strategic partners.”¹¹⁹⁶

¹¹⁹¹ “China and the EU”, *European External Action Service*, Wednesday, 11 May, Vol. 15, 2016, no. 52, p. 2, available at https://eeas.europa.eu/delegations/china_en/15394/China%20and%20the%20EU, last visited on 21/07/2018.

¹¹⁹² MEN, J., op. cit., “Between Human Rights and ...”, p. 549.

¹¹⁹³ Id., p. 550.

¹¹⁹⁴ EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 1-295, p. 194, available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

¹¹⁹⁵ MEN, J., op. cit., “Between Human Rights and ...”, p. 544.

¹¹⁹⁶ Id., p. 545.

It can be considered that the gap between both sides is due, at least, to three types of grounds, i.e. the historical ones, the cultural ones and the economic ones:

- A. The historical reasons: the main historical reason is the century of humiliation (Charlotte Ku maintains it lasted for a century and a half¹¹⁹⁷) which culminated in the Opium Wars and the subsequent destruction of the Summer Palace (圆明园 yuanmingyuan). After that humiliation, which China does not forget, it takes its own way.
- B. Cultural reasons. Confucius is related to this aspect. According to Francis Fukuyama, the key is to find a compromise between liberty and community.¹¹⁹⁸

According to Elizabeth Perry there are common points shared by Confucianism and Marxism.¹¹⁹⁹ Peter Chang concurs with this opinion.¹²⁰⁰

In China, there is a special consideration for the community, what is especially relevant in the most populated country in the world. The comparison with the EU population shows a clear asymmetry.

- C. Last but not least, the economic grounds, also related to the population and the respective per capita income and Gini index also tells a lot. The population and its density lead to the priority of the socio-economic human rights. According to China's official vision, only once the socio-economic ideal standard is reached, will China think on other view of human rights. This is another key of the question. But a developing country is also one of the world players. Furthermore, according to China's view, it will preserve stability.

Despite the three above-mentioned grounds, the EU is trying to save the gap, but obviously it is a difficult task, which will take time.

Regarding universal jurisdiction, Juan Pablo Cardenal and Heriberto Araújo maintain that the principle of the so-called universal jurisdiction has been a recurring issue for Spain, regarding Chile, Israel, the African Union or even heavy weights such as United States or China. Cardenal and Araújo state that the

¹¹⁹⁷ KU, C., op. cit., p. 67.

¹¹⁹⁸ FUKUYAMA, F., "Confucianism and Democracy", *Journal of Democracy* 6.2, 1995, pp. 20-33, p. 6 of the file, available at <https://pdfs.semanticscholar.org/f583/50fed4a1d86a4f2058aa0f79271b267cb783.pdf>, last visited on 21/07/2018.

¹¹⁹⁹ PERRY, E., op. cit., p. 40.

¹²⁰⁰ CHANG, P., "Confucian pluralism and China's dream of a harmonious world", *China Information*, Vol. 28, 2014, no. 382, DOI: 10.1177/0920203X14553371, pp. 382-404, p. 384, available at <http://cin.sagepub.com/content/28/3/382>, last visited on 22/07/2018.

said jurisdiction was reformed, due to economic issues, they maintain.¹²⁰¹ Sánchez Legido states that there are further financial aspects.¹²⁰² The legal knot of this concern is article 23.4 of the Spanish Act of the judiciary (LOPJ).¹²⁰³ The said article has evolved along the years.¹²⁰⁴ In 2006, the Spanish *Audiencia Nacional* admitted a complaint against five Chinese leaders; eventually, *Audiencia Nacional* upheld a dismissal of the case.¹²⁰⁵

But this topic is not exclusive to China.¹²⁰⁶ Notwithstanding, according to Sanchez Legido, the universal jurisdiction is universally in retreat.¹²⁰⁷ However, there is no unanimity in this regard. For instance, Máximo Langer maintains that universal jurisdiction is not in decline, but it has shifted “from ‘Global Enforcer’ to ‘No Safe Haven’”.¹²⁰⁸

¹²⁰¹ CARDENAL, J.P. and ARAÚJO, H., “Pólvora china para dinamitar la justicia universal”, *El Mundo*, 29/03/2014, available at <https://www.elmundo.es/opinion/2014/03/29/53356a98268e3e97408b4574.html>, last visited on 27/02/2021.

¹²⁰² SÁNCHEZ LEGIDO, A., “El fin del modelo español de jurisdicción universal”, *Revista Española de Estudios Internacionales*, No. 27, June 2014, pp. 1-40, esp. 8, available at <http://www.reei.org/index.php/revista/num27/articulos/fin-modelo-espanol-jurisdiccion-universal>, last visited on 27/02/2021.

¹²⁰³ Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, Jefatura del Estado «BOE» no. 157, 02/07/1985, BOE-A-1985-12666, p. 21, available at <https://www.boe.es/buscar/pdf/1985/BOE-A-1985-12666-consolidado.pdf>, last visited on 27/02/2021.

¹²⁰⁴ Ley Orgánica del Poder Judicial, (Competencia española para enjuiciar delitos de genocidio, lesa humanidad, terrorismo y otros -artículo 23.4 LOPJ-) available at <http://www.derechoshumanos.net/normativa/normas/spain/LO/1985-LO-06-1985-LOPJ-competencia-sp-genocidio-terrorismo.htm>, last visited on 27/02/2021.

¹²⁰⁵ ROMERO, J.A., “Supreme Court upholds dismissal of Tibet genocide investigation”, *El País*, 22/04/2015, available at https://english.elpais.com/elpais/2015/04/22/inenglish/1429711400_446213.html?rel=mas, last visited on 27/02/2021.

¹²⁰⁶ SÁNCHEZ LEGIDO, A., op. cit., p. 15.

¹²⁰⁷ Id., p. 14.

¹²⁰⁸ LANGER, M., “Universal Jurisdiction is not disappearing”, *Journal of International Criminal Justice*, 13 (2015), pp. 245-256, available at https://watermark.silverchair.com/mqv009.pdf?token=AQECAHi208BE49Oan9kkhW_Ercy7Dm3ZL_9Cf3qfKAc485ysgAAArMwggKvBgkqhkiG9w0BBwagggKgMIICnAIBADCCApUGCSqGSIB3DQEHATAeBglghkgBZQMEAS4wEQQMPVViDEH0kGrDRs18GAgEQgIICZiO42TY7GuJ2WK9kAvYGZKag2O1X9nf9S3cgpptD6EnIfHfAZXNpvhH7i02i0HLxJwKkNQQ0kuO4KSLHqtGhLBCc2pS0p2bhPxaueE2V10Hh_yVS3qbPkhXU61axozcUKnO-VBbrxmp23gfiJEKa7Xh3Ru8Snwkdrgt-diUiR_bWl7LWAXKanjbyhwvq8pXgE9zQ0HtpEqepYkHKF3Fb4LVjohFf7QGq_NEso1Mq9OS8PmadrOyaz6rOcGnYEP5pwO5rqznwooikZMg7yE9kQ1WDD12A9FAMvXGgP_pKEBCxDkc-beQCwj0cjOhHSh-B-ee77J75tQD1lDw29c48Z9x29qMpDzFCOt7ZZmD24K5KwB67IWPn0tIq6tZ4kiqxfi6eD0pzwrBjDbANpI2z4rY4f9YM279Kfv9uwH_LJYxN6wEwfgWVmtwRI8L4MIi830Sqv_T0w3qCY_d54lFI8AfHxi5Cl6KtJQQsrVoWqw4xny1mehsFveZTJ_fCodgOu7D4EvaMM9tMXu1jHGlriOi5nbzM9kBS5IIjOS1t1GfCfGI5GC-N63CK7ZhqcO_7_XGIgu0KEsDjV7GmBC4uwCzTNwNUqCuVhnnlIOXzAV8Ju1f8vVheonFXS5L0cXDe3ufksawVYLuBuEQkTo7GMmtJHwKcl7cNyWTzMIpwnX2H9FEtKFXtQSGB02K1WH_Swej1VOO2pND8D0iP0blbHxLuEiwOXrW

V.3.3 Especially vulnerable groups (children, women, handicapped...) in the EU and in China

We ascertain that both in the EU Member States and in China there are “Constitutional guarantees of equality for persons with disability”, according to the hand-book published by the UN called *Disabilities-Handbook for Parliamentarians-From exclusion to equality: realizing the rights of persons with disabilities*:

“Article 3 of the Constitution of the People’s Republic of China states that ‘disabled people enjoy the same rights as other citizens in respect of political, cultural and social aspects, as well as family life’ and that ‘it is forbidden to discriminate against, insult or harass disabled persons.’

Article 3 of the Basic Law of the Federal Republic of Germany states that all persons shall be equal before the law and that no person shall be disfavoured because of disability.”¹²⁰⁹

Apparently, at least regarding this issue, there is a minimum symmetry between the EU and China.

Art. 49 of the Chinese Constitution is especially relevant for disfavored groups. It is placed in “Chapter II The Fundamental Rights and Duties of Citizens”. It states that

“Article 49 Marriage, the family and mother and child are protected by the State. [...] Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents. Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is prohibited.”¹²¹⁰

However, according to Sanzhuan Guo, its applicability is not expressly included in China’s Constitution:

“The general applicability of treaties in China is not mentioned in its Constitution, which leaves the status of treaties unclear in Chinese courts, and varying from area to area. In the human rights area, the application of treaties at the domestic level requires

emfPEA1h1B-cgvMJAaaHlhBUcVYvxcIQIX1alejmNJgtPbA0g9Vqmjw98OTFMOWOwKow896pEA_FMz-cc4uY_, last visited on 27/02/2021.

¹²⁰⁹ *Disabilities-Handbook for Parliamentarians-From exclusion to equality: realizing the rights of persons with disabilities*, Secretariat for the Convention on the Rights of Persons with Disabilities United Nations Department of Economic and Social Affairs (UN-DESA),

¹²¹⁰ Constitution of the People's Republic of China, (Full text after amendment on March 14, 2004), Chapter II The Fundamental Rights and Duties of Citizens, available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372964.htm, last visited on 14/07/2018.

incorporation. The status of general comments and concluding observations made by treaty bodies is unclear, too.”¹²¹¹

Regarding this matter, we take a closer look at China’s Constitution, in order to determine the points of the Constitution with references to international treaties:

“Article 67 The Standing Committee of the National People’s Congress exercises the following functions and powers: (1) to interpret the Constitution and supervise its enforcement; [...] (14) to decide on the ratification or abrogation of treaties and important agreements concluded with foreign states; [...]”¹²¹²

The above-mentioned paragraph only enumerates the functions of the Standing Committee of the National People’s Congress, but there is no mention to the applicability of international treaties.

According to China’s Constitution

“Article 81 The President of the People’s Republic of China, on behalf of the People’s Republic of China, engages in activities involving State affairs and receives foreign diplomatic representatives and, in pursuance of the decisions of the Standing Committee of the National People’s Congress, appoints or recalls plenipotentiary representatives abroad, and ratifies or abrogates treaties and important agreements concluded with foreign states.”¹²¹³

Similar to our previous statement, the article above specifies one of the powers of the President of the People’s Republic of China.

Finally, according to Chinese Constitution:

“Article 89 The State Council exercises the following functions and powers: [...] (9) to conduct foreign affairs and conclude treaties and agreements with foreign States [...]”¹²¹⁴

Hence, given the above-mentioned quotations of China’s Constitution, we can conclude that the said statement by Sanzhuan Guo is accurate, as China’s Constitution makes no mention of “[t]he general applicability of treaties in China”. Furthermore, regarding the reason for the said lack of precision about the direct

¹²¹¹ GUO, S., “Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects”, *Chinese Journal of International Law*, Vol. 8, 2009, No. 1, pp. 161 – 179, p. 161, available at <http://chinesejil.oxfordjournals.org/>, last visited on 17/07/2018.

¹²¹² Constitution of the People’s Republic of China, (Full text after amendment on March 14, 2004), Chapter II The Fundamental Rights and Duties of Citizens, available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372964.htm, last visited on 14/07/2018.

¹²¹³ Ibid.

¹²¹⁴ Ibid.

applicability of the treaties, the reason might be the recurrent preservation of national sovereignty.

But what do the Constitutions of the EU Member States establish regarding the said issue? Let us take the example of one of the largest EU Member States: France. In its Constitution there is a special part dedicated to international treaties: “Title VI International treaties and agreements” (Unofficial translation. Original text: “Titre VI Des traités et accords internationaux”):

“Article 55

Treaties and international agreements ratified or approved have, since their publication, a superior legal range to that of the law, under the condition, for each agreement or treaty, of its application by the counterparty.”¹²¹⁵

In the paragraph above it can be seen that, with all legal caution and under the condition of reciprocity, international treaties have “a superior legal range to that of the law”. And the same applies to other EU Member States Constitutions, e.g. the Spanish Constitution, which, in its art. 96, establishes that international treaties which meet all legal formalities, “will become part of the domestic legal order”.¹²¹⁶

Compared to China’s Constitution, it is probable that the reason for such an asymmetry is the divergent vision of national sovereignty. As a result, even though China has signed international treaties, in this issue about especially vulnerable groups, the Courts have to decide on the applicability of the treaties. However does this mean that EU Member States Constitutions work smoothly and the reality of the EU reflects the texts of the laws? Not at all. In this regard, the Report titled “Make equality in law a reality in fact - Compilation of recommendations of the Committee of Ministers in the field of equality between women and men”, issued by the Council of Europe establishes that

“[...] Recommendation No. R (85) 2 of the Committee of Ministers on legal protection against sex discrimination, provided member states with guidelines which were remarkable both in ambition and in scope. They addressed issues in the field of work and employment, social security and pensions, taxation, civil law, in particular family law, nationality and political rights, along with measures of a general nature aiming to create a favourable environment for equality in public life, in the educational system and in the media, etc. The

¹²¹⁵ French Constitution, p. 24, available at http://www.assemblee-nationale.fr/connaissance/constitution_01-2015.pdf, last visited on 17/07/2018. Unofficial translation. Original Text: “Article 55 Les traités ou accords régulièrement ratifiés ou approuvés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve, pour chaque accord ou traité, de son application par l’autre partie.”

¹²¹⁶ Spanish Constitution (Unofficial translation. Original text: Constitución Española), Madrid, 21th ed., Tecnos, 2017, p. 83.

recommendation also approached the issue of positive action, or special temporary measures, to accelerate the achievement of de facto equality, as well as the need for states to create machinery to promote equality. From 1988, gender equality was no longer seen as a legal or social issue, but as a human rights principle and a fundamental criterion of democracy.”¹²¹⁷

According to the quotation above, in spite of all the legality deployed against sex discrimination, in Europe there is still work to do in the praxis. However, the key issue of the said paragraph is that gender equality is “a human rights principle”.

Regarding the implementation of international human rights standards in China, Sanzhuan Guo states that

“[t]he implementation of international human rights standards at a domestic level is well recognized as crucial for protecting human rights, and legal enforcement through courts is one of these key implementation measures. The People’s Republic of China (China) has ratified six of nine core human rights treaties and is also considering ratifying the International Covenant on Civil and Political Rights (ICCPR), which it signed in 1998. Sun notes that [...] research is required before the ratification of the ICCPR in China, including, among others, the problem of ‘what status will be given to the Covenant and how the provisions of the Covenant will be implemented in [the] Chinese domestic legal system’.”¹²¹⁸

According to the above-mentioned text, China is doing an effort to adhere to international legislation regarding human rights.

Montserrat Pintado Lobato submits that

“it is possible to identify an ongoing transformation in Chinese foreign policy practices from the non-implication towards a growing trend. In the case of international law, China is showing a growing involvement, especially in the 21st century, with the ratification of four human rights instruments, where China has ratified eight of the eighteen most important instruments”.¹²¹⁹

Moreover, Pintado Lobato also states that

“The four instruments ratified in this century are International Covenant on Economic, Social and Cultural Rights (created in 1976 and ratified in 2001), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (created in 2002 and ratified in 2008), Optional Protocol to the Convention on the Rights of

¹²¹⁷ Make equality in law a reality in fact - Compilation of recommendations of the Committee of Ministers in the field of equality between women and men, Council of Europe, November 2011, p. 5, available at <https://rm.coe.int/1680595b37>, last visited on 20/07/2018.

¹²¹⁸ GUO, S., op. cit., p. 161.

¹²¹⁹ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 324.

the Child on the sale of children, child prostitution and child pornography (created and ratified in 2002) and Convention on the Rights of Persons with Disabilities (created and ratified in 2008).”¹²²⁰

The following quotation by Sanzhuan Guo shows the enormous interest shown by China and the effort deployed to dispose of all possible mechanisms in favor of human rights for the vulnerable groups. Nonetheless, according to Sanzhuan Guo, China has not yet ratified the ICCPR, but this does not mean that China has not signed alternative mechanisms in favor of vulnerable groups:

“On the other hand, the lack of ratification of the ICCPR does not mean that China has no laws and regulations to protect relevant civil and political rights. Besides the ICCPR, it is also important for Chinese courts to implement other human rights treaties that China has ratified, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Children’s Rights (CRC), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on Elimination of Discrimination against Women (CEDAW), the Convention on Elimination of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD).”¹²²¹

There are some legal improvements in favor of vulnerable groups in China, as e. g. “[...] the EU welcomed the entry into force of the first national domestic violence law [...]”¹²²²

The EU has also contributed to the improvement of human rights of vulnerable groups in China:

“The EU also contributed to the improvement of human rights in China by supporting civil society organisations in China working specifically on human rights issues, under the EIDHR instrument, and by encouraging partnerships with the Chinese authorities through the nonstate actors (NSA) instruments. The projects focused on the strengthening the rule of law, access to justice and protection of the rights of vulnerable groups including women, children, minorities.”¹²²³

Regarding especially vulnerable groups, Sanzhuan Guo states that

¹²²⁰ PINTADO LOBATO, M., *Instituciones hegemónicas alternativas y legitimidad...*, op. cit., p. 324, see footnote 86.

¹²²¹ GUO, S., op. cit., p. 162.

¹²²² EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 195-196, available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

¹²²³ EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 1-295, p. 197, available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

“[b]esides Article 121 of the GPCL [‘Article 121. If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damages, it shall bear civil liability’], we can also find other civil remedy clauses in China’s human rights legislation, especially those laws on the protection of rights of those who belong to especially vulnerable groups, such as women, the elderly and disabled persons. Under Article 56 of the Law on the Protection of Rights and Interests of Women, civil liability can apply if property and other damages occur. Article 51 of the Law on the Protection of Rights and Interests of Disabled Persons has a similar provision.”¹²²⁴

The above-mentioned paragraph is quite specific about the applicable articles to the different cases in which vulnerable groups are involved.

Regarding this issue, according to the EU:

“The EU referred to the human rights situation in China in its Item 4 statements issued during the three regular sessions of the Human Rights Council in March, June and September. A number of EU Member States also joined a statement on China under Item 2 at the Human Rights Council in March. In August 2016, China accepted the visit of the UN Special Rapporteur on extreme poverty and human rights, which was the first visit of a UN Special Rapporteur to China since December 2010. One of the outcomes of this visit was the recommendation that China put in place ‘accountability mechanisms’ that citizens are able to use when their rights are violated.”¹²²⁵

Meanwhile, the EU is strict regarding the protection of minorities within the EU.¹²²⁶ The said protection was applied in the occasion of the enlargement process of the EU:

“Particular attention is paid to minorities within the context of the enlargement process. The Copenhagen criteria, designed in 1993 for countries wishing to join the EU, specifically highlight the protection of minorities. They state that ‘membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities’. The European Parliament has made clear the EU’s commitment to this vulnerable category, particularly with regard to the applicant countries for EU membership. In a resolution adopted in 2000, the Parliament called on the Council and the Commission to ‘enhance the ability of these countries to pass and implement laws aimed at countering discrimination against minorities.’”¹²²⁷

¹²²⁴ GUO, S., op. cit., p. 175.

¹²²⁵ EU Annual Report on Human Rights and Democracy in the World in 2016, pp. 1-295, p. 197, available at https://eeas.europa.eu/sites/eeas/files/annual_report_on_human_rights_and_democracy_in_the_world_2016_0.pdf, last visited on 21/07/2018.

¹²²⁶ In this point, a reference to the different terminology between the EU and China is necessary: the EU usually refers to “disfavoured collectives” or “minorities”, whereas China refers to “vulnerable groups”, which includes not only minorities, but also elderly people, women, children, which in fact are not minorities.

¹²²⁷ The European Union: Human Rights And The Fight Against Discrimination, Pamphlet No. 14 ,

Regarding the applicability of international covenants by Chinese courts, Sanzhuan Guo maintains that Chinese courts are competent to take measures to apply human rights treaties.¹²²⁸ Furthermore, China made several reservations regarding certain aspects of international treaties.¹²²⁹

The notion of national sovereignty is so essential to China, that it even affects the above-mentioned aspects of international treaties and bodies.

The following are the fundamental conventions on human rights signed and ratified by China, with the exception of the last one, the ICRMW. However, according to the United Nations Treaty Collection, China has not yet ratified the ICCPR.¹²³⁰

“China has ratified five of the seven major international conventions on human rights and signed one, as shown in the following table:”¹²³¹		
Name	Status	Data of signature and ratification
International Covenant on Economic, Social and Cultural Rights (ICESCR)	signed	Oct. 5 1998
International Covenant on Civil and Political Rights (ICCPR)	ratified	Feb. 28 2001
International Convention on the Elimination of All forms of Racial Discrimination (ICERD)	ratified	Dec. 29 1981
Convention on the Elimination of All forms of Discrimination against Women (CEDAW)	ratified	Nov.4 1980
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	ratified	Oct.4 1988
Convention on the Rights of the Child (CRC)	ratified	Jan.31 1992
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	not signed	---

Source: Compilation by the author of the thesis, based on the site http://www.chinahumanrights.org/CSHRS/Magazine/Text/t20080604_349282.htm

United Nations, Human Rights, Office of the High Commissioner, pp. 1-8, p. 5, available at <https://www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx>, last visited on 20/07/2018.

¹²²⁸ GUO, S., op. cit., p. 162.

¹²²⁹ WU, X., “From Assimilation to Autonomy: Realizing Ethnic Minority Rights in China’s National Autonomous Regions”, *Chinese Journal of International Law*, Vol. 13, 2014, pp. 55–90, p. 79, available at <https://academic--oup--com.uma.debiblio.com/chinesejil/article/13/1/55/292130>, last visited on 15/05/2019.

¹²³⁰ International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations Treaty Collection, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en, last visited on 11/02/2021.

¹²³¹ International Human Rights Conventions in China, China Human Rights, available at http://www.chinahumanrights.org/CSHRS/Magazine/Text/t20080604_349282.htm, last visited on 18/07/2018.

V.4 Asymmetries in migrations

V.4.1 China's migrations to the EU: source and destination

The EU-China relations, in most of realms, are asymmetric in favor of China. By way of example, there is an overwhelming trade imbalance in favor of China; another example is politics, in which the EU lacks inner cohesion. Asymmetries are essential for the existence of migration.¹²³² Regarding migration, few EU citizens migrate to China and, according to several scholars, the EU should encourage its citizens to migrate to the said Asian giant.¹²³³ Meanwhile, many Chinese migrate to the EU. This issue shows the so far overwhelming asymmetry regarding migration between the EU and China. People migrate to improve their lives. Hence, theoretically, China regarding migration would be in a weaker position than the EU. But migration does not only have disadvantages for migrant's countries of origins, because they can also gain competitive advantages out of migration. The main disadvantage of migration for the country of origin is the brain drain. Among the advantages for the migrating country of origin, there are the decrease in unemployment and the remittances. Worldwide, China is among the “main sources of emigration [sic] flows”¹²³⁴ and the second recipient of remittances.¹²³⁵ Furthermore, China's migration has a peculiar advantage for China: Chinese migrants sell a good deal of China's industrial production.

¹²³² HAMILTON, G. and FELS, D., “The Social Sources of Migration and Enterprise: Italian Peasants and Chinese Migrants in Prato”, Consortium For Applied Research On International Migration, *CARIM-East Research Report* 2013/46, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute 1-15, p. 1, p. 8, available at <https://link.springer.com/article/10.1007/s12140-014-9219-x>, last visited on 15/05/2019.

ASEM Ministerial Conference on Cooperation for the Management of Migratory Flows between Europe and Asia, 2002, pp. 1-3, p. 1, available at <https://www.mofa.go.jp/policy/economy/asem/conference/ccm0204.pdf>, last visited on 15/05/2019.

¹²³³ GARCÍA-HERRERO, A., KWOK, K.C., LIU, X., SUMMERS, T. and ZHANG, Y., “EU–China Economic Relations to 2025 – Building a common future”, *A Joint Report by Bruegel, Chatham House, China Center for International Economic Exchanges and The Chinese University of Hong Kong Building a Common Future*, 2017, pp. 1-67, p. 53, available at http://bruegel.org/wp-content/uploads/2017/09/CHHJ5627_China_EU_Report_170912_WEB.pdf, last visited on 15/05/2019.

¹²³⁴ ALONSO, J., “International Migration and Development: A review in light of the crisis”, *Economic & Social Affairs, CDP Background Paper*, No. 11(E), ST/ESA/2011/CDP/11(E) December 2011, 1-62, p. 26, available at https://www.researchgate.net/publication/254454805_International_Migration_and_Development_A_review_in_light_of_the_crisis/download, last visited on 15/05/2019.

¹²³⁵ “Migration and Remittances-Recent Developments and Outlook”, Migration and Development Brief, 31, April 2019, “Migration and Remittances-Recent Developments and Outlook” Migration and Remittances Team-Social Protection and Jobs-World Bank, p. 3, available at https://www.knomad.org/sites/default/files/2019-04/MigrationandDevelopmentBrief_31_0.pdf, last visited on 15/05/2019.

For centuries, the Chinese have migrated to Europe. Actually, the first Chinatown in Europe was established in the seventeenth century in Moscow.¹²³⁶ One could think that Chinese migrants should form a monolithic community, but that is not the case. The reason is because they have arrived in fragmented waves.¹²³⁷ Given the dimensions of China, just with the immigration from one of China's county, the figures are impressive. However, Chinese migration is fragmented, but it keeps cohesion among migrants from the same qiaoxiang (侨乡), which is a village or town inhabited by relatives of overseas Chinese and returned overseas Chinese.¹²³⁸

Asymmetry between states is one of the basic features of migration. According to Banister and Taylor,¹²³⁹ in China "[t]he usual estimate of around 100 million surplus rural workers constitutes about forty per cent of rural employment in farming, or one-quarter of all rural workers.' The said stunning statistic shows one of the probable causes of Chinese migration. Furthermore, the poorest people are those who might emigrate.¹²⁴⁰

To put the numbers in perspective, certain Chinese provinces are several times larger than any European country and certain provinces have each more population than any European member state. Just to grasp the asymmetry regarding population, by way of example, the metropolitan population of the city of Guangzhou is 44.294.245.¹²⁴¹

According to Xiang, China's migrants were only four per cent of the global population of migrants in 2013, and it is the country with the lowest rate of emigrants.¹²⁴² However, there is another statistical perspective: the UN Assembly states that China, with 10 million migrants, has worldwide the fourth largest

¹²³⁶ BENTON, G., "The Chinese in Europe: Origins and Transformations", *Religions & Christianity in Today's China*, Vol. I, 2011, No. 1, pp. 62-70, p. 64, available at https://www.eu-china.net/upload/pdf/materialien/RCTC_2011-1.62-70_Benton_Chinese_in_Europe.pdf, last visited on 15/05/2019.

¹²³⁷ LATHAM, K. and WU, B., "Chinese Immigration into the EU: new trends, dynamics and implications", *Europe China Research and Advice Network*, 2013, 1-64, p. 7, available at https://www.eu-china.net/upload/pdf/materialien/RCTC_2011-1.62-70_Benton_Chinese_in_Europe.pdf, last visited on 15/05/2019.

¹²³⁸ Pleco, op. cit.

¹²³⁹ BANISTER, J. and TAYLOR, J. "China: Surplus Labour and Migration", *Asia-Pacific Population Journal*, Vol. 4, 1989, No. 4, pp. 3-66, p. 4., available at <https://www.unescap.org/sites/default/files/APPJ-Vol-4-No-4.pdf>, last visited on 16/05/2019.

¹²⁴⁰ ALONSO, J., op. cit., p. 12.

¹²⁴¹ "The largest cities in China", *World Atlas*, available at <https://www.worldatlas.com/articles/20-biggest-cities-in-china.html>, last visited on 15/05/2019.

¹²⁴² XIANG, B., "Emigration Trends and Policies in China-Movement of the Wealthy and Highly-Skilled", *Transatlantic Council on Migration*, A Project of the Migration Policy Institute, February 2016, 1-23, p. 2, available at <https://www.migrationpolicy.org/research/emigration-trends-and-policies-china-movement-wealthy-and-highly-skilled>, last visited on 16/05/2019.

number of emigrants.¹²⁴³ China, with nearly 1.4 billion inhabitants, made up nearly twenty per cent of the world's population.¹²⁴⁴ As a result, we should not forget China's continental dimension: figures may seem enormous, but proportions are moderate.

Banister and Taylor state that in China there is no real unemployment, due to the official engagement to 100% employment.¹²⁴⁵ Actually, there is underemployment, which affects the productivity, but this is the lesser evil, in a country with the population of China.

The first peculiarity of China, as a country source of migrants is that it is a developing country, but it is also a world player. This socio-economic double condition has consequences for China, as it is a source of migration (as a developing country), but (as a world player) it is also the destination for other migrants, among which there are scientists and technicians, due to the transformation of China from the low-cost oriented factory of the world to a hi-tech world player.

China, with a view to globalization, is doing a great effort in order to attract talent. This way it helps to improve not only the country in itself, but also the links between China and the rest of the world.¹²⁴⁶ However, in this regard, we should consider that there are two probable effects: the first one is that China, as a source of unskilled migrants, is not unlimited. The other effect of the said economic trends plus relevant changes in China's demography is that China may attract international talents. Actually, according to the data from the sixth national census released by the National Bureau of Statistics (NBS) by the end of 2010 in

¹²⁴³ United Nations, Department of Economic and Social Affairs, Population Division, ST/ESA/SER.A/XXX, Changing population age structures and sustainable development - A Concise Report, 2017, pp. 1-27, p. 12, available at <https://www.un.org/en/development/desa/population/publications/pdf/trends/ConciseReport2017/English.pdf>, last visited on 15/05/2019.

¹²⁴⁴ XIANG, B., op. cit., p. 2.

¹²⁴⁵ BANISTER, J. and TAYLOR, J., op. cit., p. 4.

¹²⁴⁶ Centre for China and Globalization, "Attracting skilled international migrants to China A review and comparison of policies and practices", Centre for China and Globalization (CCG) International Labour Organization, p. 89. An Initiative funded by the Partnership Instrument (PI) of the European Union EU-China Dialogue on Migration and Mobility Support Project 支持中欧人员往来和移民领域对话项目, available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-beijing/documents/publication/wcms_570674.pdf, last visited on 15/05/2019.

mainland China were living 593.832 foreigners.¹²⁴⁷ As an example, in the city of Guangzhou are living 20,000 African residents.¹²⁴⁸

According to the Centre for China and Globalisation, there are a couple of issues to be taken into account regarding the new trend for China, as a migration country.¹²⁴⁹ First, most of foreign migrants in China can be ranked as “skilled” or “high-skilled”. Second, considering that the Chinese working population was 915.83 million in 2014, according to the Centre for China and Globalisation, the foreign migrant population is 600,000.¹²⁵⁰ Even in case all of them worked, the proportion of foreign workers to native workers would only be 0.09%. This improbable high percentage (do to the allowance of considering that 100% of foreigners are working) is still much lower than the very moderate Japan’s ratio of 0.3%, both of them much lower than 5%, typical of developed economies. The Thousand Talents Programme is, according to the Centre for China and Globalisation not successful regarding foreign talents, but it is a great success with respect to Chinese talents returning home, what in China is known as 海归 (haigui).¹²⁵¹ In fact, regarding labor force, the main aims of Chinese companies as Baidu are not foreign talents, but high-skilled Chinese who migrated to the USA; actually, fewer Chinese talents are attracted by the idea of migrating to the USA, but rather stay in China. China, perceiving this trend, is attracting more high-skilled Chinese talents back home.¹²⁵² However, according to the General Assembly of the United Nations, this is a long-standing policy.¹²⁵³

¹²⁴⁷ Xinhua, China's 2010 national population census, Embassy of the People's Republic of China in Denmark 中华人民共和国驻丹麦王国大使馆, available at <http://www.fmprc.gov.cn/ce/cedk/eng/tzgg/t819429.htm>, last visited on 16/05/2019.

¹²⁴⁸ LAN, S., “China gives and China takes’ African traders and the nondocumenting states”, *Journal of Global and Historical Anthropology*, January 2017, pp. 1-28, pp. 3-4, available at https://www.researchgate.net/publication/314126793_China_gives_and_China_takes_African_traders_and_the_nondocumenting_states/download, last visited on 15/05/2019.

¹²⁴⁹ Centre for China and Globalization, “Attracting skilled international migrants to China: A review and comparison of policies and practices”, Centre for China and Globalization (CCG) International Labour Organization, An Initiative funded by the Partnership Instrument (PI) of the European Union EU-China Dialogue on Migration and Mobility Support Project, 2017, 支持中欧人员往来和移民领域对话项目, p. 88, available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-beijing/documents/publication/wcms_565474.pdf, last visited on 16/05/2019.

¹²⁵⁰ Ibid.

¹²⁵¹ Id., p. 13.

¹²⁵² Center [sic] for China & Globalisation, Highly Skilled Immigrants Are Starting to Choose China Over US, available at <http://en.ccg.org.cn/archives/5054>, last visited on 15/05/2019.

¹²⁵³ United Nations General Assembly (2013) United Nations, A /68/190 General Assembly (2013) Distr.: General 25 July 2013 Original: English 13-40848 (E) 200813 *1340848* Sixty-eighth session Item 21 (e) of the provisional agenda* Globalization and interdependence, International migration and development, Report of the Secretary-General, pp. 1-22, available at https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/SG-report-Intl-Migration-and-Development-2013-A_68_190-EN.pdf, last visited on 15/05/2019.

There is a specific reason for migrating, typical to the Chinese society. In China, there is a basic concept: 面子(mianzi), which has no straight translation into Western societies, but is similar to “esteem; reputation; prestige; face”.¹²⁵⁴ Hence, to save one’s face or preserve appearances (保全面子 baoquan mianzi)¹²⁵⁵ is considered as a Chinese cultural value. This is one of the reasons for the Chinese coastal youngsters to migrate, as they see earlier illegal migrants returning home when they are well-off. At the sight of their sumptuous villas and their opulent ways of life, they feel they are losing face (丢面子 diu mianzi) and, in order to migrate and make money quickly, they feel compelled to fall in the hands of snakeheads (蛇头 shetou), i.e. human smugglers.¹²⁵⁶

Regarding the scheme of the Chinese migration, it starts in the above-mentioned qiaoxiang (侨乡) and ends at the destination of the migrant. According to Li and Wong, there is a “chain migration”, and the “migration service industry” obviously is a key element in Chinese migration.¹²⁵⁷ There is a symbiotic link between “the Chinese-owned ethnic economy and the Chinese-owned migration industry” and also the familiar economy of the migrants. The said symbiotic link conglomerates labour and capital inwardly the diaspora.¹²⁵⁸ There are also relevant references about migrant networks.¹²⁵⁹

Chinese migrants to Europe have arrived in many migration waves, and from distinct areas. According to Benton, there have been five migration waves from China to the EU: 1) sailors who jumped ship in the early XX century’s Europe; 2) migrants from Qingtian (青田) in the province of Zhejiang (浙江), a province on the coast of the East China Sea (who were peddlers); and from Tianmen (天门) situated in inland Hubei (湖北) province (who were acrobats and healers); 3) hundreds of thousands labourers hired in World War I to dig trenches in France, Belgium and Russia, many of which stayed after the war, and became

¹²⁵⁴ Pleco, op. cit., n. d.

¹²⁵⁵ Ibid.

¹²⁵⁶ CHIN, J., “Reducing Irregular Migration from China”, *International Migration*, Vol. 41, 2003, num. 3, pp. 49-72, p. 59, available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2435.00241>, last visited on 15/05/2019.

¹²⁵⁷ LI, M. and WONG, D., ‘Moving the Migration Frontier: A Chinese Qiaoxiang Migration Model?’ *International Migration*, 2017, 56/1, p. 70, available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/imig.12407>, last visited on 15/05/2019.

¹²⁵⁸ Id., p. 71.

¹²⁵⁹ United Nations General Assembly (2013) United Nations, A /68/190 General Assembly (2013) Distr.: General 25 July 2013 Original: English 13-40848 (E) 200813 *1340848* Sixty-eighth session Item 21 (e) of the provisional agenda* Globalization and interdependence, International migration and development, Report of the Secretary-General, pp. 7-8, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/meetingdocument/wcms_227969.pdf, last visited on 15/05/2019.

industry labourers, the only Chinese to do so in Europe; 4) the Chinese from the European colonies, who probably were the Chinese migrants in Europe with the highest socio-economic standard; and finally 5) the Hong Kongers from the New Territories.¹²⁶⁰ The said waves brought to Europe Chinese from many different geographical origins. But their fragmentation was not only geographical, but also socio-economic and cultural. But moreover, Pieke maintains that Chinese migrants in the EU speak three different dialects (which in fact can differ from each other more than European languages between themselves): 1.- Zhejiangese (浙江语 zhejiangyu), from Wenzhou (温州) and Qingtian (青田); actually, the languages from these two cities also differ considerably from each other; 2.- Cantonese (粤语 yueyu) and Hakka (客家语 kejiayu) from Hong Kong and the Pearl River Delta (大珠三角 dazhu sanjiao); and 3.- Southeast Asian Chinese speakers, including several dialects, as Hokkien or southern Fujianese (福建语 fujianyu) among others.¹²⁶¹

Fragmentation and high density are typical features of the Chinese migration. We consider that one of the reasons for fragmentation is the continental dimension of China. According to Fladrich, there are tight links between Chinese migrants from the same province, but little ties between migrants from different provinces.¹²⁶² This is what Fladrich calls a strong sub-ethnic dimension. Among others, Li and Wong¹²⁶³ also concur with Fladrich, but they attach special importance to the qiaoxiang (侨乡). We consider the qiaoxiang (侨乡) is based on the guanxi (关系). This peculiarity could also be named inner-ethnic dimension. But these migrants pertaining to the same village are also linked at the international level,¹²⁶⁴ so we consider it could be said that the guanxi (关系) is so strong that has an inner-ethnic dimension simultaneously with a transnational dimension. The Chinese diaspora as a whole is not united, due to its manifold

¹²⁶⁰ Ibid.

¹²⁶¹ PIEKE, F., "Recent Trends in Chinese Migration to Europe: Fujianese Migration in Perspective", *International Organization for Migration*, 2002, pp. 8-9, Prepared for IOM by University of Oxford, UK, available at http://publications.iom.int/system/files/pdf/mrs_6_2002.pdf, last visited on 25/07/2018.

¹²⁶² FLADRICH, A., "Chinese SMEs in Prato, Italy" In: ALON I., FETSCHERIN M., GUGLER P. (eds) *Chinese International Investments*, 2012, p. 250, Palgrave Macmillan, London, available at https://link.springer.com/chapter/10.1057/9780230361577_12, last visited on 15/05/2019.

¹²⁶³ LI, M. and WONG, D., op. cit. p. 64.

¹²⁶⁴ MA MUNG, E., 'La nouvelle géographie de la diaspora chinoise - Les moteurs de l'émigration et les communautés de migrants', *Accueillir* no. 249-250, mars-juin 2009, pp. 33, available at https://halshs.archives-ouvertes.fr/file/index/docid/865666/filename/MA_MUNG_2009_La_nouvelle_geographie_de_la_diaspora_chinoise.pdf, last visited on 15/05/2019.

LATHAM, K. and WU, B., op. cit., pp. 46-47.

origins.¹²⁶⁵ The concept of *guanxi* (关系) is organized in circles; the closer the circle, the more obligations it represents. The next of kin represents a close relation with plenty of obligations, while the people from another province are in a further circle. Obviously, the language plays an essential role in this balance of relations. The result is fragmentation in the whole Chinese migrants' community and tighter ties within the smaller circles of family, friends, village or town, and so on. Obviously, there are also tight national ties. It can be said that, regarding Chinese migrants and businesses, the *guan xi* (关系) hinges upon on the *qiaoxiang* (侨乡), i.e. the village or town inhabited by relatives of overseas Chinese and returned overseas Chinese. In this regard, according to the Worldbank,¹²⁶⁶ the Chinese diaspora heartens migration, and that's why people from the same town or village live together in the same migration destination.

Chinese are probably among the most fragmented of the ethnic minorities within the EU:¹²⁶⁷ they are divided by language, origin, class and generation. They are nearly as diverse as Europeans. We should keep in mind that, although China is a country, it has continental dimensions, and so does its population. Therefore, 2,8 million Chinese migrants are living in countries belonging to the Council of Europe,¹²⁶⁸ which means an enormous figure for the said institution, but it only represents 0.2 per cent of China's population.

Moreover, after the economic opening up policy (改革开放 *gaige kaifang*), a new wave of migration is arriving from Fujian (福建) to the EU. And this has represented a change in the Chinese migration to the EU, as now there is a proper transnational network.¹²⁶⁹ Within the said province, migrants come from two counties: Mingxi (明溪), which is a relative poor agricultural inland mountainous county, while Fuqing (福清) is a coastal tip within the region of Fuzhou (福州), the richest part in the Fujian (福建) province. The Fujianese migration arrived in

¹²⁶⁵ BENTON, G., op. cit., p. 68.

Pleco, op. cit., n. d.

¹²⁶⁶ "Global Economic Prospects", The World Bank, 34320, Economic Implications of Remittances and Migration, 2006, p. 61, available at <http://documents.worldbank.org/curated/en/507301468142196936/pdf/343200GEP02006.pdf>, last visited on 16/05/2019.

¹²⁶⁷ BENTON, G., op. cit., p. 68.

¹²⁶⁸ MARIANI, T., "Chinese migration to Europe: challenges and opportunities", Report, Committee on Migration, Refugees and Displaced Persons Rapporteur: Mr Thierry Mariani, France, Group of the European People's Party, Reference to Committee: Doc. 13197, Reference 3968 of 24 June 2013, p. 5, available at <http://website-pace.net/documents/10643/1264407/Rapport-Mariani-Migrationschinoises-EN.pdf/eedbb5e1-4932-48ca-bf22-09637e85ff1f>, last visited on 15/05/2019.

¹²⁶⁹ PIEKE, F., op. cit., p. 31.

the EU later than the Zhejiangese one. According to Frank Pieke,¹²⁷⁰ the Fujianese migration is still increasing, at such levels that the EU migration authorities will tighten the control levels; meanwhile, migration control sometimes consists of recurrent amnesties.

Furthermore, regarding the cultural level, Chinese migrants to Europe belong to both the educated classes as well as the low-skilled workers.¹²⁷¹ This issue increases even more the fragmentation of the Chinese migration in the EU.

Moreover, there are two peculiarities affecting the demography of Chinese migrants: let us take Spain as an example of an EU member state. The Chinese are the migrant group in Spain with the most children and youngsters.¹²⁷² Simultaneously, they are Spain's migration group with the second highest fertility rate, after Morocco. The fertility rate of Chinese migrants is 8.2%.¹²⁷³ However, the difference in the female population of both minorities is huge: Morocco, 96.975 women and 10.525 births, while China, 21.770 women, with 1.778 births. The subsistence of the Chinese minority is guaranteed.

V.4.2 The arrival of the Chinese in the EU: causes and effects. Migrations and economics

According to Latham and Wu,¹²⁷⁴ Chinese migration in Europe has a century and a half long History. Several generations of Chinese migrant workers have been living in the EU. EU-China economic partnership has contributed to the Chinese migration to the EU and has led Chinese migrants to profit new niches and business opportunities, which have diversified, away from the long-standing catering activities.¹²⁷⁵ There is a recent trend, in which given the growing interest in the West for authentic Chinese food, the usual Chinese restaurant adapted for Westerners is partially or totally transformed into a Chinese restaurant very similar to the ones which can be found in China. In the EU, these restaurants are

¹²⁷⁰ Id., p. 22.

¹²⁷¹ BAUGUIL, S., EU-China Dialogue on Migration and Mobility Support Project Funded by the Partnership Instrument (PI) of the European Union (EU) Workshop on China-EU Labour Migration: Scope and potential of China-EU two way labour mobility, recruitment cost and complaint mechanism 14-16 November 2016, Nanjing Summary Report, p. 2, available at <https://www.iom.int/sites/default/files/country/docs/china/IOM-China-A2-10-Workshop-on-Scope-of-Labour-Migration.pdf>, last visited on 15/05/2019.

¹²⁷² COLECTIVO IOÉ, "Inmigrantes extranjeros en España: ¿reconfigurando la sociedad?", *Panorama Social*, N° 1, junio 2005, pp. 8-9, available at http://n340.org/txt_n340/downloads/25_Inmigrantes.pdf, last visited on 25/07/2018.

¹²⁷³ Id., p. 11.

¹²⁷⁴ LATHAM, K. and WU, B., op. cit., p. 21.

¹²⁷⁵ Id., p. 7.

currently becoming quite popular both among the local Chinese population as well as with an increasing number of Westerners.

Second generations tend to adapt far better than the first ones. Regarding the second generation, Latham and Wu express their concern about them and the possibility that they could lose the links to their roots.¹²⁷⁶ This is a logical concern. However, Chinese schools, in spite of the fact that most of them teach only in the weekends, are doing a good job so that the second generation Chinese don't lose their Chinese roots. Furthermore, in order to avoid that their children lose their Chinese cultural background, when they are still young, many parents send them to study in China.

One of the peculiarities of the Chinese migrants, especially from the Zhejiang 浙江 province, is that they are very entrepreneurial. Núñez maintains that half of the employed Chinese migrants in Spain are self-employed. He considers that the Chinese represent 18% among the self-employed foreigners in Spain. In this way, since the financial crisis started, they have increased radically: 111%.¹²⁷⁷ According to the Elcano Royal Institute, Chinese population, with 180.000 individuals, is Spain's second most numerous non-EU nationality and the one which grew the most in 2017. Moreover, Chinese migrants in Spain are more than the half of non-EU self-employed citizens. Chinese self-employed migrants even grew in the times of financial crisis, due to their low exposure to the building sector as well as their access to capital, out of the Spanish banking circuit.¹²⁷⁸ This aspect shows the adaptability and dynamism of the average Chinese migrant. It also shows one of the reasons for the rise of Asia.¹²⁷⁹

A peculiarity of Chinese migrants is that they play a considerable role for Chinese industries, as they sell a good part of China's production.¹²⁸⁰ Zhejiangese are famous for their entrepreneurial capacities. Due to its booming economy in the

¹²⁷⁶ Id., p. 48.

¹²⁷⁷ NÚÑEZ, F., "El 'poder chino' se extiende entre los autónomos en España", *El Mundo*, updated on 25/06/2015 01:56 h, available at <http://www.elmundo.es/economia/2015/06/25/558b04e9268e3e3a228b4594.html>, last visited on 23/07/2018.

¹²⁷⁸ ESTEBAN, M. (coordinator), op. cit., p. 119.

¹²⁷⁹ MAHBUBANI, K., op. cit., n. d.

¹²⁸⁰ MA MUNG, E., op. cit., p. 34.

CHAN, K., "Migration and development in China: trends, geography and current issues", *Migration and Development*, 1/2, 2012, p. 189, available at <http://faculty.washington.edu/kwchan/Chan-migration-China-MD.pdf>, last visited on 15/05/2019.

last two decades, Zhejiang (浙江) has been a major destination for inner migrants.¹²⁸¹

According to Alonso one of the most outstanding tokens of globalisation are migration growing rates.¹²⁸² China takes part in the globalized world. The Fujianese migration to Europe is a good example of the way China is developing around globalization.¹²⁸³ Some authors consider that China has a lot to say about how globalization is developing.¹²⁸⁴ All this considerations reflect an increasing asymmetry between China and the EU.

Among the peculiarities of Chinese migrants is that many work for themselves, and the ones who don't, work for the ones who do, but exceptionally for Western companies. This way, in places as Prato (Tuscany, Italy) they built up a solid network of small or very small textile companies, which with few exceptions only employed Chinese staff. In the long run, the said companies showed a trend towards "ethnic vertical integration", as all the firms with which they contracted were Chinese.¹²⁸⁵

After World War II, Italian peasants were attracted by Prato, where they opened up small, family-run textile ateliers. Decades later, after the decline of many of those enterprises, Chinese migrants arrived in Prato and followed the same industrial pattern according to which Italian entrepreneurs had run their ateliers: "small-scale, family-run, and staffed by persons who lived in adjoining structures to the business at hand" but they innovated one aspect: they introduced *pronto-moda*.¹²⁸⁶

In general terms, much of the Chinese migration waves come from one city, town or village and goes to one destination. In this case, Chinese migrants came from Wenzhou (温州), in the province of Zhejiang (浙江) and arrived in Prato. In fact, ninety per cent of the Chinese who live in Prato come from Wenzhou (温州).¹²⁸⁷ Nowadays, the Chinese community in Prato has a considerable size, difficult to determine due to the unknown figure of the undocumented migrants.

¹²⁸¹ Id., p. 195.

¹²⁸² ALONSO, J., op. cit., p. 1.

¹²⁸³ PIEKE, F., op. cit., pp. 3-4.

¹²⁸⁴ MAHBUBANI, K., op. cit. MISHRA, P., op. cit. pp. 60-61.

¹²⁸⁵ Unione Industriale Pratese, "Evolution of the Prato Textile District", p. 6, available at <http://www.ui.prato.it/unionedigitale/v2/english/presentazione-distretto-inglese.pdf>, last visited on 16/05/2019.

LATHAM, K. and WU, B., op. cit., p. 35.

¹²⁸⁶ HAMILTON, G. and FELS, D., op. cit., p. 1.

¹²⁸⁷ BENTON, G., op. cit., p. 66.

Figures range from 14.000 to 25.000 Chinese; they make roughly ten percent of Prato population, which sums up to 180.000. Compared to the average Chinese population in Europe, it triples it, what gives us an idea of the density of the Chinese population in Prato.¹²⁸⁸ But others consider the Chinese population in Prato is considerably higher: 40,000 Chinese migrants in a population of 180.000.¹²⁸⁹ Note that the latter figure was estimated five years later than the first one. But there are other sources which state that Prato has a community of 45.000 Chinese, the second largest in the whole of Europe, after Paris.

The big part of migrants arriving in a wave come from the same qiaoxiang (侨乡), may work in the same economic branch, which also allows them to have ties with each other,¹²⁹⁰ and this way they can build up scale economies, based on their community. Scale economies will help them to be competitive. This way, they have a good command of labour, raw material, etc. It would have not been so easy if the same number of Chinese migrants wouldn't have had the link of the qiaoxiang 侨乡. In this way, the mere fact that migrants come from a Chinese village or town to a destination in Europe has economic relevance in itself.

In 2007, more than 2.500 Chinese companies were registered in Prato, which shows the Wenzhounese talent for business.¹²⁹¹ In June 2012, the number of registered companies at the Chamber of Commerce of Prato was 4,830, i.e. a 180% increase in ten years [sic].¹²⁹²

There are more recent waves in Prato: the ones coming from other areas different from Wenzhou (温州), mainly the Northeast (东北 dongbei), as the provinces of Heilongjiang (黑龙江) and Jilin (吉林). Another new kind of migrants is the Chinese woman, who arrives on her own or with her husband. Sometimes works for others, sometimes in her own company.¹²⁹³

¹²⁸⁸ FLADRICH, A., "Early Insights Into Chinese Entrepreneurship In Prato, Italy", this paper was presented to the 17th Biennial Conference of the Asian Studies Association of Australia in Melbourne 1-3 July 2008, p. 1.

¹²⁸⁹ LATHAM, K. and WU, B., op. cit., p. 35.

¹²⁹⁰ HAMILTON, G. and FELS, D., op. cit., p. 2.

¹²⁹¹ FLADRICH, A., op. cit., p. 6.

¹²⁹² "Evolution of the Prato Textile District", Unione Industriale Pratese, p. 6, available at <http://www.ui.prato.it/unionedigitale/v2/english/presentazione-distrettoinglese.pdf>, last visited on 17/05/2019.

¹²⁹³ FLADRICH, A., op. cit., p. 5.

Chinese migrants carried on with old Tuscan habits, i.e. worked in family production centres.¹²⁹⁴ Chinese business' mentality is adaptable, and Prato is a good example of it.

What is remarkable is that, as a result of the said migration, Chinese garment and leather companies competing against European companies did not come from China, but from within the EU. In fact, the said Chinese concurrence was also European, due to their location, but of Chinese origin.

After decades of success, mainly due to the concept of *pronto-moda*, Prato declined, facing challenges at three levels: local, global and structural. The local level had been determined by restrictive policies, the global one by changes and the structural one by hindrances which endangered the very survival of the Prato industry.¹²⁹⁵ Mariani is not optimistic about Prato, and informs about the appalling working conditions of some migrants there: he maintains that the company offers the worker the full package ready for working, including the job, but also accommodation and board, in the same premises where they work.¹²⁹⁶ Working hours, according to Mariani are unlimited and they are paid at a piece-rate.¹²⁹⁷ According to Mariani they didn't comply with many other regulations, and therefore the working conditions were poorly.¹²⁹⁸ Even several accidents have occurred, some of them with the result of dead migrants. Chinese migrants in Prato are criticized for having been the cause of the Tuscan crisis, but they were not. Actually, they were rather a response to it.¹²⁹⁹ In fact, the Chinese industry in Prato has been a revitalizing factor for part of the local industry.¹³⁰⁰

In June 2000, 58 Chinese perished in Dover as they were being smuggled into the United Kingdom. The world was shocked and, as a result, European leaders were more alert of the increasing Chinese human smuggling and human

¹²⁹⁴ BENTON, G., op. cit., p. 66.

¹²⁹⁵ CECCAGNO, A., "The Hidden Crisis: The Prato Industrial District and the Once Thriving Chinese Garment Industry", *Revue européenne des migrations internationales* [Online], vol. 28, 2012, n°4, pp. 43-65, available at <https://journals.openedition.org/remi/6211?lang=en>, last visited on 17/05/2019.

¹²⁹⁶ MARIANI, T., op. cit., p. 11.

¹²⁹⁷ Id., p. 9.

¹²⁹⁸ Ibid.

¹²⁹⁹ BENTON, G., op. cit., p. 66.

¹³⁰⁰ CECCAGNO, A., op. cit., p. 46.

trafficking into Europe.¹³⁰¹ Mariani states that, in February 2004, 23 Chinese cockle pickers drowned in the Morecambe Bay (the UK).¹³⁰²

According to Benton, globally, 23% of migration is illegal.¹³⁰³ The rates of illegal migration vary from country to country. This issue also reflects the fragmentation of Chinese migration.

Benton explains the difference between trafficking and smuggling. Although they are often assimilated, they are not synonyms.¹³⁰⁴ One of the features of smuggling is the acceptance of the smuggled person. Meanwhile, trafficking implies that, once the journey starts, the trafficked person is deceived or threatened with the use of force. Smuggling finishes as the journey ends, while the traffickers force their victims to work until they have paid their debt to the trafficking person, which can last for years.

Benton offers relevant statistic about this issue: according to US sources, in the 1990s every year 100.000 Chinese were trafficked into the EU. The fee varies from US\$10.000 to \$50.000.¹³⁰⁵ This debt used to adopt the form of a loan, on top of which the trafficked person used to pay a thirty per cent, to be deducted from the wage. Regarding the chances of the trafficked person to escape from this situation, they are none, as the trafficked person is an illegal migrant who does not speak the local language.¹³⁰⁶

In this regard, Thierry Mariani also expresses concern for the appalling situation of trafficking victims. He maintains that trafficking victims have no legal coverage; hence, they live in a situation of modern slavery.¹³⁰⁷ Obviously, in order to tackle trafficking and smuggling, coordination between the parties involved is needed. CBMM-China offers the authorities involved the chance to cooperate with each other. The project is supported by the IOM and the ILO as well as the EU, China and various member states.¹³⁰⁸ According to Xiang, the Chinese

¹³⁰¹ LACZKO, F., "Introduction: Understanding Migration between China and Europe", *International Migration*, Vol. 41, 2003, no. 3, p. 5, available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1468-2435.00239>, last visited on 17/05/2019.

¹³⁰² MARIANI, T., op. cit., p. 11.

¹³⁰³ BENTON, G., op. cit., p. 66.

¹³⁰⁴ Id., p. 67.

¹³⁰⁵ Ibid.

¹³⁰⁶ Ibid.

¹³⁰⁷ MARIANI, T., op. cit., p. 5.

¹³⁰⁸ Id, p. 12.

Government, engaged with emigration, has undertaken two positions regarding migration: “simultaneous liberalization and proactive intervention”.¹³⁰⁹

The EU, in its Factsheet EU China relations, within the part dedicated to Foreign And Security Policy, states that “[t]he EU and China work towards fighting global challenges, [...] addressing issues related to irregular migration [...]”.¹³¹⁰

A key legal instrument in this issue is the ASEM Ministerial Conference on Cooperation for the Management of Migratory Flows regarding the cooperation between Europe and China, which took place in Lanzarote, Spain, on 4 and 5 April 2002.¹³¹¹ In the said ASEM ministerial Conference, among others, were treated issues as illegal migration, which is becoming a challenge to ASEM members. However, there is a more recent international instrument, though not in the ASEM framework, but within the bilateral relations: the EU-China Dialogue on Migration and Mobility Support Project (支持中欧人员往来和移民领域对话项目). In this regard, for example, on 12 October 2015 was first launched the VIS. This system requires that all visa applicants must provide their biometric data, which improves the security of the system.

Worldwide, United States is the country which most benefitted from Chinese investor migrants, receiving 18,152 out of the more than 57,000 “approved Chinese main applicants 2009-2018”. Regarding the EU, among the most successful EMs are Portugal, Greece and Spain.¹³¹²

In Spain in 2013, the act formally named as Law to Support Entrepreneurs and their Internationalization (in fact, this Act introduced the Golden Visa) was enacted. This act (Article 63.2. b) establishes that purchasers of real estate worth 500,000 or more (minimum requirement for each applicant) are entitled to apply

¹³⁰⁹ XIANG, B., op. cit., pp. 17-18.

¹³¹⁰ “EU-China relations Factsheet”, p. 2, available at https://eeas.europa.eu/sites/eeas/files/factsheet_eu-china.pdf, last visited on 22/05/2018.

¹³¹¹ LACZKO, F., op. cit., p. 7.

¹³¹² NESHEIM, C., “57,000+ Chinese Spent More Than US\$44 Billion on Golden Visas in Last Decade”, Investment Migration Insider, available at <https://www.imidaily.com/china/57000-chinese-spent-more-than-us44-billion-on-golden-visas-in-last-decade/>, last visited on 25/02/2021. There are some remarks on this statistics at the beginning of this website.

for Spain's golden visa.¹³¹³ Juan Diego Quesada reports that "In 2018, there were 16,029 requests for a 'golden visa' of which 12,634 were granted".¹³¹⁴

Magdalena Martín Martínez submits that there are two simultaneous trends in this regard: on one side, there is a restrictive tendency in respect of EU citizens with socioeconomic dependence or who are in a precarious condition, and on the other side, there is a shift trying to attract citizens from rising powers, such as China or Russia, with high purchasing and investing power, what in a nutshell is called "cash-for-citizenship".¹³¹⁵

China is the country whose citizens are applying for most golden visas in Spain.¹³¹⁶ Regarding Chinese applicants as the nationality with the highest percentage among the applicants in a country, it is Ireland: 91% of the applicants for Irish Golden Visa are Chinese. Spain is, according to the said statistics, the country with the ninth highest percentage of Chinese Golden Visa applicants (35%).¹³¹⁷

Regarding the results of Spain's golden visa, eight months after the said act came into force, 81 golden visas had been granted, half of them to Russian and Chinese investors, out of which only 3 business projects generated jobs. These outputs are far from the declared purpose of the said act, according to Magdalena Martín Martínez.¹³¹⁸

Mutual knowledge is basic for mutual understanding. Mutual approach is the beginning of eliminating taboos. According to Statista, in 2015 in Europe there were 57 overseas Chinese schools and classes. New opportunities to strengthen the relation between the white hosts and the Chinese migrants emerge. There are precedents of bilateral agreements between EU member states and

¹³¹³ Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización, Jefatura del Estado, BOE núm. 233, de 28 de septiembre de 2013, Reference: BOE-A-2013-10074, available at <https://www.boe.es/buscar/pdf/2013/BOE-A-2013-10074-consolidado.pdf>, last visited on 25/02/2021.

¹³¹⁴ QUESADA, J. D., "Why wealthy families from Beijing are buying up apartments in Madrid", *EL PAÍS*, available at https://english.elpais.com/elpais/2019/04/08/inenglish/1554725966_757545.html, last visited on 24/02/2021.

¹³¹⁵ MARTÍN MARTÍNEZ, M., "Límites a la libre circulación de personas en la UE por razones de orden público, seguridad o salud pública en tiempos de crisis: una revaluación a la luz de la jurisprudencia del TJUE", *Revista de Derecho Comunitario Europeo*, ISSN 1138-4026, Year 18, No. 49, 2014, pp. 767-804, esp. 788-789, available at <https://recyt.fecyt.es/index.php/RDCE/article/view/38982>, last visited on 24/02/2021.

¹³¹⁶ DURÁN, Y., "China es el país que solicita más Golden Visa en España a pesar del Covid", *BRAINSRE*, 14/09/2020, available at <https://brainsre.news/china-es-el-pais-que-solicita-mas-golden-visa-en-espana-a-pegar-del-covid/>, last visited on 24/02/2021.

¹³¹⁷ NESHEIM, C., op. cit.

¹³¹⁸ MARTÍN MARTÍNEZ, M., op. cit., p. 789.

China with a view to integrating both communities, e.g. Chinese pedagogical institutions also open to the aboriginal population.¹³¹⁹ For example, in Budapest in 2003, 7% of the immigrant community was Chinese, what lead to a bilateral agreement for the establishment of a Chinese school with a double identity, accepting both Chinese and Hungarian pupils, which attaches importance to cultural interrelation.¹³²⁰

At the professional level, a closer understanding is possible through the cooperation of both sides or under the aegis of several international bodies dealing with migration. Another example: IOM organized “study visits and holding training workshops for immigration officials”, in order to improve the bilateral joint effort.¹³²¹

After the economic reforms (改革开放 *gaige kaifang*) and the opening of the migration requirements, the migration numbers rose. Chinese migrants started coming from the southern provinces of Zhejiang (浙江), Fujian (福建) and Guangdong (广东), but since 1990 they come from other places, such as the urban concentration of Beijing (北京), Shanghai (上海) and Tianjin (天津) and even from the Dongbei (东北), i.e. the Northeast, which comprehends three provinces: Heilongjiang (黑龙江), Jilin (吉林) and Liaoning (辽宁). Dongbei (东北) has a high concentration of SOEs. In the late 1990s, SOE reform made many workers redundant. Hence, many migrants come from that area.¹³²²

It can be said that nowadays the diaspora sums up to 35 or 40 million people.¹³²³ Nowadays there are three kinds of Chinese migrants: students, workers and traders.¹³²⁴

Recently, among the most successful Chinese migrants are the students. This phenomenon demonstrates the elevation in China’s cultural standards. Ma Mung states that at the beginning of the 2000s there were 460.000 Chinese students abroad, out of which twenty percent are in Europe.¹³²⁵ The figure from 1985 till 2004 has risen to 815.000. When they return to China, they are valuable for big companies.

¹³¹⁹ Statista (The Statistics Portal), Number of overseas Chinese schools and classes in Europe from 2007 to 2015, available at <https://www.statista.com/statistics/633174/chinese-schools-and-classes-overseas-in-europe/>, last visited on 17/05/2019.

¹³²⁰ MARIANI, T., op. cit., p. 13.

¹³²¹ LACZKO, F., op. cit., p. 7.

¹³²² LATHAM, K. and WU, B., op. cit., p. 19.

¹³²³ MA MUNG, E., op. cit., p. 34.

¹³²⁴ Ibid.

¹³²⁵ Ibid.

Other statistical criteria are used by Zhang: since 1978 (the end year of this statistic must be 2003, as it is the date of publication) the Chinese students abroad sum up 500.000.¹³²⁶

China's trade with the EU is growing, and simultaneously is growing the Chinese migrant population in the EU. According to Wu and Latham, in Europe only live 5% of the world total,¹³²⁷ but it is going through a swift growth of the Chinese population: despite a small share of the world total, Europe has experienced a rapid growth in the Chinese population: "from 0.60 million in 1980 to 1.45 million in 2000 and jumping to 2.15 million in 2007".¹³²⁸ Hence, in only 27 years it has nearly quadrupled.

Another type of Chinese migration, developed since the 1990s is the one attracting temporary or contractual workers to work for Chinese companies, mainly on road, train and petrol infrastructures. Many of these migrants are working in the Near and Middle East as well as in Southeast Asia.¹³²⁹ We consider that nowadays, much of this migration is due to the OBOR project, as many Chinese workers and high-skilled officials are engaged in the issue.

Since the 1990s China started the production of consumption goods. Simultaneously, Chinese migrants are coming to the EU with a view to importing the goods made at "the factory of the world". These migrants differ from those who migrated decades ago in the fact that nowadays they migrate with the necessary funds so that they can establish their businesses. These migrants play a relevant role in China's export sector. Anywhere in the world can be found Chinese wholesale distribution centres.¹³³⁰

According to Wu and Latham, the main reasons for the new Chinese migrations to the EU are: "state-owned enterprise (SOE) reform, China-Europe trade, rising consumer power and inequalities in China, as well as the internationalisation of higher education".¹³³¹ The reform of the SOEs has led many workers from Dongbei (东北), made redundant by the said reform, to come to the EU. Regarding the China-EU trade, the Chinese community is diversifying

¹³²⁶ ZHANG, G., "Migration of Highly Skilled Chinese to Europe: Trends and Perspective", *International Migration*, Vol. 41, Num. 3, pp. 73-97, p. 74, available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2435.00242>, last visited on 17/05/2019.

¹³²⁷ WU, B. and LATHAM, K., "Migration from China to the EU: The Challenge within Europe", in BROWN, K. (ed.), *China and the EU in Context*, London, Palgrave MacMillan, 2014, pp 303-327, pp. 303-304.

¹³²⁸ Ibid.

¹³²⁹ MA MUNG, E., op. cit., p. 34.

¹³³⁰ Ibid.

¹³³¹ WU, B. and LATHAM, K., op. cit., p. 305.

its business, turning to those with more added values. The rising consumer power and inequalities in China includes the two main effects of the rise of China's economy: part of its population has gained in purchasing power, and therefore more Chinese staff is needed in the EU, in order to assist the growing Chinese tourism¹³³² and to make goods for them; the other effect is the rising Gini Index. Internationalisation of higher education has drawn many Chinese students to the EU.

Chinese mass media in the EU play a decisive role regarding the relation between China and Chinese migrants. Probably the most relevant example of such media is CCTV, China's Central Television, which is a permanent link between China and migrants.

Regarding second generation Chinese, they connect with each other in the same way youngsters do in China, i.e. via social networks. The most conspicuous Chinese social network is WeChat, in China called 微信(Weixin), which covers many aspects, not only social network, but also China's and international news, etc.

The Chinese *migrants* in the second generation are strictly no migrants, and have their own distinct idiosyncrasy, as they know their culture of origin, but also the one of the place where they live. Actually they are Europeans.

Since 2001, the People's Republic of China fosters the relations between the long standing overseas Chinese communities and between those and the new ones, but China also intends to build up and strengthen the links between mainland China and the diaspora as a whole.¹³³³ According to Thunø, China is approaching Chinese migrants in an inclusive way.¹³³⁴

The LTP is a concept developed by Arthur Lewis. Lewis reached two conclusions: first, LTP it is the point when the binary rural-urban labour market in a certain country starts to succumb and consolidates; second, it is also the point where a labour surplus economy becomes a full-employment economy. Apparently, this is the case of China, although with lower growth rates and higher

¹³³² LACZKO, F., op. cit., p. 16.

¹³³³ MA MUNG, E., op. cit., p. 35.

¹³³⁴ THUNØ, M., "Reaching Out and Incorporating Chinese Overseas: The Trans-territorial Scope of the PRC by the End of the 20th Century", *The China Quarterly*, December, 2001, p. 912, available at https://www.researchgate.net/publication/231908833_Reaching_Out_and_Incorporating_Chinese_Overseas_The_Trans-territorial_Scope_of_the_PRC_by_the_End_of_the_20th_Century, last visited on 17/05/2019.

inflation ones, but China will have to build up innovation capability in order to enhance new technologies.¹³³⁵

According to Chan, China's inner demographic movements are constrained by a system based on the hukou (户口), which is the registered permanent residence.¹³³⁶ There are two kinds of rural-urban migration: the one with hukou (户口) and the non-hukou one, which is not properly considered migration (迁移 qianyi). In 2010, there were 85.8 million people living in a place with a hukou 户口 with registration from another province. In the same year, the non-hukou population was 221 million (while the total migration population worldwide was 214 million in 2010). Both figures just doubled in twenty years, i.e. since 1990. According to some authors, this situation enables the development of "the world's factory".¹³³⁷ In this regard, Chan and Yuan Zhang, Ting Shao and Qi Dong concur with the said opinion.

Chan states that in 2010 when China's economy was starting to recover from the world's debt crisis, several factories on China's east coast were having problems in finding workers in order to fill export orders.¹³³⁸ This was something unexpected, as just one year earlier twenty three million migrant workers were made redundant due to the global crisis. Moreover, in the same year there were several suicide attempts in the same factory and there were several labour disputes in the same region. Those days, the situation was named as labour 'shortage' and 'the end of labour surplus'.¹³³⁹ Others considered that China had reached the LTP which, in fact, they maintained had already arrived in the countryside in 2003,¹³⁴⁰ a situation which follows the Lewis model, according to which the LTP starts in the rural areas, but Liu makes no distinction, and considers that China reached the

¹³³⁵ HUANG, Y. JIANG, T., "What does the Lewis turning point mean for China?" *China Center for Economic Research*, Peking University, Working Paper Series, 2010-03, pp. 1-21, p. 20, available at https://www.researchgate.net/publication/233252385_What_Does_the_Lewis_Turning_Point_Mean_for_China_A_Computable_General_Equilibrium_Analysis, last visited on 17/05/2019.

¹³³⁶ CHAN, K., op. cit., p. 187.

¹³³⁷ Ibid.

¹³³⁸ Id., p. 198.

¹³³⁹ DEMICK, B. and PIERSON, D., "People, people everywhere in China, and not enough to work - How can China be facing a labor shortage? In the big manufacturing hubs, employers are scrambling", *Los Angeles Times*, March 28, 2010, available at <http://articles.latimes.com/2010/mar/28/world/la-fg-china-labor28-2010mar28>, last visited on 20/08/2018.

¹³⁴⁰ HUANG, Y. and JIANG, T., op. cit., p. 20.

ZHANG, X., YANG, J. and WANG, S., "China Has Reached the Lewis Turning Point", *IFPRI Discussion Paper*, 000977 May 2010, Development Strategy and Governance Division, p. 21, available at <http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/1737/filename/1738.pdf>, last visited on 17/05/2019.

LTP in 2002-2004;¹³⁴¹ real wages were increasing all year round.¹³⁴² Others consider that there is no evidence showing that LTP arrived in 2004-2005 [sic], but it was about 2010 when it reached the whole of China.¹³⁴³ Das and N'Diaye consider that in 2013, when they wrote their study, China was about to undergo a demographic shift.¹³⁴⁴ However, Chan four years after the occurrence of the supposed LTP in China, considered that there was not at all a LTP in the country. Chan maintains that there are other rather socioeconomic factors playing a role in this issue: migrant workers lack the local hukou 户口; the one-child policy has also depressed fertility; finally, as a result of the global crisis, migrant workers were obnoxiously treated by employers, therefore some of the migrant workers were deterred to go back to the Pearl River Delta to seek for jobs.¹³⁴⁵

In order to solve the problems caused by the LTP, Yuan Zhang, Ting Shao and Qi Dong suggest the following measures: 1) Improvement of the “human capital training systems”. The current nine year compulsory education should be prolonged to 12 years. Education systems for workers and for rural labour should be implemented and improved. 2) Agriculture should be modernised and developed. A “modern agricultural management system” should be urgently built up. 3) “National grain security” should be guaranteed by improving the “major grain-producing areas”, attaching special importance to the central region, with a view to encourage “pure peasants” to carry on the grain production.¹³⁴⁶

Economic migration is determined by two contradictory agents: the chance for material improvement associated to the change and the cost and risk implied by the option.¹³⁴⁷ Lately, the balance between the two said agents is changing: the number of Chinese ready to migrate is stagnant, while there are more high-skilled Chinese eager to return to China and more Europeans who immigrate into China.

¹³⁴¹ LIU, D., “Has the Chinese economy passed the Lewis turning point?” *Journal of the Asia Pacific Economy*, Vol. 20, 2015, no. 3, pp. 404-422, p. 404, available at https://www3.nd.edu/~nmark/ChinaCourse/Liu_Dequiang_LewisTurningPoint.pdf, last visited on 17/05/2019.

¹³⁴² ZHANG, X., et al. op. cit., p. 21.

¹³⁴³ ZHANG, Y., SHAO, T. and DONG, Q., “Reassessing the Lewis Turning Point in China: Evidence from 70,000 Rural Households”, *China & World Economy*, Vol. 26, 2018, num. 1, p. 4, available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/cwe.12226>, last visited on 17/05/2019.

¹³⁴⁴ DAS, M. and N'DIAYE, P., “Chronicle of a Decline Foretold: Has China Reached the Lewis Turning Point?”, *International Monetary Fund Working Paper*, WP 13/26, 2013, p. 5, available at <https://www.imf.org/external/pubs/ft/wp/2013/wp1326.pdf>, last visited on 17/05/2019.

¹³⁴⁵ CHAN, K. W., op. cit., pp. 197-198.

¹³⁴⁶ ZHANG, Y. et al., op. cit., p. 16.

¹³⁴⁷ ALONSO, J., op. cit., pp. 16-17.

Some authors consider that China's economy lengthens its high growing rates and turns into a tertiary sector-based economy.¹³⁴⁸ Therefore, it is evolving from an inner migration and international migration country into a relevant international immigration target. Due to socio-economic evolution and population patterns, China can't anymore take for granted an endless accumulation of low-skilled workers.

According to the United Nations report entitled *World Population Ageing 2015* (ST/ESA/SER.A/390), the support ratio (ratio of equivalent producers to equivalent consumers in the population) is expected to decay in the most aged countries, i.e. China, Germany, Italy, the Republic of Korea, Spain, Slovenia and Thailand.¹³⁴⁹ Note that China is the first enumerated country, but among the other ones, there are also four EU member states. China, as well as India and Spain, among other countries, are expected to have fewer births in 2015-2030 than in 2000-2015.¹³⁵⁰

Yuan Zhang, Ting Shao and Qi Dong state that China has exhausted its "population dividend", due to the family planning started in the 1980s.¹³⁵¹ When the one-child offspring became adult, they were not eager to endure severe working conditions. These authors require that measures should be taken regarding the family planning policy.¹³⁵² Concerning the above-mentioned population pattern, Asher states that in October 2015 China proclaimed that its one-child policy would be substituted by a two-child policy, which would need up to three years to fully come into force.¹³⁵³ Asher also maintains that the Total Fertility Rate (TFR) has been affected by its extended decay which, in turn, has altered the age structure and, hence, labour force trends.¹³⁵⁴ Apparently, the two-child policy will be not enough, given the above-mentioned circumstances.

Regarding the impact of ageing on the labour force, Asher considers that probably the impact of the two-child policy in China will be low, therefore the

¹³⁴⁸ PIEKE, F., op. cit., p. 41.

¹³⁴⁹ "World Population Ageing 2015", United Nations, New York, 2015, ST/ESA/SER.A/390 Department of Economic and Social Affairs, Population Division, p. 39, available at https://www.un.org/en/development/desa/population/publications/pdf/ageing/WPA2015_Report.pdf, last visited on 17/05/2019.

¹³⁵⁰ "Economic & Population 2030, Demographic challenges and opportunities for sustainable development planning", United Nations, New York, 2015, p. 10, available at <https://www.un.org/en/development/desa/population/publications/pdf/trends/Population2030.pdf>, last visited on 17/05/2019.

¹³⁵¹ ZHANG, X., et al. op. cit., p. 21.

¹³⁵² Ibid.

¹³⁵³ ASHER, M., "Ageing China Switches To Two-Child Policy", 2015, p. 2, available at <https://www.researchgate.net/publication/285236925/download>, last visited on 8/8/2018.

¹³⁵⁴ Id., pp. 2-4.

country's age structure will remain as foreseen: the population aged sixty years old will be 36.5 percent of the nation's population.¹³⁵⁵

China, according to certain authors will have to reorient its development strategy in favour of worker's skills. As industries become more "technology- and knowledge-based", they require more skilled staff.¹³⁵⁶

One of the possible effects of the LTP within the migrations between the EU and China is the growing migration from the EU to China. To attract high-skilled migrants it is convenient to keep in mind the essence of what they are expecting: "to enjoy an overall positive migration experience".¹³⁵⁷ The key for the said issue is to ease the culture clash; therefore, we consider that two of the main questions are the environment and the cultural atmosphere.

Regarding the BCS, which is a work permit for the whole EU, the European Commission considers that it lacks coherence and harmonisation between the EU member states and, as a result, the BCS is somehow a fiasco.¹³⁵⁸ Furthermore, the system is unbalanced as, e.g. in 2013 ninety per cent of the whole Blue Cards issued in Europe were emitted by Germany.¹³⁵⁹

Apart from the above-mentioned changes in Chinese demography, there are also changes in the rest of the world regarding China. One of the new migration trends are students from all over the world attracted to study in China. Their main destinations are Beijing and Shanghai, but Chinese courses for foreigners are offered in many cities over the country. The Chinese State offers grants for foreign students.

¹³⁵⁵ Id., pp. 4.

¹³⁵⁶ ZHANG, X., et al. op. cit., p. 21.

¹³⁵⁷ Centre for China and Globalization, "Attracting skilled international migrants to China: A review and comparison of policies and practices", Centre for China and Globalization (CCG) International Labour Organization An Initiative funded by the Partnership Instrument (PI) of the European Union EU-China Dialogue on Migration and Mobility Support Project, 2017, 支持中欧人员往来和移民领域对话项目, p. i., available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-beijing/documents/publication/wcms_565474.pdf, last visited on 17/05/2019.

¹³⁵⁸ "Highly Skilled Immigrants Are Starting to Choose China Over US", 39 984 Center [sic] for China & Globalisation, available at <http://en.ccg.org.cn/archives/5054>, last visited on 17/05/2019.

¹³⁵⁹ Ibid.

V.5 Conclusions

There is a legal key point affecting sovereignty and human rights in China: unlike in the EU, China's Constitution does not establish the direct application of the international treaties. This way, China also preserves its sovereignty.

Regarding the death penalty in China, the main reason for this issue is the economy, and there is no social acceptance for the abolition of the death penalty.

In China there is a national action plan on human rights. There is also a safeguarding system on human rights. In this point, we shouldn't forget that China considers it is high time to allow it to make contributions to the theory and practice of international law, including the death penalty. The EU is also cooperating to the debate on the issue, and has developed the "EU Guidelines on Death Penalty", but probably from the Asian point of view this question exceeds the admissible limits of sovereignty. Eventually, the death penalty will be abolished, but it will take time.

The key for the protection of human rights in China is a reasonable rule of law as governing element of the country. The starting point for human rights in China was the policy of reform and opening-up (改革开放 *gaige kaifang*) undertaken by Deng Xiaoping (邓小平).

Regarding "Western" human rights in China, some authors maintain that the country is implementing policies in this direction. China wishes to make contributions to the theory of international law, including human rights.

Regarding the protection of China's environment, the fact that obligations regarding the protection of the environment are not exclusively sustained by the principle of reciprocity should be taken into account. The logic of international law appoints to environment as a single good, which actually is common to the whole humankind. However, the views of environment and the priority given to it differ depending on the degree of development of the country: developing countries insist in their right to develop, but developed countries stress the relevance of the environment for the whole humankind and for the earth. Developing countries don't deny this point, but consider that the developed countries have already run along the development course, and on the way they have also polluted a lot, therefore now it is their own turn to develop. It is a

typical catch 22 situation. A probable way out could be via the mutual confidence, so that developed countries help developing countries to build up on the base of the green technologies.

Regarding the EU's view about the situation of human rights in China, the Asian country has done an enormous effort in order to catch up with the EU's degree of human rights but according to the EU, there is still plenty to do.

In respect of the gap between each other's view on human rights between the EU and China, there are three grounds for such a situation: historical, cultural and economic ones. The historical ground is based on the century of humiliation, including the Opium Wars and the Unequal Treaties. The base for the cultural grounds is Confucianism and its points in common with Marxism. The economic reasons are mainly each one's economic situation and other factors, such as e.g. the Gini index.

In respect of especially vulnerable groups, both in the EU and in China, there are mechanisms for their protection, according to the UN. Regarding this issue on the theoretical level, there is some symmetry between the EU and China. However there is a difference between both sides: international treaties can be immediately applied in the EU, but not in China, where judges are competent.

In relation to EU-China migrations, there is asymmetry in favor of the EU, because more Chinese migrate to the EU than vice versa. Asymmetries (labor surplus, difference in income, etc.) are the basis for migration. The reason for the said migration is the search for a better life. In general terms, migration has the disadvantage of the brain drain, but the advantage of lowering the unemployment rates and receiving the remittances. However, regarding China, there are three peculiarities: first, in general, Chinese migrants are very entrepreneurial; second, they sell goods made in China; and third, when they are old and generally well-off, Chinese migrants often follow an old Chinese proverb: “落叶归根 (luoye guigen)”, which verbatim means “The falling leaves settle on the roots.”, i.e. “A person residing elsewhere finally returns to his ancestral home.” As a result, many Chinese migrants return home when they are old (sometimes when they are still young) and well-off, what is another advantage for the Chinese economy. As a result, China has turned a weakness into a competitive advantage.

Chinese migration is fragmented due to various factors, because it came to the EU in different waves, they have different places of origin, languages and

even socio-economic standards. All these factors create a centrifugal force. However, each group is under the effect of a much stronger centripetal force, with magnetic strength: the qiaoxiang (侨乡), which is the village or town in which the relatives of the emigrated Chinese and the returned Chinese live. The whole migrants' community coming from the same village or town hinges upon on a strong-linked network, around which the migrants live and work. The qiaoxiang 侨乡 is both inner-ethnic and transnational; and it is able to keep the resources within the diaspora. In this way, thanks to the qiaoxiang 侨乡, it has been possible for the Chinese diaspora to build up scale economies, based on their community, which allow them to be competitive. The factor strengthening the qiaoxiang (侨乡) is the guanxi (关系) meaning connections or relationships, and establishes the relations within the Chinese community.

Most of the scholar community admits that China has reached the LTP, what means that an economy is no longer a labour surplus economy. Hence, it could be assumed that the Chinese LTP will have an effect in migrations. But there are other noteworthy factors: the Chinese LTP is at least partially due to the demographic consequences of the one-child policy. Many EU member States are also under severe demographic circumstances. Furthermore, some authors consider that China's LTP will cause lower growth rates and higher inflation rates. Hence, most probably migrants would remain abroad. The LTP regards China's inner labor market, but the occurrence of the LTP in China would, in our opinion, affect China's migration to the EU, but this does not imply it will affect the said asymmetries. Asymmetries, at least in the medium-term, will remain and will still be in favour of China. The reason is because nowadays the gap between the EU and China is still considerable. The view from the EU to China is changing as well. Currently, there is a huge interest from the EU regarding China, e. g. to study or work in the said country.

VI. GENERAL CONCLUSIONS

Along our thesis we have made remarkable findings, which we expose in the following pages.

There is a period still influencing the relations between the EU and China: the century of humiliation (1839-1949) which includes the Unequal Treaties. The above-mentioned century of humiliation stands for the horrors unleashed along more than a century as result of the trade on opium. China did not accept such ignominy. Hence the Opium Wars broke out between the European powers and China. The powers which took part in the first Opium War (1839–42) were Britain and China, and in the second Opium War (1856–60), Britain was supported by France. China was defeated. As a result, the Unequal Treaties were imposed on the Asian country by the Europeans. Such events haven't been forgotten by China. According to official statements, it will not be humiliated again. To impose trade on opium was an evil attitude which has stigmatized the Chinese regarding the Europeans.

However, in the trading history between Europe and China there are two cases which show that a relative symmetry and understanding is possible between both sides: the Silk Road (130 B.C.-1453 A.D.) and the Manila Galleon (1565 A.D-1815 A.D.).

The Silk Road was an example of trading coordination between Europe and China, but the first real case of globalization was the Manila Galleon (organized by the Spanish Empire), because it linked Europe, America and Asia. The trade carried out by the Galleon greatly depended on the sangleyes, who were Chinese traders established in their own district in Manila, called Parián.

The Spanish-Chinese Friendship, Trade and Navigation Treaty, signed in 1864, had little reciprocity and much imposition. No wonder, because its sample was the Unequal Treaties. Due to a breach of the Treaty, the evident slavery on the Africans was succeeded by the surreptitious slavery on the Chinese, because in the Philippines they were cheated with offers to work in the Spanish American colonies (mostly Cuba) and on arriving there, they were made slaves, or they were kidnapped in the Philippines and conveyed to the American colonies with the same purpose. They were the so-called *culíes*. Their situation was so appalling that in 1874 the Qing (清) government sent a delegation to Cuba, the so-called Cuba Commission, which reported on the said inhumane living conditions. Furthermore, the Spanish case was not an exception, as just the same happened in the British, French and Dutch colonies in the Americas, Southeast Asia and Africa.

A more recent milestone is, when in 2001, China accessed the WTO as a fully qualified member (what in Chinese is called 入世 *rushi*). Deng Xiaoping (邓小平) was the architect of all the economic reform implemented in the 80's, necessary for the said admission. This is a historic turning point, as it marks the completion of the integration of China in the international society. However, it has also led to a legal dispute. We analyze this aspect in Chapter III (the Economic Dimension). The process to the admission in the WTO meant an enormous reform for China and was crucial for its future.

Probably the major conceptual divergence between the EU and China is about sovereignty. The EU inward vision might seem flexible compared to the Chinese one, but the EU has not gained sovereignty from its member States. Actually, the EU's concept of sovereignty is based on the principle of attribution of competences. Meanwhile, China considers that sovereignty is essential, and is not ready to cede the least of it. Regarding third States, the EU has an expansive vision of sovereignty, because it usually considers that it can export its vision of human rights. Meanwhile, China's inward vision is strict. Regarding third States, the Asian giant is also restrictive. An issue related to sovereignty as well as to human rights is the Responsibility to Protect (R2P), developed by the Canadian government. The three pillars of the R2P are: first, the State is responsible to protect its population from genocide, war crimes and crimes against humanity; second, the international community, which bears the responsibility to assist states to uphold the responsibility to protect; third, the international community has the responsibility to protect populations in diplomatic ways or with the use of force, according to the UN Charter, if a State is unwilling or unable to protect them. This third pillar is the one which China, in its Responsible Protection, applies in a much more restrictive way. China suspects that the West, via Human Rights, might tend to interfere in third states' home affairs.

Moving on to other issues, China intends to upgrade its role in the international society: from being a mere order taker to become an order shaper. Several authors claim that the new global order should not just be built by Western powers, but other players should also take part in its development. As a world player, China is already contributing to the theory of international relations with institutions such as the above-mentioned RP (responsible protection); the Tian Xia (天下), which criticizes Western theories because they consider the unit of analysis is the State, while it maintains that the right parameter is the whole world; or the formula for National Whole Power developed by Yan Xuetong:

$NWP=(M+E+C) \times P$ (National Whole Power=(Military Power + Economy Power + Cultural Power) x Political Power), which differs to the one of the creator of the idea of soft power, Joseph Nye ($NWP=HP+SP=M+E+P+C$) (HP=Hard Power; SP=Soft Power), because Yan Xuetong considers that the key element is politics, hence it should not be added, but multiplied. Meanwhile, the EU is not playing a decisive role in this field. However, in our opinion, nowadays there are two major factors affecting the said formula: on one hand, the growing role of soft power (i.e. $SP=P+C$); on the other, there is an issue which is increasing: globalization (although nowadays on its online version). Hence, the “C”, which stands for culture, is gaining momentum, given the fact that the understanding between cultures is necessary. Without cultural understanding, the other elements of the formula will be useless, at least in the long term.

An essential aspect to gauge the legal asymmetries is the realm of the physical, legal, institutional and human reality. The EU is a partnership of countries, which holds a part of a continent, while China is a unitary country, which has continental dimensions, both in size and in variety, covering an area similar to that of the whole of Europe, with 56 ethnic groups. These asymmetries are pivotal to understand the bilateral relations between both sides.

Finally, at least in general terms, in the EU there is a unitary notion of the rule of law. In Chinese this concept (法治 fazhi) has two meanings: on one hand, it means rule of law, but on the other it means rule by law. The differences between the two meanings are substantial.

Economy is considered the core of the EU-China relations. China exports to the European Union are roughly 250% of what the European Union exports to China. Trade is one of the major asymmetrical aspects in the EU-China relations. Transactions on goods are clearly in favor of China, while trade on services is in favor of the European Union. But the surplus for China in the first aspect is so daunting compared to the surplus in favor of the EU (16 times more) that the final balance is overwhelmingly in favor of China. The main reason for such an asymmetry between goods and services is that China's advantage is due to its working force and industrial system, while the EU preponderance in services is based on its qualified labor. High-quality industrial sectors imply better trade balance. For instance, Germany has a favorable trade balance with China not only in services, but also in goods. We consider that the common factor for such a positive trade balance in both aspects is the know-how.

We have compared trade between both sides along history. From the deep and extensive findings we have made, some of the most relevant ones regard supply and demand as well as trade balance or imbalance. The economic reform implemented by Deng Xiaoping (改革开放) was a revolutionary change for China. The economic reform was such a success that in 1995-1996 tables turned and the trade imbalance became in favor of China, which has experienced a clear evolution from being the factory of the world, making produces with no originality, to a country producing innovative high-tech devices. A key factor for this success is China's adaptability.

In respect of trade balance or imbalance, in the e-commerce, as well as in the BRI, we can see not only the trade imbalance in favor of China, but also that it is covering gradually more business areas. Furthermore, China is launching a new strategy: it is exporting not only goods, but also services. Jack Ma, co-founder of Alibaba, has presented to the world the Electronic World Trade Platform (eWTP), which enables small and medium enterprises (SMEs) to expand worldwide and have access to faraway markets. In its own website, it is stated that this platform does not want to substitute the WTO, but to complement it.

The Manila Galleon, the BRI and the e-commerce have a similarity: sangleyes used to finance the Spaniards resident in Manila in their business operations via the Manila Galleon, while the BRI shows that China is also a financing power. Finally, the e-commerce also behaves according to the said pattern, specifically the fintech companies, which are modern financial institutions. A comparable case is also the Asian Infrastructure and Investment Bank, which lets China conform transcontinental cohesion. Meanwhile, the EU lacks cohesion.

Soft power is a not compelling but attractive power. The EU and China exert both kinds of power. The EU is a longstanding player regarding soft power. Meanwhile, China, a traditional hard power state, is improving its abilities in the realm of soft power, as for instance with its promotion of an extensive network of Confucius institutes, a plan for worldwide university exchanges and its grid of international television channels in several world languages.

Francis Fukuyama published in 1989 in *The National Interest* its article named "The end of History", according to which, after the collapse of the USSR, the Western liberal ideology is the only existing one, influencing the whole world. We do not concur with this theory, because China has adapted to the Western

ideology, but only apparently. Inwardly, China keeps its own cultural background. In this respect, it can be said that Fukuyama's theory is not accurate, according to the situation nowadays. Moreover, History has not ended, but there is a new one, determined to a great extent by the Asia-Pacific factor. Hence, it can be said that asymmetry has substituted the East-West dichotomy. The key factor of the East-West dichotomy was the conflict, while in the asymmetries as an analytical framework special attention is paid to the divergences and lack of understanding between the two sides and its causes.

The respective visions of international relations are also divergent, as the EU is in favor of a world in which international multilateral organizations play a preponderant role, issuing norms and checking that they are abided. Meanwhile, China is in favor of a multipolar world. However lately China advocates multilateralism, and in fact it is in favor of international organizations.

The new land corridors along Eurasia are another issue affecting the international relations between both sides, especially the complementary policies implemented by China. Since 1993, the EU is developing the TRACECA. So far, the Chinese BRI (previously named OBOR) is much more successful than the TRACECA. Furthermore, there are two other policies affecting the EU: the 16+1 and the Southern Europe initiative. China does not necessarily create distortion within the EU, as it is not needed; it just takes advantage of the EU's lack of cohesion. In this respect, the EU has shown uneasiness, as reflected in the Joint Communication to the European Parliament and the Council-Elements for a new EU strategy on China.

The EU and China have divergent Weltanschauungs about human rights. The Western one underpins on political, civil and social rights, while the Chinese one hinges upon on economic, social and cultural rights. Regarding human rights, the Chinese notion of sovereignty also emerges, this time linked to the idea of independence. According to the official view, only by the exercise of sovereignty will the State be able to allow the people to enjoy their human rights. Meanwhile, in the EU human rights are inextricably linked to democracy. Regarding the exercise in China of what in Europe is understood as human rights, they are also considered, but only once the society had reached an ideal economic standard.

Regarding the applicability of international agreements, especially in the sphere of human rights, there is a divergence between the EU and China. In the EU member States, international covenants have the highest legal rank, while in

China, in case of conflict between national laws and international agreements, the former prevail over the latter. This is another example which shows the importance that China attaches to sovereignty.

Regarding the death penalty, there is another evident divergence between the EU and China. The death penalty is not applicable in any EU member State. Meanwhile, it is in force in China and it enjoys a general social support. Its abolition, if any, would happen in a phased way and in the long term.

In relation to EU-China migrations, there is an apparent asymmetry in favor of the EU, because more Chinese migrate to the EU than vice-versa. Regarding China, there are three peculiarities: first, in general, Chinese migrants are very entrepreneurial; second, they mainly sell goods made in China; and third, when they are old and generally well-off, Chinese migrants often return home, what is another advantage for the Chinese economy. As a result, China has turned a weakness into a competitive advantage.

Since the dawn of the third millennium, in China has emerged a new socio-economic phenomenon: the so-called LTP, according to which the labor surpluses have ended. China's LTP might have an impact on China's migration to the EU.

After the analysis carried out along the thesis, our general hypothesis has been confirmed: in fact, the EU-China relations are asymmetrical, and so have been mostly along History, with the exception of short periods of time among periods of divergence. We ascertain the evolution of the asymmetries in the said relations. Their peculiarity is how radically tables have changed from being overwhelmingly in favor of China, to be clearly in favor of Europe, due to the Unequal Treaties, as a result of the Opium Wars. Since the reform policy of the 80's, the asymmetry turned back in favor of China again. In our view, asymmetrical relations can be analyzed through the comparison between the EU's and China's institutions and projects.

Regarding our first specific hypothesis, i.e. the causes for such asymmetry, they are diverse, essentially historical and cultural ones e. g. regarding the different historical views, in which China pays special attention to the so-called century of humiliation. However, both the Silk Road and the Manilla Galleon are examples showing that a generally balanced and lasting relation between both sides is possible. Regarding the legal perspective, the visions of sovereignty are divergent. Asymmetries are evident in the economic matters (not only regarding

trade imbalance, but also the differences regarding IP), and still growing in favor of China. The BRI is a case which affects both the field of international relations and the economic one, where the growing differences between both sides are conspicuous. Finally, the human dimension reflects, on one side two different views e. g. regarding human rights (with opposite applicability of international treaties, which especially affects this realm), and on the other one, contrasting realities, as for instance, the migratory phenomenon, which is intensive from China to the EU, but scarce in the reverse way. In a nutshell, there are asymmetries between both sides and probably will still grow. Notwithstanding, more balance between both sides would lead to more stable and lasting relations.

Regarding the second specific hypothesis, i.e. to ascertain what is the main trend regarding the asymmetry (will the asymmetry grow or diminish?) we consider that for the time being and even in the short and medium term the asymmetry will still grow. This opinion is based on several points: first, apparently, nowadays globalization is decreasing, what could damage Chinese exporting power, but in fact it is not, because there is a powerful digital globalization, due to the pandemic. Second, in spite of the initial effects on Chinese economy, for the time being the EU is more affected by it than the Chinese one. Third, so far China's BRI is showing it has more capabilities than EU's TRACECA."

The method we have implemented along our thesis has proven to be suitable: given the fact that this is a holistic thesis, the use of History (first dimension) or Economy (third dimension) as analytical frameworks have been decisive for the result of our thesis, regarding concrete and complete dimensions, complimentary to Law and International Relations. Moreover, other fields of study, regarding certain geographical (in respect of the physical comparison between both sides or about migration) or demographical aspects (as in the case of the LTP or regarding the locations of origin and destination of migration) have played a meaningful role as auxiliary sciences. The comparative analysis has been the core of the study of the differences between the EU and China. We have compared the views expressed in official documents, private sources and in doctrinal works originated in Europe and in China. Finally, the whole of the said methodology has helped us to substantiate that there is not a single cause for the asymmetries, but there are series of causes ranging from historical to idiosyncratic, cultural and the ones regarding values.

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ADDENDUM COVID-19

COVID-19 is so transcendental that it marks the beginning of a new age, which could be named the COVID-19 era. This pandemic has altered many aspects of human life, including international relations, especially the relations between the European Union and China. Sovereignty, competitiveness and globalization are concepts to be understood in reciprocal influence nowadays. This pandemic is spreading through the same ways as globalization.¹³⁶⁰ *Prima facie* the world is undergoing a process of de-globalization, affecting the EU-China relations. But after a deeper analysis, we might discover that appearances can be deceiving, because digital globalization is increasing.

Moreover, the object of the thesis has suffered the onslaught of the COVID-19, but at the same time the pandemic has given even greater relevance and topicality to the object of the thesis. The COVID-19 has brought the object of our thesis to the daily lives of citizens, who now perceive asymmetries between the EU and China as never before.

Global trade could decline by 13-32% in 2020 as a result of the disruption of normal economic activity and life caused by the COVID-19 pandemic worldwide.¹³⁶¹

The European Union was late in reacting to the pandemic but has since initiated comprehensive action, not only internally but also internationally.¹³⁶²

Europe should have a sense of community.¹³⁶³ Member States intend to retain their sovereignty rather than cede it to the EU. Indeed, rebalancing such a feeling, at the level of the citizen, could lay the foundations for the development of cohesion between Member States and institutions. In the normative order, there is

¹³⁶⁰ Iliana Olivé y Manuel Gracia, “¿El fin de la globalización? Una reflexión sobre los efectos de la crisis del COVID-19 desde el Índice Elcano de Presencia Global”, *Real Instituto Elcano*, ARI 43 (2020), 14/04/2020, p. 7, available at <http://www.realinstitutoelcano.org/wps/wcm/connect/e08d7209-b66d-4946-8fe7-c045fc128375/ARI43-2020-Olivie-Gracia-fin-de-la-globalizacion-reflexion-efectos-crisis-COVID-19-Indice-Elcano-de-Presencia-Global.pdf?MOD=AJPERES&CACHEID=e08d7209-b66d-4946-8fe7-c045fc128375>, last visited on 21/04/2020.

¹³⁶¹ World Trade Organization, “Trade set to plunge as COVID-19 pandemic upends global economy”, 08/04/2020, available at https://www.wto.org/english/news_e/pres20_e/pr855_e.htm, last visited on 02/10/2020.

¹³⁶² European Commission, Timeline of EU Action, available at https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/timeline-eu-action_en, last visited on 02/10/2020.

¹³⁶³ Morillas, P., “Hay una normalización del papel de China en el mundo”, CIDOB, Cadena Ser – Hoy por hoy – 26/3/2020, available at https://www.cidob.org/prensa/pol_morillas_hay_una_normalizacion_del_papel_de_china_en_el_mundo, last visited on 02/10/2020.

still room for the development of the European citizenship.¹³⁶⁴ The European Council (EC) develops policies to improve European cohesion. To this end, this body has released 37,000 million Euros, within the cohesion policies, to deal with the consequences of the COVID-19. Furthermore, the EC is promoting the Multi-annual Financial Framework, which will have to play an essential role in the recovery of the EU. Among its aims is to promote cohesion through solidarity.¹³⁶⁵

In the EU there is interest in regaining control of globalization. It is about achieving sovereignty through European integration. In fact, if an EU member state isolates itself from global value chains, it will become less competitive and hardly attractive to investors.¹³⁶⁶

The crisis triggered by this pandemic will have lasting effects on EU-China relations, even once the crisis is over.¹³⁶⁷

China is the oldest and most resilient civilization, with a comprehensive long-term planning.¹³⁶⁸ This will therefore be another field in which the dispute for world leadership will be fought.¹³⁶⁹ China has used its advantage in terms of resilience, adaptability and dynamism.¹³⁷⁰ Confucian influx, which submits the individual to the society, and is still present in the Far East, is being essential in the results of the policies against the pandemic not only in China, but in most of Asian societies, compared to the Western ones. Such philosophical attitude

¹³⁶⁴ European Union, "EU citizenship", available at https://europa.eu/european-union/about-eu/eu-citizenship_en, last visited on 02/10/2020.

¹³⁶⁵ European Council, "Report on the comprehensive economic policy response to the COVID-19 pandemic", 9/4/2020, available at <https://www.consilium.europa.eu/en/search/?filetypes=PAGE&Keyword=Report+on+the+comprehensive+economic+policy+response+to+the+COVID-19+pandemic>, last visited on 02/10/2020.

¹³⁶⁶ Cœuré, B., "Taking back control of globalisation: Sovereignty through European integration", European Central Bank - Eurosystem, 28/03/2018, available at <https://www.ecb.europa.eu/press/inter/date/2018/html/ecb.in180328.en.html>, last visited on 02/10/2020.

¹³⁶⁷ John Seaman, "Introduction: China as partner, competitor and rival amid Covid-19", [in John Seaman, coord.: *Covid-19 and Europe-China Relations A country-level analysis*, European Think-tank Network on China (ETNC) Special Report – 29/04 (2020)], p. 5, available at <http://www.realinstitutoelcano.org/wps/wcm/connect/8c964538-388b-4ab0-aa58-a02f16cbd909/ETNC-Special-Report-COVID-19-Europe-China-Relations-2020.pdf?MOD=AJPERES&CACHEID=8c964538-388b-4ab0-aa58-a02f16cbd909>, last visited on 17/06/2020.

¹³⁶⁸ Kishore Mahbubani, "Has China Won? The Chinese Challenge to American Primacy", in *Ambassadors Brief*, available at <https://mahbubani.net/2020/03/31/has-china-won-the-chinese-challenge-to-american-primacy/>, last visited on 06/07/2020.

Ignacio Ramonet, "Ante lo desconocido - La pandemia y el sistema-mundo", en *Le Monde Diplomatique*, 04/05/2020, available at <https://www.eldiplo.org/wp-content/uploads/2020/04/Ramonet-pandemia.pdf>, last visited on 13/07/2020.

¹³⁶⁹ Stefan Schmalz, "Der Corona-Crash in China", en *PROKLA* 199, 2/06, (2020), p. 355, available at <https://doi.org/10.32387/prokla.v50i199.1878>, last visited on 08/06/2020.

¹³⁷⁰ Kishore Mahbubani, *The New Asian Hemisphere: The Irresistible Shift of Global Power to the East*, Washington, PublicAffairs, 2009.

implies a straight solidarity, which is yielding far better results in the fight against the COVID-19.

One of the major precedents of the COVID-19 was the SARS, which took place between 2002 and 2004. However, China recovered quickly: only 12 months after the SARS, China's PIB increased by 9.4%.¹³⁷¹

Regarding the legal dimension, COVID-19 has affected sovereignty: in the wake of the pandemic, the EU considers that the health sector is strategic. Thus, in the Motion for a Resolution of the European Parliament B9-0149/2020, 14.4.2020, p. 21, it makes several conspicuous statements:

- a) On one side, due to the special circumstances, European Parliament does not defend the free market, as usual in the EU, but the recovery of the technological sovereignty for the EU
- b) Reshoring of production of strategic medical supplies
- c) Despite the above-mentioned actions, the EP is not convinced of the outcome of the said issues and suggests the diversification of import sources¹³⁷²

Hence, a redefinition of essential elements of international relations is taking place: sovereignty, competitiveness and globalization. This affects other areas, to which the new visions of sovereignty apply, apart from the already mentioned health area: the political area (in the EU there is interest in regaining control of globalization; it is a matter of achieving sovereignty through European integration) or the technological area (data traffic). In short, the conclusion of this point is that we live in a globalized world, and therefore, extremely competitive, in which uncompetitive countries lose sovereignty, which is barely recoverable afterwards. This is evident in the said Motion for a Resolution of the European Parliament.

The COVID-19 has had an effect on trade relations between the EU and China, and specifically, it is worth asking whether the pandemic will cause a change of paradigm in terms of the geographical location of European companies' production: will offshoring continue (a vehicle for globalization) or will reshoring (relocation, a vector of de-globalization) or nearshoring (similar to offshoring, but the location of the production is not as distant as the Far East) triumph? All

¹³⁷¹ China Briefing, "China Trade Rebound – The Asian Financial Crisis and SARS Impact, Post Coronavirus Implications", available at <https://www.china-briefing.com/news/china-coronavirus-rebound-op-ed/>, last visited on 14/02/2020.

¹³⁷² European Parliament, Motion for a Resolution, Plenary sitting B9-0149/2020, 14.4.2020, p. 23, available at https://www.europarl.europa.eu/doceo/document/B-9-2020-0149_EN.pdf, last visited on 01/09/2020.

options have advantages and disadvantages. In short, so far there is no option more competitive than the current offshoring. Furthermore, in the current state of things, reshoring would involve a decrease in the purchasing power of Western consumers, due to the foreseeable increase in prices.

Many of the countries that in the last decades undertook offshoring are going to opt for de-globalization, that is, for reshoring, but with limitations. A total EU-China disengagement is not only unlikely but impossible. Precisely in sectors such as high technology, four circumstances come together: first, they are strategic; second, the EU does not have a preponderant position in them; third, China is a power in this field; fourth and last, as a result of the COVID-19, physical globalization could diminish, but certainly digital globalization is growing, due to worldwide data traffic, and this is precisely another strategic sector.¹³⁷³ In short, the consequence of this reasoning is the growth of asymmetry in favor of China also in this field.

In terms of international relations, COVID-19 will affect, among other aspects, soft power, which will grow, as demonstrated by BRI and 5G. 5G, consisting of the fifth-generation mobile technology network, is 10 to 20 times faster than the current 4G, bringing mobile connections into the snapshot category. It is relevant that Ericsson and Nokia have recognized their inability to compete with Huawei's production costs, so they are willing to cooperate with this Chinese company. In this regard, the European Parliament, regarding the reports of the Body of European Regulators for Electronic Communications (BEREC), states that the traffic of fixed and mobile networks has increased during the crisis of COVID-19. It therefore encourages member countries to establish their own 5G networks.¹³⁷⁴ The 5G is a clear example of the current situation in the industrial and commercial aspect. Traditionally, high quality products have been manufactured in Europe, but they are not as affordable worldwide. In a first phase, since the 80s of the 20th century, China manufactured offering cheap prices, but with the result of limited quality. The pattern developed by the Chinese industry in the last decade was to maintain limited prices, but in a second phase has considerably increased its quality. And the current paradigm, in a third phase, is the result of their insistence on innovation: 5G. China has developed a technology that is currently exclusive, which allows it to impose its conditions. This has strategic consequences, due to

¹³⁷³ Ortega, A., "The Deglobalization Virus?", *The Globalist-Rethinking globalization*, 18/03/2020, available at <https://www.theglobalist.com/coronavirus-covid19-pandemic-globalization-deglobalization-globalism/>, last visited on 02/10/2020.

¹³⁷⁴ European Parliament, *op. cit.*, p. 23.

two factors: on the one hand, it is a communication technology and, on the other, it is an exclusive technology. Hence, 5G is an issue with direct impact on the sovereignty of States. These are changes that go beyond the temporary situation, with directly structural effects. At the same time, examples such as the said ones help China to grow as an ideational power. These are capacities that feed each other.

The Asian giant is at the forefront “in the construction of 5G networks, in artificial intelligence, quantum computing and supercomputers” and, furthermore, “is the source of five branches of the world economy: pharмоchemistry, automotive, aeronautics, electronics and telecommunications.”¹³⁷⁵

It is undeniable that the COVID-19 is part of the object of our thesis, since it was initially declared in China, and it is devastating to the EU. We have analyzed the pandemic along the dimensions of our thesis. Furthermore, we must make a general mention of the COVID-19. It affects all the dimensions of the thesis, but above all it is a human drama. COVID-19 is a test of the capacity and resistance of international actors. The EU, due to the crisis, is experiencing difficulties on two levels: on the one hand, the damage inflicted by the virus on the population and the European economy and, on the other, the divisions within the EU that have been exposed due to the crisis. Cohesion is essential for the sustainability of the EU, but so is solidarity. In the wake of the pandemic, Europe has demonstrated its ability to react, developing two relevant projects: the multiannual framework and the Next Generation Europe. However, the EU should overcome its own internal inconsistencies and reassess the hierarchy of policy objectives it intends to achieve vis-à-vis China.

In order to understand the EU-China relations nowadays, we analyze the document of the General Secretariat of the Council, called "Extraordinary meeting of the European Council (17, 18, 19, 20 and 21 July 2020)-Conclusions", EUCO 10/20, CO EUR 8 CONCL 4, regarding the effects of COVID-19. But this instrument does not exclusively refer to the effects of COVID-19. Moreover, the Conclusions make use, for example, of an instrument aimed to deal not with the pandemic but with globalization: the European Globalization Adjustment Fund, in paragraph 135, page 59, under "Heading 7. European public administration",

¹³⁷⁵ Raúl Zibechi, “A las puertas de un nuevo orden mundial” [in Néstor Borri, coord.: *Sopa de Wuhan-Pensamiento contemporáneo en tiempos de pandemias*, Editorial ASPO (Aislamiento Social Preventivo y Obligatorio), 2020], pp. 115-116, available at <https://repositorio.uca.edu.ar/handle/123456789/10038>, last visited on 12/07/2020.

specifically "Flexibility: special thematic instruments". This refers to workers made redundant by globalization.¹³⁷⁶

The EU therefore recognizes the effects of globalization on Europe. It is positive to face one of the keys to world changes. The EU also takes action to stimulate the European economy and try to avoid job destruction.

In the "Expenditure" section, Heading 1 (p. 18 of the Conclusions) is dedicated to the Single Market, Innovation and the Digital Economy. The first element refers to cohesion; the second to an essential aspect of the Chinese economy: innovation; and finally, one of the keys to globalization, in which China is dominant: the digital environment. In short, these are aspects that aim to improve the competitiveness of European companies and, therefore, prepare the EU for globalization. The "Connecting Europe" Mechanism is relevant, because it mentions the trans-European networks, which produce four decisive benefits for the development of the EU: they facilitate inter-European communications, encourage socio-economic and territorial cohesion, promote a more competitive social market economy, and finally, contribute to the fight against climate change. Thus, these communication networks are a good example of positive and inclusive EU policies.

One of the consequences of the lack of leadership in the EU was initially Euroscepticism, due to the loss of credibility of the institutions. We live in times that demand individual leadership, but above all, collective leadership, something for which Europe does not yet stand out. The EU must develop an awareness of Europe and transfer it to its citizens, as the reaction to the pandemic.

The question will be not only if the EU changes its supplier, but also in what economic situation the EU will be left as a destination for Chinese exports. This will clearly be one of the consequences of the economic debacle that is likely to hit the old Europe. In other words, it is not only a question of whether the EU will want to change its preferred trading partner, abandoning China, but also, given the aforementioned economic situation, to what extent China will pay special commercial attention to Europe.

Furthermore, it should not be forgotten that COVID-19 is a global pandemic, so the EU must also be coordinated at the global level.

¹³⁷⁶ European Council, "Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020)– Conclusions", EUCO 10/20, CO EUR 8 CONCL 4, available at <https://www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf>, last visited on 25/07/2020.

Questions arise about whether the world is going to move from a process of globalization to a process of de-globalization. We believe that there will be no such process on a full scale, as it is clear that digital globalization has increased, although physical globalization may decrease. As for what the EU's strategies towards China should be, one option would be reshoring, as long as it is competitive. To improve European know-how, the EU would have to increase its effort in R&D, but also in certain key knowledge sectors in the field of new technologies, as well as innovation and creativity. An essential issue is the development of digital networks, which allow us to digitize. This is one of the areas in which China is most competitive. In fact, it is number one worldwide. The EU should make an effort to be among the international players producing these cutting-edge technologies. In this aspect, competitiveness also prevails, but it also projects strategic effects on sovereignty.

All of the above leads us to conclude that, after COVID-19, the asymmetry between the two sides will at least not diminish. Moreover, it is likely that EU-China relations will become even more asymmetrical, in favor of China. Throughout the history of relations between the two sides, as we have pointed out, there have been times when asymmetries have alternated in favor of one side or the other. Therefore, it cannot be said that the current asymmetries will be definitive. Asymmetries are inevitable in international relations, but it is desirable that they are not overwhelming. They could be reduced by increasing the cohesion and competitiveness of the disadvantaged party, in this case the EU. In this way, relations will be more durable and less conflictive.

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ANEXO. RESUMEN EN ESPAÑOL DE LA TESIS DOCTORAL

ANÁLISIS DE LAS ASIMETRÍAS ENTRE LA UNIÓN EUROPEA Y CHINA EN CINCO DIMENSIONES

El resumen en español de la presente Tesis Doctoral se realiza de conformidad con el Artículo 20.3 del Reglamento de Doctorado de la UMA, texto aprobado en el Consejo de Gobierno de la Universidad de Málaga de 9 de octubre de 2012, con las modificaciones aprobadas en los Consejos de Gobierno de la Universidad de Málaga de 19 de julio de 2013, de 19 de junio de 2014, de 13 de mayo de 2015, de 27 de junio de 2016 y de 28 de junio de 2017.

El objetivo de esta tesis es comprobar si las relaciones entre la Unión Europea (UE) y la República Popular China (China) son asimétricas y, si lo son, precisar cuáles son las causas y efectos de dichas asimetrías.

Nuestra hipótesis es que las relaciones UE-China son asimétricas, y lo han sido a lo largo de la mayor parte de su historia. Las causas de las asimetrías son diversas, esencialmente de índole histórica y cultural, que afectan a aspectos jurídicos, económicos, de relaciones internacionales y humanos. También es de nuestro interés determinar la evolución de dichas asimetrías, para cuyo análisis recurriremos a la comparación entre las instituciones y proyectos de ambas partes.

La intención que nos ha guiado ha sido elaborar una tesis innovadora sobre las relaciones UE-China. Nos alejamos de las concepciones eurocéntricas y sinocéntricas propias de este tipo de análisis. Esta actitud posibilita la adquisición de una visión más certera de la realidad. A través de este planteamiento podremos ser más objetivos. China, desde el punto de vista del europeo medio, es enigmática. Por su parte, los chinos suelen considerar que la idiosincrasia europea es insólita. Así pues, las divergencias, desacuerdos y asimetrías son probables.

La motivación para realizar esta tesis viene determinada por los conocimientos adquiridos en un curso de especialista en Derecho Europeo en la Universidad de Málaga, recibido hace años, y el deseo de profundizar en algunas cuestiones planteadas en ese momento. Además, el haber vivido varios años en China, estudiando en dos universidades (en Shanghái y en Pekín, respectivamente) su lengua, historia, geografía y cultura en general. También logré el nivel C-1 de chino. Lo antedicho le ofrecía al autor de la presente tesis la oportunidad de observar el objeto de análisis a través de la propia concepción del país asiático, sin interpretaciones basadas en traducciones no siempre exactas.

Hay una sólida doctrina del Derecho Internacional Público y de Relaciones Internacionales que mantiene que para el estudio de estas últimas es necesaria la asistencia de ciencias auxiliares. Concretamente, mantienen que es esencial el análisis, entre otros, de los antecedentes históricos (Aguilar Navarro). En la tesis están presentes las ciencias auxiliares, en las que vamos a profundizar. Pero los antecedentes históricos forman parte crucial, no auxiliar, de nuestro trabajo, hasta el punto de que el primer capítulo de la tesis está dedicado a la dimensión histórica de las relaciones objeto de nuestro estudio. En dicho capítulo, entre otros, analizamos el siglo de humillación (1839-1949), que es primordial en la política exterior de China hoy en día, ya que, entre otros aspectos, es alegado como esencial para su visión del concepto de soberanía nacional, uno de los pivotes esenciales de las asimetrías estudiadas (Wang Hongying). Además, hemos realizado una comparativa, desde el punto de vista económico, entre las dos partes de esta relación bilateral, concretamente sobre el desequilibrio de la balanza de pagos como uno de los aspectos esenciales de las asimetrías. Por último, también hemos realizado una comparación evolutiva de varios componentes en las relaciones comerciales entre la UE y China. Al igual que la Historia, la Economía también es parte esencial, no auxiliar, de esta tesis, motivo por el cual se le ha dedicado el capítulo III. El medio internacional es tan complejo que exclusivamente con el estudio del Derecho no es posible llegar a comprender en profundidad las relaciones UE-China, sino que es imprescindible la mencionada técnica meta-jurídica que nos proporcionan por una parte la Historia y la Economía, y por otra, las mencionadas ciencias auxiliares. A pesar de todo lo antedicho, hasta la fecha se ha utilizado con poca frecuencia la mencionada técnica desde las perspectivas de las dos partes de las relaciones UE-China. Por lo tanto, la línea inicial de investigación de nuestro trabajo parte de la antedicha premisa, que a la postre, ha posibilitado el desarrollo de la investigación y llegar a los hallazgos efectuados.

En cuanto a las ciencias auxiliares, nos han permitido alcanzar una perspectiva social del objeto de tesis. Por ejemplo, el análisis geográfico o demográfico que inciden directamente en las relaciones internacionales entre ambas partes. Este es el caso del análisis de las migraciones, o el del Lewis Turning Point (LTP).

Así pues, recurriremos a la citada técnica meta-jurídica para analizar, por ejemplo, los tratados internacionales que, con independencia de su fecha, son

documentos legales. También evitaremos las frecuentes brechas conceptuales al hablar de civilizaciones tan distintas como las que son objeto de nuestro estudio.

Para fijar el estado de la cuestión, hemos examinado una profusa bibliografía respecto a las líneas maestras de nuestra obra. En las lecturas obligadas para el objeto de nuestra tesis nos cercioramos de si en la doctrina del Derecho Internacional existe alguna valoración sobre la Historia de China. En efecto, hay parte de la doctrina jurídica que, en su análisis menciona la dinastía Ming (s. XIV-XVII). Además, hay autores que afirman, así mismo, que las relaciones internacionales han de ser analizadas a través de la cultura y civilización chinas. Todos los aspectos antedichos constituyen un marco teórico y analítico apropiado para el desarrollo de nuestro trabajo.

Conforme a las afirmaciones expresadas, es necesario evaluar las actuales relaciones de Europa con China en perspectiva histórica. En este sentido es reseñable lo expuesto por parte de la doctrina, respecto a los siglos XIX y XX, al señalar el fenómeno llamado *dilatatio europea*, como resultado del cual Europa pasó de controlar medio mundo en 1800, a 4/5 del planeta justo antes de la Primera Guerra Mundial (García Picazo). Fue en aquel contexto cuando se produjo una de las claves que más afectan al ámbito del estudio planteado aquí: el llamado siglo de humillación, consistente en los horrores cometidos por el colonialismo desde 1839 hasta 1949. Parte relevante de la doctrina, tanto europea como china, considera que dicha época es relevante para la actual noción de soberanía en China, divergente de la europea. En este sentido, Montserrat Pintado Lobato, remitiéndose a Y. Zhang, mantiene que el proceso de socialización de China en la sociedad internacional fue tan traumático que aún se mantiene en la retórica de dicho país.

La visión histórica del Derecho Internacional se consideraba necesariamente eurocéntrica, ya que el concepto de Derecho Internacional fue desarrollado por los Estados europeos (Rodríguez Carrión). Pero hoy en día China es de hecho una superpotencia, miembro del Consejo de Seguridad de la ONU con derecho de veto. Además, en los últimos tiempos, el gigante asiático ha venido desarrollando un papel preponderante en el mundo a través de instituciones de índole económica, como el Banco Asiático de Inversión en Infraestructura (AIIB en su acrónimo en inglés) o la iniciativa Franja y Ruta (BRI en su acrónimo en inglés, antes llamado OBOR). Sin embargo, la economía no es suficiente para que un Estado llegue a ser un *polo* mundial, sino que es necesario afianzar el *poder nacional total*. Este es, de hecho, el ámbito en el que se mueve China desde finales del siglo XX. Hoy

en día, dicho país realiza aportaciones a la construcción de la teoría del Derecho Internacional y de las Relaciones Internacionales. Por ejemplo, la doctrina que mantiene que el poder político no es un elemento más que se suma al resto que conforman el poder nacional total (económico, militar y cultural) sino que, debido a su transcendencia, se ha de multiplicar por el resto. Un segundo ejemplo es la teoría de *Tianxia*, término que literalmente significa “la tierra bajo el cielo”, es decir, “todo el planeta”, mantiene que el elemento de análisis de Derecho Internacional no es el Estado, sino el planeta en su conjunto que, por tanto, afirma que debería existir una sola institución que gobernara todo el orbe, conforme a una filosofía política global. A este respecto, en una original aportación, Montserrat Pintado Lobato mantiene que el elemento estatal se somete al elemento global, lo que demuestra, según mantiene, que el pensamiento chino se basa en la civilización. Además, Pintado Lobato considera que ya el confucianismo mantenía esta idea *civilizacional* del mundo.

Hemos analizado textos científicos en los que se considera que el brío del gigante asiático jugará un papel decisivo en el desarrollo doctrinal de las relaciones internacionales, debilitando el etnocentrismo aún vigente. Sin embargo, probablemente dicha pugna no será en pos o en contra del etnocentrismo, sino que cada parte defenderá el suyo propio: tanto el eurocentrismo como el sinocentrismo son formas de etnocentrismo. Esto ocurre, por ejemplo, con la visión de los derechos humanos, ya que a pesar de la Declaración Universal de Derechos Humanos, no existe una única visión en torno al concepto de los mismos. La citada Declaración se firmó el 10/12/1948, pero en 1966, es decir 18 años después, se firmaron en Nueva York los Pactos Internacionales, uno sobre Derechos Civiles y Políticos, y otro sobre Derechos Económicos, Sociales y Culturales.

En el aspecto legal, es significativa la asimetría entre las respectivas visiones de soberanía del Estado. Según Montserrat Pintado Lobato, citando a Liang Shoude, la teoría de las relaciones internacionales con características chinas se fundamenta precisamente en la soberanía del Estado.

En los últimos años, la doctrina científica china ha alcanzado un consenso sobre dos cuestiones: primera, las teorías occidentales no bastan para analizar las relaciones internacionales en todo el mundo; segunda, dichas teorías no consideran el aspecto cultural de las relaciones internacionales (Qin Yaqing). Parte de la doctrina mantiene dicha opinión, afirmando que lo antedicho es debido a la preponderancia cultural occidental, de acuerdo con Francis Fukuyama. Sin embargo, consideramos que, debido a que China adoptó ciertos aspectos

culturales, no sucumbió a la cultura occidental, sino que creó su propio estilo cultural. Zhongqi Pan enfatiza el aspecto cultural de las relaciones internacionales, concretamente en cuanto a las brechas conceptuales, que por ejemplo afectan a las divergentes visiones de la soberanía. Esta cuestión nos suscita la curiosidad para profundizar hasta qué punto las relaciones entre la UE y China están afectadas por los mencionados aspectos.

En estas relaciones bilaterales, se da una dualidad divergente: existen unas relaciones comerciales relativamente fluidas, pero sin un entendimiento cultural entre ambas partes. Algunos autores afirman que la comunidad internacional no ha aceptado a China. Uno de los factores que provocan malentendidos es la divergencia en valores. Uno de los ejemplos de dicha divergencia es que Occidente le otorga gran importancia a las libertades individuales, ya que el individualismo es esencial para la cultura occidental, a diferencia de China donde, como suele ocurrir en gran parte del continente asiático, el valor prioritario es la comunidad. En este punto nos planteamos en qué medida los derechos humanos de ambas partes están condicionados por este factor.

En cuanto a la oportunidad y actualidad de nuestra tesis, hemos de tener en cuenta que China es el segundo socio comercial de la UE, tan solo tras los EEUU, mientras la UE es el socio principal de China. Así pues, resulta palmario que la tesis es oportuna y actual. Napoleón Bonaparte afirmó: “Dejad que China duerma, porque, cuando despierte, el mundo temblará”. Y este despertar es lo que ha estado sucediendo desde principios de la década de los 80 del siglo XX, es decir, durante los últimos cuarenta años. En dicho periodo de tiempo, tan breve en términos históricos, China pasó de ser un país pobre a ser una gran potencia mundial, y sigue creciendo. Mientras, la UE intenta recuperarse de la que probablemente haya sido la peor crisis económica de su Historia, es decir, la crisis financiera de 2008.

Respecto a la metodología, utilizamos el método inductivo. En las relaciones UE-China, hemos observado la realidad de los contactos internacionales, con especial atención al análisis de los instrumentos legales sustentadores de las indicadas relaciones. Además de la consulta directa de los textos legales, profundizamos en la materia a examinar, cotejar y extraer aquellas conclusiones más relevantes de los autores que han publicado sobre el objeto de estudio. De esta forma, abordamos los diversos aspectos de estas complejas relaciones bilaterales, desde las consideradas macro-estructuras conceptuales a las microestructuras particulares.

Una de las principales novedades de esta tesis es que hemos analizado las distintas instituciones, circunstancias y proyectos a través de la visión de los autores europeos y chinos, así como instrumentos de Derecho Internacional Público y legislación tanto de la UE como de China. Además, hemos analizado ambas partes por medio del cotejo entre ellas, específicamente con ayuda del Derecho Comparado.

Respecto a la estructura de nuestro estudio, una vez recopilada la información incluida en los textos legales y los trabajos editados, estimamos conveniente dividirlo en cinco capítulos o dimensiones, en atención a las partes específicas que queremos resaltar, entre otros aspectos a abordar en futuras investigaciones. En este resumen, dentro de cada uno de ellos presentamos las conclusiones obtenidas.

En cuanto al capítulo I (la Dimensión Histórica), hay un periodo histórico que aún influye en las relaciones entre la UE y China: el siglo de humillación (1839-1949). Se refiere a los horrores acaecidos a lo largo de más de una centuria, y que se desencadenaron a raíz del tráfico de opio. China se opuso a dicho lacra y, como resultado, estallaron las Guerras del Opio. La primera (1839-42) se libró entre Reino Unido y China, y en la segunda (1856-60), también conocida como Guerra del Arrow, las tropas francesas se sumaron a las británicas frente al enemigo asiático. China fue vencida en ambas ocasiones, con el resultado de que ciertas potencias europeas (más Estados Unidos y Japón) le impusieron los Tratados Desiguales. Dichos sucesos no han sido olvidados por China. La imposición de la legalización del tráfico de opio fue una acción vil que ha estigmatizado a China respecto a las potencias invasoras. Hoy en día, China es una potencia que goza de reconocimiento internacional y es miembro del Consejo de Seguridad de la ONU.

Hay dos casos en la historia comercial entre Europa y China demostrativos de que una relativa simetría y comprensión entre ambas partes es factible: la Ruta de la Seda (130 a.C.-1453 d.C.) y el Galeón de Manila (1565-1815).

La Ruta de la Seda fue un caso de comercio estable entre Europa y China, aunque el primer caso de globalización podría considerarse que fue el Galeón de Manila, ya que unía Europa, América y Asia. En gran medida, el tráfico comercial del Galeón dependía de los sangleyes, comerciantes chinos establecidos en su propio barrio (Parián) de Manila. Profundizamos en este aspecto en la Dimensión Económica (Capítulo III).

El Tratado Hispano-Chino de Amistad, Comercio y Navegación de 1864 reflejaba poca reciprocidad y mucha imposición, lo que no es de extrañar, ya que se inspiraba en los Tratados Desiguales. Debido a una violación del Tratado, la evidente esclavitud de africanos fue reemplazada por la subrepticia esclavitud de chinos. Los comerciantes chinos eran engañados en Filipinas y trasladados a las colonias españolas en América (fundamentalmente a Cuba), donde eran esclavizados, o bien eran secuestrados en Filipinas, y llevados a las colonias con el mismo propósito. Se les denominó *culíes*. Su situación era tan deplorable que en 1874 el gobierno de la dinastía Qing envió una delegación a La Habana, la llamada Comisión Cuba, que informó sobre las mencionadas condiciones de vida inhumanas. Para mayor abundamiento, el caso español no era una excepción, ya que las mismas circunstancias se produjeron en las colonias del Reino Unido, Francia y Países Bajos en América, sudeste asiático y África.

Un hito más reciente es el momento en que China accedió a la OMC (Organización Mundial del Comercio) como miembro de pleno Derecho. Deng Xiaoping fue el arquitecto de las reformas económicas aplicadas en los años 80 del siglo XX, necesarias para llegar a la mencionada admisión. La integración china en la OMC culminó su integración en la sociedad internacional y significó un proceso de transformación para China, determinante para su futuro. Este es un claro ejemplo de que China no es objeto de la mencionada humillación. Es una potencia mundial con plenos derechos, que se adhiere libremente a los tratados que considera pertinente.

El capítulo II se refiere a la Dimensión Legal. Lo más transcendental es la asimetría entre las respectivas visiones de soberanía del Estado. Este aspecto es fundamental para el estudio de las relaciones internacionales entre la UE y China, al tener multiplicidad de relaciones causa-efecto. A título de ejemplo, la visión china de dicho concepto es uno de los efectos del siglo de humillación, pero, además, es causa de las divergencias en cuanto a derechos humanos, ya que China considera que cuando la UE critica la situación de los derechos humanos en dicho país, en realidad se trata de una intromisión en su soberanía. Además, desde la visión del país asiático, los EM, respecto de la UE, practican la soberanía con flexibilidad. Por otra parte, desde la visión del gigante asiático, la UE tiene una noción expansiva de su soberanía respecto de terceros Estados, ya que en las relaciones internacionales con estos promueve, por ejemplo, el respeto a los derechos humanos. Esto es algo coherente y natural desde la óptica europea. Sin embargo, para China esta promoción de los derechos humanos es una intromisión

intolerable en la soberanía de otro Estado. Por su parte, China tiene una concepción interna estricta de su soberanía, ya que mantiene que no cederá ni un ápice de la misma. En cuanto a su visión respecto a terceros Estados, China tiene un enfoque restrictivo de la soberanía, ya que no entra en cuestiones como los derechos humanos de terceros países. En cuanto a la soberanía entre la UE y los EM, se ha de tener en cuenta que la UE se basa en el principio de atribución de competencias. Los EM ceden temporalmente el ejercicio de las mismas a la Unión, pero no su titularidad, es decir, la soberanía no reside en la UE sino en cada EM, que la transfieren voluntariamente y con ciertas condiciones para que sea ejercida por las instituciones de la Unión. Respecto a la aspiración europea del respeto de los derechos humanos por terceros países, aquí aparece el contraste entre un mundo multipolar, reclamado por China, en el que haya varias grandes potencias (a diferencia del unipolar tras el hundimiento de la URSS como fin a la Guerra Fría, en el que se mantuvo EEUU como hegemon global) y un mundo multilateral, reclamado por la UE, es decir, un mundo regido por instituciones en las que participen las potencias. En cuanto a la actitud de la Unión Europea respecto a los Derechos Humanos, esta se ciñe a la aplicación de los tratados internacionales suscritos por los EM. Los Derechos Humanos, al fin y al cabo, son la esencia del Estado de Derecho.

En su calidad de potencia mundial, China, a través de diversas corrientes doctrinales, ha realizado contribuciones a la teoría del Derecho Internacional Público y Relaciones Internacionales (Caterina García-Segura). Ejemplos de ello son su propia concepción del *poder nacional total*, la Protección Responsable (*Responsible Protection*, RP) y el *Tianxia*. En cuanto a la primera de las antedichas figuras, la doctrina china ha creado su propia fórmula del poder nacional total (National Whole Power, NWP), $NWP=(M+E+C) \times P$, que difiere de la fórmula original americana ($NWP=HP+SP=M+E+P+C$). HP equivale a *hard power*, SP a *soft power*, M a poder militar, E a poder económico, P a poder político y C a poder cultural. La visión china mantiene que el elemento determinante es el poder político, por lo cual, en vez de sumarlo al resto de elementos de la fórmula, como hace el autor americano de la fórmula original, la multiplica, lo que realza su trascendencia. A nuestro entender, hoy en día se dan dos factores preponderantes que alteran el conjunto de la fórmula: por un lado, el valor creciente del *soft power* en su conjunto, es decir $SP=P+C$. Por otro lado, hay un factor que, a día de hoy, sigue creciendo: la globalización. Concretamente, hoy en día se desarrolla con vigor la globalización digital. Con este crecimiento, se acentúa mucho el poder cultural, ya que es esencial la comprensión entre culturas,

por muy diversas que sean. Sin entendimiento cultural entre las partes, ninguno de los otros elementos de la fórmula, ni siquiera los del *hard power*, servirá de nada, al menos a largo plazo. El poder cultural (C) seguirá creciendo mientras permanezcan los dos factores antedichos.

En cuanto a la segunda de las figuras antedichas, es decir, la Protección Responsable (RP en su acrónimo en inglés), es una respuesta a la Responsabilidad de Proteger (en su versión inglesa, Responsibility to Protect, R2P) institución de Derecho Internacional Público promovida por el gobierno canadiense. Los tres pilares de R2P son: el Estado es responsable de proteger su población de los crímenes masivos; en segundo lugar, la comunidad internacional, a través de la ONU, tiene la responsabilidad de asistir a los Estados a asumir la Responsabilidad de Proteger; en tercer término, la comunidad internacional ha de asistir a los Estados a asumir la Responsabilidad de Proteger la población por vías diplomáticas o con el uso de la fuerza, de conformidad con la Carta de las Naciones Unidas, en el caso de que un Estado no esté en condiciones o no esté dispuesto a protegerla. Este tercer pilar es el que China, en su Protección Responsable aplica de una forma mucho más restrictiva. China sospecha que Occidente, vía Derechos Humanos, podría tender a interferir en los asuntos internos de terceros Estados. Por tanto, China rechaza la R2P y apoya la RP. A estos efectos, se hace referencia a los casos de las crisis de Siria y Libia. O en los casos de Ruanda, Somalia y Bosnia. Desde el punto de vista chino la soberanía es intocable. Sin embargo, desde el punto de vista de la UE, es inadmisibles que la comunidad internacional se mantenga impertérrita ante las conculcaciones de derechos humanos. Estamos ante otro caso en que se aprecian las divergencias entre la UE y China en cuanto al concepto de soberanía.

La UE se ciñe a la aplicación de la Declaración Universal de los Derechos Humanos, en función de las organizaciones multilaterales.

En tercer lugar, el *Tianxia*, que literalmente significa “el mundo” o “todo bajo el cielo”. El *Tianxia*, teoría creada por Zhao Tingyang, representa la visión china de las relaciones internacionales. Esta teoría considera que la unidad mínima de análisis en las relaciones internacionales no es el Estado, sino la Tierra, que debería estar gobernada por un ente único. Llegar a un acuerdo universal en este aspecto no va a ser factible, al menos en el corto plazo. La doctrina del *Tianxia* no parece compatible con una actitud Westfaliana, propia de China, por dos motivos. El primero, porque dicha actitud implica la defensa del statu quo, que resultaría alterado por una forma de gobierno mundial. Por otro lado, la

mencionada doctrina exige la estricta aplicación de la soberanía, algo que a las claras es contradictorio con el *Tianxia*.

El capítulo III (la Dimensión Económica) analiza el comercio y la economía, así como el desequilibrio comercial. Las exportaciones chinas a la UE son en torno al 250% de lo que la UE exporta a China, por lo que el comercio es uno de los aspectos más asimétricos de las relaciones UE-China. El comercio de bienes está claramente a favor de China, mientras que el de servicios favorece a la UE. Sin embargo, el superávit del comercio de bienes es tan abrumador respecto del superávit de servicios a favor de la UE (16 veces más) que el balance final es arrollador en beneficio de China. Desde los años ochenta del siglo XX hasta mediados de la segunda década del siglo XXI, en gran medida, la ventaja china en bienes era debida a su mano de obra barata, mientras que la ventaja a favor de la UE en servicios era consecuencia de su mano de obra cualificada. Los sectores industriales de alta calidad implican un balance comercial más favorable. Por ejemplo, Alemania tiene una balanza comercial favorable con China no solo en servicios, sino también en bienes. Un factor común a ambos casos para tal balance comercial es, entre otros, el *know-how*. Por tanto, la UE debería incentivar la formación educativa en este aspecto, así como promover una estrategia industrial innovadora. Tengamos en cuenta que, en general, es reconocida mundialmente la calidad de los productos europeos, que sin embargo, no suelen destacar por unos precios bajos a nivel planetario. Sin embargo, China, tradicional proveedor de manufactura barata, en los últimos tiempos ha incrementado la calidad de su producción. A ello ha de sumarse el hecho de que están alcanzando el nivel de dominio de ciertos ámbitos, como ha venido siendo el caso del 5G. Hasta ahora, la UE ha destacado por su investigación y desarrollo. Pero China está aplicando una reforma educativa en pos de la creatividad. Así pues, si prosperan los planes chinos, sus productos serán de buena calidad, incluso exclusivos y además con desarrollo de la creatividad, lo que podría afectar a la balanza de pagos entre ambas partes. Todo esto implica que la UE debe trazar una estrategia que le permita competir. Pero como se puede apreciar, China lleva la iniciativa. La UE reclama que en las relaciones comerciales entre ambas partes se aplique el principio del respeto a un marco de igualdad (el llamado *level playing field*), donde por ejemplo no se apliquen por parte del gigante asiático las barreras no tarifarias (menos evidentes y cuantificables que las tarifarias) así como la protección de la propiedad intelectual o corregir el dumping social.

El último apartado del capítulo III está dedicado al análisis comparativo de varios componentes del comercio, en cinco periodos de las relaciones comerciales UE-China. Hemos diseccionado ciertos periodos históricos en sus distintos componentes: la ruta terrestre o marítima, las mercancías, los medios de transporte, los comerciantes, oferta y demanda y, por último, el equilibrio o desequilibrio comercial. Los periodos comerciales seleccionados son: la antigua Ruta de la Seda, el Galeón de Manila, la política de reforma y apertura al mundo exterior (impulsada por Deng Xiaoping en la década de los 80 del siglo XX), la Nueva Ruta de la Seda (BRI) y el comercio electrónico chino. Entre los hallazgos obtenidos del mencionado estudio comparativo, destacamos el equilibrio o desequilibrio comercial. En este aspecto, la reforma económica impulsada por Deng significó un cambio revolucionario para China. Fue tan exitosa que en 1995-1996 cambiaron las tornas y el desequilibrio comercial pasó a estar a favor de China. Este país ha experimentado una clara evolución, de ser la fábrica del mundo, elaborando productos sin originalidad, a convertirse en un productor de innovadora alta tecnología.

En el comercio electrónico, como en la Nueva Ruta de la Seda, no solo se da un desequilibrio de la balanza comercial a favor de China, sino que además, está cubriendo progresivamente más áreas de negocio. Además, el país asiático está lanzando una nueva estrategia: no solo exporta bienes, sino también servicios. Por ejemplo, Jack Ma, cofundador de Alibaba, presentó al mundo la Plataforma de Comercio Mundial Electrónico (electronic World Trade Platform, eWTP), una plataforma para la expansión mundial de las pequeñas y medianas empresas (PYMEs).

Los sangleyes (en relación con el Galeón de Manila) la BRI (Nueva Ruta de la Seda) y el comercio electrónico tienen un punto en común: los chinos, en los tres mencionados casos, no solo comercian, sino que además financian a las otras partes involucradas en el tráfico mercantil, a fin de que se completen las respectivas transacciones. Un caso comparable es el Banco Asiático de Infraestructuras e Inversiones (Asian Infrastructure and Investment Bank, AIIB) que le permite a China conformar la cohesión transcontinental euroasiática.

El capítulo IV se refiere a la Dimensión de Relaciones Internacionales. Ante todo, hemos de precisar que no se trata de relaciones al uso, en las que intervienen dos Estados, sino que son relaciones bilaterales de dos niveles: por una parte, la UE y China, y por otro lado, cada uno de los EM de la UE en sus relaciones con China. Además, existe una cierta competitividad entre los países

integrantes de la UE para ganarse los favores del gigante asiático. Este aspecto representa una asimetría evidente entre las dos partes, ya que China está unida frente a la UE, mientras que esta última no tiene una voz única frente al gigante asiático.

En 1989, Francis Fukuyama publicó en la revista *The National Interest* el artículo titulado “The End of History?”. En dicho artículo Fukuyama afirmaba que la Historia había llegado a su fin, debido al triunfo mundial del liberalismo occidental. A este respecto, nos hemos planteado dos cuestiones: en primer lugar, si dicha teoría es válida hoy en día, y en segundo, si la diferencia ideológica occidente-oriental ha sido sustituida por la asimetría como marco analítico. En cuanto al primer punto, más de tres décadas después, se ha demostrado que la posición de Fukuyama no era acertada. Pero no se trata tanto de su acierto o error en su conclusión, sino que alguno de sus parámetros no era acertado, como ha ocurrido, por ejemplo, respecto a China, que ha asimilado usos occidentales, aunque esto no implica que dicho país asiático haya perdido la batalla cultural, sino que esta es la peculiaridad del país oriental, debido a que se ha adaptado a la cultura occidental, a niveles superficiales, ya que el fondo de su cultura sigue siendo sinocéntrico. Por lo tanto, China aplica la adaptabilidad, incluso cultural, creando una dualidad, un doble plano. Por ejemplo, en China se utiliza el calendario occidental, solar o gregoriano, pero al mismo tiempo mantienen su tradicional calendario lunar. Otro ejemplo de su adaptabilidad está en relación con su idioma, que en muchos ámbitos, sobre todo en centros oficiales y en sistemas de transporte, está escrito en su transcripción fonética con caracteres latinos, legible para los occidentales pero sin contenido de significación para los chinos; pero también se mantiene en sus caracteres chinos, que son los que incorporan el significado para ellos. Si la asimetría continuara su deriva de las dos últimas décadas en favor de China y, en general, del hemisferio oriental, no sería descartable que sea occidente quien, en un futuro, tenga que adaptarse a pautas asiáticas, quizá no solo culturales, consecuencia del vórtice globalizador.

El mismo Fukuyama, en posteriores publicaciones, ha retrocedido de sus antedichas posiciones. En cuanto a si el binomio ideológico occidente-oriental ha sido sustituido por la asimetría, consideramos que no se trata tanto del fin de la Historia, por la supremacía del liberalismo occidental, sino que más bien estamos ante el comienzo de una nueva Historia, con un fuerte componente de Asia-Pacífico, y la peculiar cosmovisión de dicha región. La asimetría será un parámetro trascendental, sustituto de la dicotomía Occidente-Oriente.

A diferencia de lo que mantenía Fukuyama, la Historia no ha sido aniquilada por el liberalismo occidental, sino por la globalización, que se inicia en Occidente, pero que fue asimilada por Oriente, y ya la globalización constituye una potencia que en sí misma ha superado al liberalismo occidental, y también ha arrasado con el parámetro Occidente-Oriente, con una fuerza imparable, ya que, si por las circunstancias no se puede desarrollar en su faceta física, sigue creciendo en la digital. La asimetría, que va a seguir siendo la referencia para comprobar cómo la divergencia entre los dos actores internacionales objeto de nuestro estudio va a continuar creciendo. Ha continuado aumentando la globalización digital. Es la asimetría el nuevo parámetro que nos permite analizar el mundo hoy en día.

El criterio occidente-oriental es romo, sin aristas, por lo que no permite apreciar los matices de las polifacéticas relaciones internacionales. En un entorno globalizado es más adecuado el mosaico que compone la asimetría en sus diversos aspectos. La asimetría permite un análisis en un plano dual: por una parte, el cuantitativo, y por otra, el cualitativo. El plano cuantitativo se refleja, por ejemplo, en el análisis, realizado en nuestro trabajo, de la balanza comercial y sus desequilibrios. El plano cualitativo lo hemos aplicado al seguimiento de la evolución de la asimetría a lo largo de la historia de las relaciones comerciales entre ambas partes, a través del *case law*, en el que comparamos los distintos componentes mercantiles de distintas etapas. Ambos planos han sido estudiados en el capítulo III (la Dimensión Económica). El elemento clave de la dicotomía oriente-occidente era la confrontación, mientras que en las asimetrías como parámetro de análisis nos centramos en las divergencias como causa de la falta de entendimiento entre las partes.

Las respectivas visiones de las relaciones internacionales también son asimétricas. Aquí cabe una precisión terminológica, ya la UE no está interesada en un mundo multipolar, sino en instituciones multilaterales que elaboren normas y que además vigilen el cumplimiento de las mismas. Es justo este factor el que distingue la multilateralidad de la multipolaridad: la primera se ejerce en organizaciones internacionales, mientras que la segunda se practica directamente entre grandes potencias. Casos de multilateralidad son la propia ONU o la OMC. Por su parte, China es partidaria de la multipolaridad, en el que las distintas potencias o polos se miden de poder a poder.

El poder blando (*soft power*), que es aquél no coercitivo, sino atractivo, es ejercido tanto por la UE como por China. El factor asimétrico en este aspecto

reside en que la UE viene ejerciendo dicha estrategia desde décadas, mientras que China, tradicional potencia *hard power*, en los últimos años está realizando un ingente esfuerzo para desplegar su *soft power* como, por ejemplo, ocurre con los Institutos Confucio desplegados a nivel mundial. Otro caso son los medios de comunicación, especialmente las cadenas chinas internacionales de televisión, que emiten en varios idiomas, entre los que figura el español. Por último, China se esfuerza por atraer a sus universidades a estudiantes de todo el mundo, para lo cual ha diseñado un plan de intercambios universitarios internacionales y becas para dichos alumnos.

Los nuevos corredores terrestres a lo largo de Eurasia son otro aspecto de las relaciones euro-chinas. De momento, el BRI chino es mucho más exitoso que el TRACECA (Transport Corridor Europe-Caucasus-Asia, corredor terrestre promovido por la UE), a pesar de la mayor antigüedad de este último. Además, otras dos políticas chinas complementarias del BRI afectan a la UE: el 16+1 y la iniciativa sur-europea. El 16+1 consiste en un plan para favorecer a 16 países de Europa central y del este. La iniciativa sur-europea se refiere a otra propuesta de cooperación internacional, respecto de Estados del sur de Europa. China no necesariamente crea distorsión dentro de la UE, ya que quizá no sea necesario, sino que basta con beneficiarse de la propia falta de cohesión de la UE. Respecto de la BRI, está por ver si el gigante asiático resistirá la magnitud de este reto, y si las otras partes involucradas también podrán cumplir con sus obligaciones financieras. Son innegables las ventajas de la BRI en cuanto a las infraestructuras de los territorios beneficiados, pero no se puede obviar que los costes han de ser asumibles para todos. En caso de no cumplir con sus obligaciones, habrá consecuencias sobre las infraestructuras afectadas.

El capítulo V trata de la Dimensión Humana. La UE y China también divergen en cuanto a sus cosmovisiones sobre los derechos humanos. La visión de la UE pivota sobre los derechos políticos, civiles y sociales, mientras que China toma como referencia los derechos socio-económicos, hasta el punto de que en sus planes a medio y largo plazo sobre derechos humanos se especifican los niveles económicos a alcanzar por el pueblo, como el *xiaokang*, es decir, una sociedad moderadamente acomodada. Gran parte de la regulación china sobre derechos humanos no se ciñe a la Constitución, sino que se aborda en un texto legal llamado National Human Rights Action Plan (NHRAP) es decir, Plan de Acción Nacional de Derechos Humanos. Entre ellos está el derecho a un nivel de vida mínimo. Aunque el NHRAP no concreta a qué se refiere con dicho nivel de

vida mínimo, interpretamos que ya no se trata del concepto estrella durante la política de reformas de Deng Xiaoping en los años 80 del siglo XX, llamado *tie fanwan* (literalmente, cuenco de acero para comer arroz, cuyo significado es el de “empleo seguro”) sino que con el mencionado nivel de vida mínimo ya se apunta al mencionado *xiaokang*, es decir, un nivel de vida más alto, pero sin la seguridad del *tie fanwan*, ya que el *xiaokang* implica la asunción de riesgo comercial, porque se promueve que los chinos inicien sus propios negocios.

La visión china de soberanía también aparece respecto de los derechos humanos, en esta ocasión vinculada a la idea de independencia ya que, conforme a la perspectiva oficial, sólo por medio de la soberanía los derechos humanos se verán reflejados en el pueblo. Por su parte, en la UE los derechos humanos están inextricablemente asociados a la democracia. En cuanto a si en China también se contempla una visión europea de los derechos humanos, sí que se consideran, pero tan solo una vez que se hayan alcanzado unos niveles económicos ideales, por lo que no es previsible cuándo se puedan poner en práctica.

En China, comparada con la UE, se da la circunstancia de que hay un aspecto legal clave que afecta a la soberanía y los derechos humanos. A diferencia de lo establecido por las Constituciones de los EM de la UE, la Constitución china no establece la directa aplicación de los tratados internacionales. De esta manera, China también preserva su estricta percepción de la soberanía, a pesar de tratarse de instrumentos internacionales asumidos por dicha potencia. Sin embargo, en la UE los tratados internacionales tienen prelación sobre la normativa nacional, incluidas las respectivas constituciones.

La pena de muerte es otro aspecto en el que se percibe una clara divergencia entre las dos partes estudiadas. En ningún país de la UE está en vigor dicha figura penal, mientras que en China es vigente y tiene apoyo social. La abolición del castigo capital en dicho país no parece factible ni siquiera a medio plazo. En todo caso, sería una abolición paulatina y a largo plazo. Es relevante no solo la divergencia en cuanto a la pena de muerte, sino también cómo se desarrollan los procesos, ya que el sistema legal chino dista del Estado de Derecho imperante en los países miembros de la UE. Es en este punto donde las divergencias son palmarias, en gran parte debido a las diferencias culturales y de valores. A este respecto, lo fue en su día la política del hijo único (ahora ya se permiten dos hijos), y hoy en día, la propiedad privada o la posición de la mujer.

Las asimetrías (excedentes de mano de obra, diferencias de ingresos, etc.) son causa de las migraciones. En las migraciones UE-China, existe una asimetría evidente, ya que hay mucha más migración de China hacia la UE que en sentido contrario. La peculiaridad de esta asimetría es que una alta proporción de los migrantes chinos regentan comercios que venden, en gran medida, productos de fabricación china, en sus países de acogida, lo que le resulta muy favorable a la industria del gigante asiático. Por último, cuando los migrados del mencionado país asiático hacen fortuna, regresan a sus localidades de origen, Todo esto es una ventaja para la economía china. Como resultado, China convierte una aparente debilidad en una ventaja competitiva.

En la última década se ha producido en China un fenómeno socio-económico llamado *Lewis Turning Point* (LTP), es decir, el Punto de Inflexión de Lewis, consistente en el fin de los excedentes de mano de obra y la equiparación entre los mercados laborales rural y urbano. Se considera que dicho fenómeno se debe, en parte, a que la generación de los hijos únicos no está dispuesta a trabajar por sueldos tan bajos como los de sus ancestros. Tras algunas temporadas desplazándose a trabajar desde sus orígenes rurales a los centros industriales, han podido comprobar que el trabajo es duro para unos sueldos que consideran que no les merecen la pena, por lo que muchos de ellos han dejado de acudir a las ofertas de empleo industrial. Es probable que el LTP afecte a la migración china a la UE. Este fenómeno ha provocado que la mano de obra en China ya no sea ilimitada, a pesar de la enorme superpoblación que sufre el gigante asiático. Este fenómeno puede llegar a afectar a la capacidad industrial del país.

Nuestra hipótesis ha quedado demostrada después de realizar la comparativa desarrollada a través de las cinco dimensiones en que se estructura esta tesis: en efecto, las relaciones entre la UE y China son asimétricas. Esto se refleja, por ejemplo, en la distinta visión histórica, en la que China hace hincapié en el llamado siglo de humillación. Sin embargo, tanto la Ruta de la Seda como el Galeón de Manila demuestran que una relación mayoritariamente equilibrada y duradera entre las dos partes es posible. En cuanto al ámbito legal, los divergentes conceptos de soberanía evidencian dos perspectivas diversas. En el aspecto económico las asimetrías son visibles (no solo respecto del desequilibrio de la balanza de pagos, sino también respecto las diferencias en cuanto a la propiedad intelectual o el llamado *level playing field*) y siguen aumentando en favor de China. La BRI (antes llamada OBOR) es un ejemplo, que afecta a varias dimensiones, como la de relaciones internacionales o la económica, donde se

perciben divergencias crecientes entre las partes. Por último, la perspectiva humana nos muestra, por un lado, una diferente visión entre las partes, por ejemplo, en cuanto a derechos humanos (con una opuesta aplicabilidad de los tratados internacionales, especialmente significativa en este campo), y por otro, unas realidades en contraste, por ejemplo, en cuanto al fenómeno migratorio, intenso de China a Europa, pero minoritario en sentido inverso. En definitiva, las asimetrías entre las partes existen, y probablemente aumenten. Sin embargo, un mayor equilibrio sería deseable, en pos de unas relaciones más estables y duraderas entre la UE y China.

En cuanto al método que hemos aplicado a lo largo de la tesis, ha demostrado ser idóneo: al tratarse de una tesis holística, la Historia (primera dimensión) o la Economía (tercera dimensión) han demostrado su eficacia como marcos analíticos de dimensiones concretas y completas, complementarios del Derecho y de las Relaciones Internacionales. Igualmente, otros campos del conocimiento, como son ciertos aspectos geográficos (por ejemplo, la comparativa física entre ambas partes o el origen y destino de la migración) o demográficos (como en el caso del LTP o también en el caso de la migración) han desempeñado en nuestra tesis un reseñable papel, gracias a las mencionadas ciencias auxiliares. El análisis comparativo ha sido clave para el estudio de las diferencias entre la UE y China. Hemos cotejado las respectivas visiones expresadas en documentos oficiales, fuentes privadas y en trabajos doctrinales provenientes tanto de Europa como de China. Por último, la citada metodología nos ha permitido corroborar que no hay una sola causa de las asimetrías, sino que se trata de un conglomerado de causas de diversa índole, esencialmente causas jurídicas, de relaciones internacionales, históricas, económicas, geográficas, demográficas, idiosincráticas, culturales y relativas a valores.

Tras completar nuestra tesis, se ha declarado la pandemia COVID-19. Se trata de un acontecimiento transcendental que ha afectado en general a todo el planeta, y en especial al objeto de la tesis. Por lo tanto, hemos añadido a la misma un apéndice titulado “Addendum COVID-19”. Además, dos de los artículos publicados por el autor de la tesis y citados en la misma versan sobre algunas de las consecuencias de la COVID-19 en la asimetría de las relaciones entre la Unión Europea y China.