

The Paradoxical Leverage between Sovereign Wealth Funds-Based Investments and Human Rights: The Geopolitical Effect on Universal Values*

Abstract

Sovereign wealth funds (SWFs) have been rapidly redefining the traditional paradigms, providing both much-needed capitals as well as posing particular challenges for policy makers.

The role of SWFs, which are becoming increasingly involved in the global financial markets, has often been underestimated in the discourse of the protection of human rights. The *tâtonnement* processes of bargaining between home and host countries of SWFs indicate that the concern regarding human rights has maintained a sensible balance between protecting the rights of individuals and the benefits that large capital investments offer for both host and home countries. The challenge still remains as to whether the presumption would be rebutted that the promotion of SWFs investment is going to retard the promotion of human rights.

Key Words: China, Sovereign Wealth Funds, Europe, Human Rights

Introduction

As China becomes a global player and a fierce competitor in European markets, its political system and state capitalist ideology may pose a threat.¹ Sovereign wealth funds (SWFs) are state-owned pools of assets designed to engage primarily in foreign portfolio investment in order to recycle the host state's forex reserves surplus. They are predicted to surpass the entire economic output of the United States by 2015, reaching a total value of more than \$12 trillion.² As long as global macroeconomic imbalances continue to persist, SWFs are projected to grow at an accelerated rate in the near future. The rapid expansion in the size of SWFs represents one of the most consequential international economic developments with particular regard to their plausible implications on the protection of human rights.³ Arguably, the beginning of the 21st century witnessed the centre of the global economy shifting away from countries which share the fundamental values of human rights and rule of law.⁴ The rise of SWFs may provoke an irrational reaction to the development of what has been called a "non-polar" world order, in respect of SWF's potential cumulative effect on the stability of global

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¹ Heriberto Araújo and Juan Pablo, 'China's Economic Empire' *The New York Times* (1 July 2013)

² Vincent Gasparro and Michael Pagano, 'Sovereign Wealth Funds' Impact on Debt and Equity Markets During the 2007-09 Financial Crisis' (2010) 66 (3) *Financial Analysts Journal* 92, 103

³ Richard G. Lugar, 'Opening Statement for Hearing on Sovereign Wealth Funds before U.S. Senate Committee on Foreign Relations' (11 June 2008)

<<http://www.foreign.senate.gov/imo/media/doc/LugarStatement080611a.pdf>>

⁴ Dinah L. Shelton, 'Protecting Human Rights in a Globalized World' (2002) 25 *Boston College International and Comparative Law Review* 273, 322

markets. The shift to a new multi-polar architecture of the global financial powerhouse has significant political consequences; particularly in the transition of the recovery from the financial crisis.⁵

The emergence of China's SWFs represents such a shift in the global balance of power, but the line between political and financial clout is always blurred.⁶ China is diversifying the SWFs-related investment and steering away from the previous risk-averse approaches. The SWFs have come to be perceived as the new giants of the international monetary and financial system, which are arguably not a definable class of either political or financial actors. This surge brings about challenges and opportunities for EU countries, but with novel threats as well.⁷ As a global financial market investor, SWFs raise complex issues that transcend traditional boundaries between foreign policy and financial markets. These changes in the global economy have also caused a shift in the human rights discourse, which has been substantially influencing the relations between the EU and China. In the context of globalisation, the SWFs have more than one dimension which China could exploit as part of its grand strategy to levelling the West's criticism of its human rights.⁸ More challengingly, the rhetoric masks a subtle but significant shift in China's own use of economic sanctions.⁹ This could give China leverage over what the host countries' decisions towards the *status quo* of the Chinese human rights. Such a relationship has not been sufficiently studied in the case of SWFs.

The outline of the paper is as the following: Part I looks into a paradoxical argument enshrined in China's economic growth and the growing role of SWFs in global capital markets. Pros and cons are discussed based on certain perceived geopolitical consequences. Part II considers the traditional cornerstone of the EU and its implication on the discourse of human rights. A long-standing argument is critically analysed in respect of the state sovereignty *vis-à-vis* the human rights intervention. Part III breaks new ground by looking at the behaviour of policy-makers at the intersection of SWFs and human rights, and how human rights issues are seeping into the SWFs. This part then examines whether the SWFs-based investment is independent from political regimes, and whether China has been using its SWFs to exert financial leverage to achieve political ends. Cases are studied to describe dilemmas and paramount challenges that the EU member states face. It continues to ascertain whether the issue of human rights are always secondary when hard decisions about SWFs are to be made, in particular, under the circumstances where the "divide and conquer" policy is exploited. Part IV

⁵ Reuben Wong, 'China's Rise: Making Sense of EU Responses' (2013) 2 (2) *Journal of Contemporary China Studies* 111, 128

⁶ Christina Madden, 'Sovereign Wealth Funds under Scrutiny' *Policy Innovations* (21 May 2008)

⁷ Daniel Deudney, James Goldgeier, et al., *Global Shift: How the West Should Respond to the Rise of China*. (Washington, DC, Transatlantic Academy, 2011)

⁸ Jean-Marc Blanchard, 'China's Grand Strategy and Money Muscle: The Potentialities and Pratfalls of China's Sovereign Wealth Fund and Renminbi Policies' (2011) 4 *The Chinese Journal of International Politics* 31, 53 at 37

⁹ James Reilly, 'China's Unilateral Sanctions' (2012) 35 (4) *The Washington Quarterly* 121, 133

explores a framework in which the politically-inspired investment decisions can be mitigated given the lack of transnational legal venue. Among other innovative initiatives, the UN's Tri-pillar principles are examined with a particular regard to a state's core duty to protect human rights. This part also explores how the EU coordinates SWFs and human rights objectives and resolves conflicts; it provides innovative proposals to help stakeholders to make their decisions more cogent, so that policy makers can pursue policies that achieve goals for both healthy SWFs investment and human rights. A tentative conclusion is given in the end of this study.

A. The Anatomy of China's SWFs: The *Pros and Cons*

China's economy has grown at rates of around 10% for the past three decades, despite the absence of a robust legal system. The rapid economic growth has afforded it an economic powerhouse in the global system. As the world's second largest economy and a major creditor nation, China has impressive intrinsic economic capabilities.¹⁰ Its large foreign reserves are primarily made up of commodity export revenues. At an unprecedented pace, China has accumulated the largest foreign exchange reserves, which are estimated at around \$3.4 trillion, resulting primarily from trade surpluses generated by its export-driven economy.¹¹ The Chinese government has created its own SWF, i.e. the China Investment Corporation (CIC) in 2007,¹² which is emblematic of the new status of China in the global economy.¹³ As a semi-independent entity, it reports directly to the State Council, the Chinese highest administrative organ. In this regard, it is vital to guard against the uncertainties arising from the reshaping of the emerging governance landscape of multipolar global finance.

1. Relieve the Global Financial Tension

Most SWFs do not seem to act for political purposes, but maximise profit and play a positive role in alleviating global tensions. They contribute stabilising the global financial system and underpin confidence as a whole through offering a fresh source of investment and market liquidity. As Gilson and Milhaupt observed, SWFs have softened the effects of the subprime mortgage crisis, lowering the cost of equity and reducing long-term U.S. interest rates.¹⁴ They have drawn significant attention largely because their home state has been investing in ways that are geopolitically expedient as well

¹⁰ Wendy Dobson and Paul Masson, 'Will the Renminbi Become a World Currency?' (2008) 20 (1) *China Economic Review* 124

¹¹ Simon Rabinovitch, 'China's Forex Reserves Reach \$3.4tn' *Financial Times* (11 April 2013)

¹² Michael F. Martin, 'China's Sovereign Wealth Fund: Developments and Policy Implications' (Congressional Research Service, 23 September 2010) <<http://fas.org/sgp/crs/row/R41441.pdf>>

¹³ Gordon Clark, Adam Dixon and Ashby Monk, *Sovereign Wealth Funds: Legitimacy, Governance, and Global Power* (Princeton University Press, 2013) 105-120

¹⁴ Ronald Gilson and Curtis Milhaupt, 'Sovereign Wealth Funds and Corporate Governance: A Minimalist Response to the New Mercantilism' (2008) 60 (5) *Stanford Law Review* 1345, 1368

as economically remunerative.¹⁵ One school of thought holds that the spectre of China's SWFs may have been exaggerated. The SWFs are crucial to balance the global economy, infuse liquidity and help provide stability to the international financial market. They are able to lengthen their investment horizons.¹⁶ In particular, the sovereign wealth injection into the financial industry has alleviated many of the banks' liquidity problems during the height of the financial crisis.¹⁷ The EU does not exert a significant impact on the human rights situations in China, the lack of progress in this regard prevents the EU to deepen the strategic relations with China.¹⁸ Nevertheless, SWFs investments give the EU a stake in the sustained prosperity and lower the cost of equity for companies, which is also conducive to reduce long-term interest rates.¹⁹ They have thus far been a positive influence to the global economies and helped to reduce the large current account deficit. It is unlikely that SWFs would exercise any significant constraint on Western foreign policy. Epstein and Rose arguably observed that SWFs have not sought to leverage their position to pursue political ends.²⁰ There is little evidence that SWFs have been used significantly for strategic investments. Ghahramani even optimistically held that: "investments by sovereign wealth funds may, in fact, have created an unprecedented level of global financial interdependence that could even enhance political stability."²¹ In contrast to the observations, some concerns arise in that SWF motives can be strategic rather than purely financial.

2. The SWFs' Geopolitical Consequences

Chinese SWFs may come with implicit strings attached and could potentially act as a Trojan Horse affecting European human rights norms.²² The SWFs' dramatic growth may potentially lead to inevitable foreign policy consequences and may significantly impair the West's human rights protection efforts. Concerns have been raised over the extent to which SWFs exert financial leverage for political ends. It can do this because of its huge SWFs, which were estimated at about \$1.3037

¹⁵ Barry Eichengreen, 'Global Shifts' (April 2011)

<http://emlab.berkeley.edu/~eichengr/Global_shifts_5-17-11.pdf>

¹⁶ Surendranath Jory, Mark Perry and Thomas Hemphill, 'The Role of Sovereign Wealth Funds in Global Financial Intermediation' (2010) 52 (6) *Thunderbird International Business Review* 589, 604 at 590

¹⁷ Salar Ghahramani, 'Sovereign Wealth Funds, Transnational Law, and the New Paradigms of International Financial Relations' (2013) 8 (2) *Yale Journal of International Affairs* 52, 64 at 58

¹⁸ Jean-Pierre Cabestan, 'European Perspectives on China's Rise' in Herbert Yee (ed.) *China's Rise – Threat or Opportunity?* (London & New York, Routledge, 2011) 80-100 at 92

¹⁹ Qingxiu Bu, 'The Sovereign Wealth Funds: Problem or Panacea?' (2010) 11 (5) *Journal of World Investment & Trade* 849, 877

²⁰ Richard Epstein and Amanda Rose, 'The Regulation of Sovereign Wealth Funds: The Virtues of Going Slow' (2009) 76 *The University of Chicago Law Review* 111, 134

²¹ Salar Ghahramani, 'Sovereign Wealth Funds, Transnational Law, and the New Paradigms of International Financial Relations' (2013) 8 (2) *Yale Journal of International Affairs* 52, 64 at 62

²² Sophie Meunier, 'Political Impact of Chinese Foreign Direct Investment in the European Union on Transatlantic Relations' (Brussels: European Parliament, 2012)
<http://scholar.princeton.edu/smeunier/files/meunier_final.pdf>

trillion as of March 2014.²³ In addition, the rise of state capitalism and the growing weight in the global economy of China have even complicated SWFs' geopolitical implications.²⁴ It is high time to review the theorising of the dialectics between global capitalism, geopolitics and the contradictions between the ongoing globalisation tendencies on the one hand, and the growing signs of and the politicisation of SWFs on the other.

China attempts to use its increasingly financial might to exert strategic influence over foreign affairs. As part of its grand strategy, China could exploit its SWFs as a political weapon with its integration into the global economy. They can be used strategically to apply political pressure and manipulate markets. The biggest effect of SWFs is their potential effect on democracy and human rights promotion efforts.²⁵ The increasing pressure resulting from the financial crisis renders it possible for China to make strategic decisions to invest in a politically friendly EU member states. The SWFs-based investment could be motivated by politics rather than investment goals, due particularly to its close ties to the Chinese government.²⁶ Under certain circumstances, SWFs are even a "threat to the sovereignty of the nations in whose corporations they invest".²⁷

Previously, China relied heavily on market access, technology transfer and capital from the West to accelerate its economic development.²⁸ In principle, China should still need the EU to keep its jurisdiction open to capital inflows, whose markets remain deep and liquid enough to absorb inflows in the trillions of dollars.²⁹ Globalisation appears to have changed the conventional dynamic. China's rapid accumulation in SWFs has begun to challenge Western dominance of global capital flows.³⁰ It seems that the EU member states have been de-prioritising human rights in the Sino-EU relation due to the increasing pressure following the global financial crisis.³¹ China no longer finds human rights compliance as incentive to do business with developed countries or as a requirement to find trading

²³ SWF Institute, 'Sovereign Wealth Fund Rankings' (March 2014)

<<http://www.swfinstitute.org/fund-rankings/>>

²⁴ Ian Bremmer, 'State Capitalism Comes of Age' (2009) 88 (3) *Foreign Affairs* 40, 55

²⁵ Patrick Keenan and Christiana Ochoa, 'The Human Rights Potential of Sovereign Wealth Funds' (2009) 40 *Georgetown Journal of International Law* 1151, 1179

²⁶ Larry Catá Backer, 'Sovereign Investing in Times of Crisis: Global Regulation of Sovereign Wealth Funds, State-Owned Enterprises, and the Chinese Experience' (2010) 19 (3) *Transnational Law and Contemporary Problems* 3, 144 at 40

²⁷ Ronald Gilson and Curtis Milhaupt, 'Sovereign Wealth Funds and Corporate Governance: A Minimalist Response to the New Mercantilism' (2008) 65 *Stanford Law Review* 1345

²⁸ Yasheng Huang, 'What's Next for Chinese Economy' *MIT Sloan Management Review* (14 June 2014)

²⁹ Daniel Drezner 'Sovereign Wealth Funds and the (In)security of Global Finance' (2008) 62 (1) *Journal of International Affairs* 115, 130

³⁰ Ian Bremmer, 'State Capitalism Comes of Age' (2009) 88 (3) *Foreign Affairs* 40, 55 at 48

³¹ Sonya Sceats with Shaun Breslin, 'China and the International Human Rights System' (Chatham House, The Royal Institute of International Affairs October, 2012)

<http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf> 1

partners.³² With its growing influence, China has started to use SWFs as an investment vehicle to dominate market activity,³³ so as to leverage its responsibility to protect human rights.³⁴ Thus, it has a direct stake in the continuing prosperity of the West and may impair the European human rights efforts.

B. The Cornerstone of the EU and the Human Rights Intervention

The EU has been exporting democracy and human rights, representing a cornerstone of many European countries' foreign policy.³⁵ It is perceived to support China's transition to an open society based upon the above universal values.³⁶ It is argued that the economic development which Western-style legal changes have facilitated will increase demand for Western-influenced legal change in such political areas,³⁷ and expose China to the functioning of a modern market economy.³⁸ It is thus perceived that the economic integration and wealth are more likely to move China towards better protection of human rights. This presumption does not hold true because China's SWFs belies the notion that as China grows richer it will become more democratic with more protection of human rights.³⁹ On the contrary, worries increasingly level up about Chinese SWFs, which carry particular concerns due to China's poor track record with human rights.⁴⁰ Although the Chinese market reforms may not guarantee greater respect for human rights, the huge economic success does pose pressure on the Chinese government to implement political reform for democracy.⁴¹

1. The Cornerstone of the EU in Human Rights

³² Patrick Keenan, 'Financial Globalization and Human Rights' (2008) 46 (3) *Columbia Journal of Transnational Law* 509, 562

³³ Victor Shih, 'Tools of Survival: Sovereign Wealth Funds in Singapore and China' (2009) 14 *Geopolitics* 328, 344

³⁴ Jean-Marc Blanchard, 'China's Grand Strategy and Money Muscle: The Potentialities and Pratfalls of China's Sovereign Wealth Fund and Renminbi Policies' (2011) 4 *The Chinese Journal of International Politics* 31, 53 at 46-47

³⁵ Ingrid Dhooghe, 'The Limits of China's Soft Power in Europe: Beijing's Public Diplomacy Puzzle' in Jan Melissen and Sook Jong Lee (eds.), *Public Diplomacy and Soft Power in East Asia* (Palgrave Macmillan, 2011) 163-190

³⁶ 'EU-China Relations: A Maturing Partnership' [COM (2003) 533] §2

<http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/asia/r14207_en.htm>

³⁷ Tom Ginsburg, 'Does Law Matter for Economic Development? Evidence From East Asia' (2000) 34 (3) *Law & Society Review* 829, 856

³⁸ Yingyi Qian and Jinglian Wu, 'Transition to a Market Economy: How Far Across the River?' in Nicholas Hope, Dennis Tao Yang and Mu Yang Li (eds.) *How Far Across the River?: Chinese Policy Reform at the Millennium* (Stanford University Press, 2003) 31-63

³⁹ Duncan Freeman and Gustaaf Geeraerts, 'Europe, China, and Expectations for Human Rights' (2011) 4 *The Chinese Journal of International Politic* 179, 203

⁴⁰ 'Sovereign Wealth Funds: Foreign Policy Consequences in An Era of New Money' *Hearing before the Committee on Foreign Relations United States Senate* (S. Hrg. 110-765, 2nd Session 110th Congress, 11 June 2008) <<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/pdf/CHRG-110shrg48061.pdf>>

⁴¹ Doug Bandow, 'Trade with China: Business Profits or Human Rights?' (Cato Institute, 5 May 2000) <<http://www.cato.org/publications/commentary/trade-china-business-profits-or-human-rights>>

China has indeed made certain progress towards the protection of human rights. There is, however, still a significant gap between the current human rights situation in China and internationally accepted standards. It results largely from a perception that the rights to state sovereignty prevail over individual human rights.⁴² Human rights are generally considered as subordinate to the Chinese Communist Party (CCP)'s authority and to the policy goals of maintaining social stability.⁴³ Although the economic growth and emerging middle class create pressures for the protection of human rights as well as improvement of democracy, those interested parties within the CCP refer incremental to dramatic changes.⁴⁴ Given the shared basis of values and norms among the EU state members, the EU has an increased moral responsibility to enhance its policy on promoting human rights, in particular, in China. The European societies are deeply permeated by the value of human rights even if the governments are willing to take a more pragmatic approach to ensure their material interest.⁴⁵ Giving up on the commitment to human rights or being compliant in the face of rapacious state capitalism would hurt the EU in the long term.⁴⁶ In the sense that politics and economics cannot be divorced, SWFs are integral parts of a component of a state-led development approach. It is unrealistic to be free from such political and social demands that piggyback on investment negotiations and advance unilaterally-defined objectives, reflecting domestic criteria.⁴⁷ For instance, the Norwegian SWFs refuse to invest in countries which do not satisfy its own social responsibility criteria.⁴⁸ Even free trade and investment is likely to advance human rights, through which the EU can transmit the well-recognised value via businesses.⁴⁹ Notably, a free-market approach to human rights policy does not mean that the EU should be indifferent to human rights abuses in China and disconnect the trading relationship from fundamental values.⁵⁰ It may be strategically significant to promote better political relations through stronger economic ties, so as to advance the EU's political and social objectives.

⁴² Gordon Clark, Adam Dixon and Ashby Monk, *Sovereign Wealth Funds: Legitimacy, Governance, and Global Power* (Princeton University Press, 2013) 30-45

⁴³ Thomas Lum, 'Human Rights in China and U.S. Policy' (18 July 2011)

<<http://www.fas.org/sgp/crs/row/RL34729.pdf>>

⁴⁴ Thomas Lum and Hannah Fischer, 'Human Rights in China: Trends and Policy Implications' (12 June 2009)

<<http://fpc.state.gov/documents/organization/125955.pdf>>

⁴⁵ Ingrid Dhooghe, 'The Limits of China's Soft Power in Europe: Beijing's Public Diplomacy Puzzle' in Jan Melissen and Sook Jong Lee (eds.), *Public Diplomacy and Soft Power in East Asia* (Palgrave Macmillan, 2011) 163-190

⁴⁶ Heriberto Araújo and Juan Pablo Cardenal, 'China's Economic Empire' *The New York Times* (1 June 2013)

⁴⁷ Jagdish Bhagwati, 'Sovereign Wealth Funds and Implications for Policy' *Testimony before The Senate Foreign Relations Committee* (110th Congress, 2nd Session, Senate Hearing 110-765, 11 June 2008)

<<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/html/CHRG-110shrg48061.htm>>

⁴⁸ Simon Chesterman, 'The Turn to Ethics: Disinvestment from Multinational Corporations for Human Rights Violations-The Case of Norway's Sovereign Wealth Fund' (2008) 23 *American University International Law Review* 577, 615

⁴⁹ Doug Bandow, 'Trade with China: Business Profits or Human Rights?' (5 May 2000)

<<http://www.cato.org/publications/commentary/trade-china-business-profits-or-human-rights>>

⁵⁰ James Dorn, 'Trade and Human Rights in China' *Journal of Commerce* (15 November 1996)

2. State's Core Duty *vis-à-vis* State Sovereignty

A human rights dialogue is usually the most sensitive issue in China and cannot be debated yet in broader forums.⁵¹ China has long held that 'universal' human rights are goals to be attained on the path to development rather than binding legal obligation. Collective socio-economic or 'survival' rights are firmly prioritised over individual civil and political rights.⁵² The Chinese government has regularly spoken out against external intervention on human rights grounds in its sovereignty.⁵³ It denounces foreign criticisms of its human rights policies as interference in China's internal affairs, and asserts that perspectives on human rights vary according to a country's level of economic development and social system.⁵⁴ Such an approach may contradict the state's duty to protect human rights.

The State has an intrinsic duty to protect citizens from human rights violations.⁵⁵ It should ensure policy coherence by considering human rights across all relevant governmental agencies,⁵⁶ promoting human rights through multilateral institutions dealing with business-related issues,⁵⁷ and maintaining "domestic policy space" to fulfil human rights obligations when pursuing economic objectives such as investment treaties.⁵⁸ The emergence of the international human rights regime has shifted previous fundamental understandings regarding state sovereignty,⁵⁹ which is itself now conditioned on a state's ability and will to protect the human rights of its citizens.⁶⁰ The human rights regime should seek to protect individuals from violations of their rights, regardless of whether those rights have been violated by agents of the state or by private actors.⁶¹ When a state fails to protect its citizens from

⁵¹ Daniel Bell, 'The East Asian Challenge to Human Rights: Reflections on an East West Dialogue' (1996) 18 (3) *Human Rights Quarterly* 641, 667

⁵² Shaun Breslin, 'The EU and Asia within an Evolving Global Order: What is Europe? Where is Asia?' (2010) 27 (1) *East Asia: An International Journal* 1, 13

⁵³ Sonya Sceats and Shaun Breslin, 'China and the International Human Rights System' (Chatham House, The Royal Institute of International Affairs October, 2012)

<http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf> 1

⁵⁴ The PRC State Council, 'Progress in China's Human Rights in 2009' *Xinhua* (26 September 2010)

⁵⁵ United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (HRC 17th Session, Agenda Item 3, A/HRC/17/31, 21 March 2011) <<http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>> Principle 1

⁵⁶ Principle 8

⁵⁷ Principle 10

⁵⁸ Principle 9

⁵⁹ Patrick Keenan and Christiana Ochoa, 'The Human Rights Potential of Sovereign Wealth Funds' (2009) 40 *Georgetown Journal of International Law* 1151, 1179 at 1157

⁶⁰ Vesselin Popovski, 'Sovereignty as Duty to Protect Human Rights' (2004) 41 (4) *United Nations Chronicle* 16-19

⁶¹ The International Council on Human Rights Policy, *Beyond Voluntarism: Human Rights and the Developing Legal Obligations of Companies* 46 (February 2002) <http://www.ichrp.org/files/reports/7/107_report_en.pdf>

violations of human rights, the state itself has been held to have breached its duty to protect human rights.⁶²

In reality, not all states have the capacity or the will to protect human rights and may make very little real effort to fulfil this duty, which holds particularly true in an authoritarian state.⁶³ A strong reliance on the state's duties will not function effectively in China where there has been no sound record for the protection of human rights.⁶⁴ When it is unable or unwilling to do so, the international community or other states may share in fulfilling the duty to protect human rights, which are violated in connection with business and financial activity. Nevertheless, there has been less recognition of this duty to share in the protection of human rights in the SWFs' geopolitical arena and its implications.⁶⁵ ⁶⁶ China invokes the principles of state sovereignty as a defence against foreign incursions.⁶⁷ Given the arguable direct intervention, a relatively realistic resolution could resort to a strengthening of the system of international law.⁶⁸ A subsequent problem remains: how to make international law effective in the absence of a powerful enforcing avenue.⁶⁹

3. A Dilemma between Two Approaches

China's diplomatic dealings with the EU have been largely dependent on its powerful SWFs, which provides China with political leverage.⁷⁰ It is good at using economic interests to meld the EU's China policy, which faces hard decisions while seeking to gain more SWFs investments.⁷¹ For instance,

⁶² Patrick Keenan, and Christiana Ochoa, 'The Human Rights Potential of Sovereign Wealth Funds' (2009) 40 *Georgetown Journal of International Law* 1151, 1179 at 1157

⁶³ David Miller, 'The Responsibility to Protect Human Rights' in Lukas Meyer (ed.) *Legitimacy, Justice and Public International Law* (Cambridge, Cambridge University Press, 2009) 232-251

⁶⁴ Julie Liu, 'Lighting the Torch of Human Rights: The Olympic Games as a Vehicle for Human Rights Reform' (2007) 5 (2) *Northwestern Journal of International Human Rights* 213, 235

⁶⁵ Eric Helleiner, 'The Geopolitics of Sovereign Wealth Funds: An Introduction' (2009) 14 (2) *Geopolitics* 300, 304

⁶⁶ Walter Clemens, Jr, 'China, North Korea and the Responsibility to Protect the UN Human Rights Council's Commission of Inquiry' *Global Asia* (27 March 2014); Patrick Keenan and Christiana Ochoa, 'The Human Rights Potential of Sovereign Wealth Funds' (2009) 40 *Georgetown Journal of International Law* 1151, 1179 at 1158

⁶⁷ Sonya Sceats and Shaun Breslin, 'China and the International Human Rights System' (Chatham House, The Royal Institute of International Affairs October, 2012)

<http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf>

⁶⁸ Salar Ghahramani, 'Sovereign Wealth Funds, Transnational Law, and the New Paradigms of International Financial Relations' (2013) 8 (2) *Yale Journal of International Affairs* 52, 64

⁶⁹ Jana von Stein, 'International Law: Understanding Compliance and Enforcement' in Robert Denemark (ed.), *International Studies Compendium* (Oxford: Wiley-Blackwell, 2010)

⁷⁰ Sophie Meunier, 'Political Impact of Chinese Foreign Direct Investment in the European Union on Transatlantic Relations' (Brussels, European Parliament, 2012)

<http://scholar.princeton.edu/smeunier/files/meunier_final.pdf> 6

⁷¹ Alex Cree, 'Managing China's Sovereign Wealth Fund Development: An American Strategy for Setting Rules and Norms' (2008) 9 *The Journal of International Policy Solutions* 27, 32

Klaus Regling, head of the European Financial Stability Facility (EFSF), went to Beijing as soon as the European rescue package was put together, seeking for Chinese investment in the fund.⁷² Since the SWFs have been used to influence political and economic objectives, it presumes that China knows how to strategically use its SWFs for maximising leverage with regards to human rights. Criticizing China's human rights violations might result in reduced access to the investment opportunities and the impediment of the recovery in an era of global economic uncertainty.⁷³

A serious concern arises as to how willing the EU members would be to stand up to China in the human rights issue.⁷⁴ Notably, the emphasis on human rights has been in decline. It is alleged that trade policies have been undermining some fundamental values.⁷⁵ Even if the conditionality is implicit, the competition between EU member states to host Chinese SWFs could lead to a reversal of policy positions concerning the issue of human rights, and result in a regulatory race to the bottom.⁷⁶ From pervasive state ownership of key strategic enterprises to portfolio investment by its SWFs, China's dramatic growth under weak formal legal institutions has been posing a serious challenge to the conventional sustainability and justice.⁷⁷ It is therefore essential that Western governments stick to the rule of law i.e. the core of Western prosperity. In this sense, it remains uncertain about the extent to which the Chinese SWF investments impact the Western's core values of human rights, and whether SWFs have the effect of having economic policy which in effect trump the legitimate concern about human rights abuses.⁷⁸

C. Paradoxical Leverage between SWFs and Human Rights

China's fiscal capacity, foreign exchange reserves and SWFs are a tremendous source of leverage in global money governance. The current financial crisis has intensified the Western reliance on China's

⁷² Sophie Meunier, 'China as Saviour or Predator in Europe?' *The Huffington Post* (11 March 2011)

⁷³ Odd Arne Westad, 'China and Europe: Opportunities or Dangers?' in Nicholas Kitchen (ed.) *Europe in an Asian Century: Europe between the Superpowers* (SR013. LSE IDEAS, October 2012)
<<http://eprints.lse.ac.uk/46823/>>

⁷⁴ Philip Baker, 'Human Rights, Europe and the People's Republic of China' (2002) 169 *The China Quarterly* 45, 63

⁷⁵ James Reilly, 'China's Economic Statecraft: Turning Wealth into Power' (27 November 2013)

<<http://m.lowyinstitute.org/publications/chinas-economic-statecraft-0>>

⁷⁶ Sophie Meunier, 'Political Impact of Chinese Foreign Direct Investment in the European Union on Transatlantic Relations' (Brussels: European Parliament, 2012)

<http://scholar.princeton.edu/smeunier/files/meunier_final.pdf>

⁷⁷ Ronald Gilson and Curtis Milhaupt, 'Economically Benevolent Dictators: Lessons for Developing Democracies' (2011) 59 (1) *American Journal of Comparative Law* 227, 288 at 277

⁷⁸ 'Sovereign Wealth Funds: Foreign Policy Consequences in An Era of New Money' Hearing before the Committee on Foreign Relations United States Senate (S. Hrg. 110-765, 2nd Session 110th Congress, 11 June 2008) <<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/pdf/CHRG-110shrg48061.pdf>>

SWFs-based investment.⁷⁹ When the Chinese SWFs own shares in western financial institutions, their economies have intertwined within western financial framework. Interdependence created by SWFs is significantly at stake for both host and home countries where finance and human rights are increasingly intertwined.⁸⁰ Human rights are inevitably being woven into the tightly intermeshed Sino-EU relationships.⁸¹ Despite the increased economic interdependence, it does not necessarily shorten the ideological gap in respect of the protection of human rights.⁸² On the contrary, human rights issues might be deferred or slowed until the economic issues have been set, depicting economic issues as the higher priority.⁸³ SWFs, together with the Chinese SOEs' integrated outbound activities, can serve as instruments of state policy effectuated through private, markets--reaping both economic profit and state political objectives.⁸⁴ Though private in form, the SWFs may interact with public policy differently from what private funds normally do.⁸⁵ Beyond simply seeking demand or higher financial return, SWFs investment has potentially translated into Sino-EU policy change.⁸⁶ Arguably, whatever the abuses of human rights, the injection of China's SWF-relate investment may have virtually trumped all other considerations.⁸⁷ This is largely due to the fact that China has increasingly resorted to unilateral sanctions through the exploiting of SWFs in response to the EU's criticism of its human rights record.⁸⁸

1. The Policy of "Carrot and Stick"

China has long used financial incentives in an attempt to swing the EU policies. During the euro crisis, China knows how to employ the EU's multi-level governance to its advantage based on the

⁷⁹ Qingxiu Bu, 'The Sovereign Wealth Funds: Problem or Panacea?' (2010) 11 (5) *Journal of World Investment & Trade* 849, 877

⁸⁰ Mary Dowell-Jones and David Kinley, 'Minding the Gap: Global Finance and Human Rights' (2011) 25 (2) *Ethics & International Affairs* 183, 210

⁸¹ Larry Catá Backe, 'Sovereign Investing and Markets-Based Transnational Rule of Law Building: The Norwegian Sovereign Wealth Fund in Global Markets' (2013) 29 (1) *American University International Law Review* 1, 122 at 109

⁸² Ian Goldin and Tiffany Vogel, 'Global Governance and Systemic Risk in the 21st Century: Lessons from the Financial Crisis' (2010) 1 (1) *Global Policy* 4, 15

⁸³ Brian Spegele, 'Protracted Negotiations' Solution to U.S.-China Tension?' *The Wall Street Journal* (31 May 2011)

⁸⁴ Larry Catá Backer, 'Sovereign Investing in Times of Crisis: Global Regulation of Sovereign Wealth Funds, State Owned Enterprises and the Chinese Experience' (2010) 19 (1) *Transnational Law & Contemporary Problems* 3, 144

⁸⁵ Larry Catá Backer, 'Sovereign Wealth Funds as Regulatory Chameleons: The Norwegian Sovereign Wealth Funds and Public Global Governance through Private Global Investment' (2010) 41 (2) *Georgetown Journal of International Law* 425, 500

⁸⁶ Sophie Meunier, 'Political Impact of Chinese Foreign Direct Investment in the European Union on Transatlantic Relations' (Brussels: European Parliament, 2012) 7
<http://scholar.princeton.edu/smeunier/files/meunier_final.pdf>

⁸⁷ Gordon Clark, Adam Dixon and Ashby Monk, *Sovereign Wealth Funds: Legitimacy, Governance, and Global Power* (Princeton University Press, 2013)

⁸⁸ Jianwei Lou, 'Is China an Emerging Sanctioning State?' in Junsheng Li, Bo Chen Bo and Na Hou (eds.) *Cooperation for a Peaceful and Sustainable World Part 2* (Emerald Group Publishing, 2013) 225, 240

inconsistencies between member states within the EU.⁸⁹ Despite the common fundamental values, European countries have their own different interests over many other issues. In this respect, there is a need for coordination and solidarity within the EU given the lack of institutional integrity.⁹⁰

(a) Access to China's Lucrative Markets and the Key Stake of China's SWFs

China's regular use of SWFs to advance its strategic interests reflects on some geopolitical implications.⁹¹ On the one hand, it has been increasing the use of unilateral economic sanctions to achieve its foreign policy objectives.⁹² On the other hand, the EU is courting China to provide more investment with its SWFs to help stabilise the euro on the global market.⁹³ China is always drawing a line at whether or not a nation criticizes its human rights record. It has repeated politicised economic relations, refusing the SWFs-based investment opportunities in support of its ideological objectives.⁹⁴ As a result, the strategy of financial pressure assumes that threatening loss of capital injections opportunities will compel many powerful European foreign multinational companies (MNCs) to lobby their home governments in a pro-China fashion.⁹⁵ It is obvious that China has deployed its vast SWFs as a tool to mix economic rewards and punishments to eviscerate criticism of China's human rights policies.⁹⁶

(b) The Divide and Conquer: The "Carrot and Stick" Policy

China has become adept at exploiting European division to its advantage.⁹⁷ It mainly uses either economic sticks or economic incentives to "punish" or "reward" an individual European member state, although it is yet to clarify what is a "normal" bureaucratic hold-up and what is a deliberate decision

⁸⁹ 'China-Europe Relationship and Transatlantic Implications' Hearing before the US-China Economic and Security Review Commission 112th Congress 2nd Session (19 April 2012)

<<http://origin.www.uscc.gov/sites/default/files/transcripts/4.19.12HearingTranscript.pdf>>

⁹⁰ Gordon Clark, Adam Dixon and Ashby Monk, *Sovereign Wealth Funds: Legitimacy, Governance, and Global Power* (Princeton University Press, 2013) 105-120

⁹¹ Jean-Marc Blanchard, 'China's Grand Strategy and Money Muscle: The Potentialities and Pratfalls of China's Sovereign Wealth Fund and Renminbi Policies' (2011) 4 *The Chinese Journal of International Politics* 31, 53

⁹² Jian Jisong, 'Investigation into the Judicial and Legal Aspects of Unilateral Sanctions' (2007) 1 *Legal Studies* 87

⁹³ Liz Alderman and David Barboza, 'Europe Tries to Lure Chinese Cash to Back Rescue of Euro' *The New York Times* (28 October 2011)

⁹⁴ James Reilly, 'China's Unilateral Sanctions' (2012) 35 (4) *The Washington Quarterly* 121

⁹⁵ 'China State-Owned and State Controlled Enterprises' *Hearing before the United States-China Economic and Security Review Commission* (112th Congress, 15 February 2015)

<<http://www.uscc.gov/Hearings/hearing-chinese-state-owned-and-state-controlled-enterprises>>

⁹⁶ James Reilly, 'China's Unilateral Sanctions' (2012) 35 (4) *The Washington Quarterly* 121, 122

⁹⁷ Sophie Meunier, 'A Faustian Bargain or Just a Good Bargain? Chinese Foreign Direct Investment and Politics in Europe' (2014) 12 (1) *Asia-Europe Journal* 143, 158 at 152

to delay.⁹⁸ Accordingly, the EU member states' China policies vacillate over choice between economic interests and human rights issues.⁹⁹ As a result, most EU countries have adopted a policy of appeasement on human rights issues.¹⁰⁰ As Meunier observed:

*“the EU member states have been reacting to this surge with competition and cacophony, each one scrambling to attract this investment to its own territory and negotiating its own terms with China.”*¹⁰¹

The geographical distribution of Chinese SWFs in the EU seems very diverse, but the three primary locations are based in France, Germany and the UK.¹⁰² China can afford to simply turn away from any major EU powers and form economic alliances with the states that are silent with its human rights record.¹⁰³ With threats of unilateral economic sanction to counter criticism of its human rights policy, China employs a strategy that resembles that of “divide and conquer.”¹⁰⁴ This is the tactic of trying to opportunistically exploit temporary divisions among the core group of powerful states.¹⁰⁵

While it is unlikely that UK features centrally in China's grand strategy in global affairs, China's growing influence nonetheless impacts Sino-UK relations significantly.¹⁰⁶ The UK took a more critical position on China's human rights record, which had considerably harmed the two countries' relationship. A recent approach does not press China to improve the protection of human rights, but helps to attract huge SWFs-based financial investment opportunities. Such a U-turn policy has not served its trading relationships from the British national values. For instance, CIC took a 10% stake in London's Heathrow Airport in 2012, as well as a nearly 9% stake in the British utility company Thames Water.¹⁰⁷ The “carrot and stick” policy has clearly undermined the UK's human rights diplomacy as a whole by showing that there are double standards. There are some countries in which

⁹⁸ ‘China-Europe Relationship and Transatlantic Implications’ Hearing before the US-China Economic and Security Review Commission 112th Congress 2nd Session (19 April 2012)
<<http://origin.www.uscc.gov/sites/default/files/transcripts/4.19.12HearingTranscript.pdf>>

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⁹⁹ Qinglian He, “‘Soft Power’ with Chinese Characteristics Is Changing the World’ (19 December 2009)
<<http://www.hrichina.org/en/content/3175>>

¹⁰⁰ Qinglian He, “‘Soft Power’ with Chinese Characteristics Is Changing the World’ (19 December 2009)
<<http://www.hrichina.org/en/content/3175>>

¹⁰¹ Sophie Meunier, ‘Divide and Conquer: China and the Cacophony of Foreign Investment Rules in the EU’ (2014) 21 (7) *Journal of European Public Policy* 996, 1016

¹⁰² Sophie Meunier, ‘Beggars can’t be Choosers’: The European Crisis and Chinese Direct Investment in the European Union’ (2014) 36 (3) *Journal of European Integration* 283, 302

¹⁰³ Salar Ghahramani, ‘Governments, Financial Markets, and International Human Rights: The State’s Role as Shareholder’ (2011) 6 (1) *Yale Journal of International Affairs*. 85, 95

¹⁰⁴ Sophie Meunier, ‘Divide and Conquer: China and the Cacophony of Foreign Investment Rules in the EU’ (2014) 21 (7) *Journal of European Public Policy* 996, 1016

¹⁰⁵ Eyal Benvenisti and George Downs, ‘The Empire's New Clothes: Political Economy and the Fragmentation of International Law’ (2007) 60 (2) *Stanford Law Review* 595, 631 at 620

¹⁰⁶ Doug Stokes and Richard Whitman, ‘Transatlantic Triage? European and UK ‘Grand Strategy’ after the US Rebalance to Asia’ (2013) 89 (5) *International Affairs* 1087, 1107

¹⁰⁷ Andrew Woodman, ‘CIC Buys Stake in Heathrow Airport Holdings’ *Asian Venture Capital Journal* (2 November 2012)

the UK raises human rights and others in which the UK doesn't do because of its trade interests, such as China.¹⁰⁸

The 'divide and conquer' policy has applied to Germany and France as well. Policy makers have been increasingly playing a role at the centre of the global financial system. Germany has generally been less outspoken about China's human rights record than most of its European partners.¹⁰⁹ However, Angela Merkel expressed concern about China's human rights situation and raised criticism on a visit to China in 2007. In consequence, she has failed to get a single purchase order from China during her visit. Notably, some observers were critical of Chancellor Merkel's reluctance to tackle the issue of human rights when she visited China again in August 2012, with a mission to attract the Chinese investment in Germany.¹¹⁰ France has a reputation as being the "motherland of human rights," but has long been guided by economic interests, having abandoned its concern for and critique of the human rights situation in China.¹¹¹ The Chinese government adopted a "carrot and stick" policy by means of either injecting or refusing of SWFs. While Merkel got the cold shoulder, French President Nicolas Sarkozy was in China basking in the "warm winter sun," garnering the largest £815million purchase order in the history of civilian use of nuclear power in the world and selling 160 Airbuses to boot.¹¹² Nevertheless, China has suspended bilateral relations as a means of exerting leverage. In 2008, China postponed the EU-China Summit as a reaction to French President Sarkozy's plan to meet Dalai Lama. Since France had at the time the European presidency, the entire EU was basically taken hostage as a result of the French decision.¹¹³ With the relationship coming back to normal, CIC recently purchased a 7% stake in France's Eutelsat Communications.¹¹⁴ These cases reflect the shift in policy based on financial interests rather than ideological convictions or moral principles. China not only makes use of "purchase order diplomacy" to manipulate and modify such unprincipled European foreign policy that is subordinate to economic interests, but also derides the "hypocrisy of human rights diplomacy."¹¹⁵

¹⁰⁸ Yang Jiang, 'Red Trojan Horses? A New Look at Chinese SOEs' Outward Investment' (2014) 2 (1) *Journal of China and International Relations* 1, 25

¹⁰⁹ Wieland Wagner, 'The Domesticated Chancellor: Merkel Shies Away from Direct Criticism in China' *Spiegel International* (31 August 2012)

¹¹⁰ Sophie Meunier, 'A Faustian Bargain or Just a Good Bargain? Chinese Foreign Direct Investment and Politics in Europe' (2014) 12 (1) *Asia-Europe Journal* 143, 158 at 147

¹¹¹ Qinglian He, "'Soft Power" with Chinese Characteristics Is Changing the World' (19 December 2009) <<http://www.hrichina.org/en/content/3175>>

¹¹² Jane Macartney and Robin Pagnamenta, 'French Seal \$12bn Chinese Nuclear Deal' *The Times* (27 November 2007)

¹¹³ Gudrun Wacker, 'Hearing on the China-Europe Relationship and Transatlantic Implications' (19 April 2012) Testimony before the U.S.-China Economic and Security Review Commission <<http://www.uscc.gov/sites/default/files/4.19.12Wacker.pdf>>

¹¹⁴ Françoise Nicolas, 'China's Direct Investment in the European Union: Challenges and Policy Responses' (2014) 7 (1) *China Economic Journal* 103, 125

¹¹⁵ Qinglian He, "'Soft Power" with Chinese Characteristics Is Changing the World' (19 December 2009) <<http://www.hrichina.org/en/content/3175>>

(c) *Less Diplomatic but Effective Sanctions*

China put pressure on the three EU member states to further the interests of its national policy, which represents a more subtle influence.¹¹⁶ It prefers to use subtle threats, variation in SWFs investment opportunities and selective purchases. Such a delicate game minimises diplomatic fallout. It takes advantage of the scheme's flexibility that can be removed without an embarrassing policy reversal while achieving China's political and ideological objectives.¹¹⁷ The sanctions are enforcement in a relatively less costly and risky way to signal China's dissatisfaction, while increasing the costs to those governments who take undesired actions.¹¹⁸ The sanction conveys a message that more serious repercussion will come unless the country reverse its certain action.¹¹⁹ Secondly, this threat is based on a leverage asymmetry. There is little leverage imposed on China in terms of efficient enforcement mechanisms and strong protections against violation of human rights. With the issue unaddressed, it will pose an immense challenge to the future prosperity and stability of both China and the EU.¹²⁰ Policymakers have to balance the various interests and make a judgment on what they think is in the best interest of their country overall. The delicate game also indicates that the EU's current China policy in human rights is in a shambles, which is seen as inconsistent and self-serving.¹²¹ There might be some sort of implicit awareness of the extent to which the EU are relying on the Chinese SWFs.¹²² Finally but notably, this is an increase in interdependence, not an increase in asymmetric dependence.¹²³ The scale of China's economy does give it significant economic leverage.¹²⁴ European member states have been logically competing with each other to attract Chinese investment with various incentives.¹²⁵ Given the ongoing financial difficulties, the EU is increasingly lacking the confidence to admonish China on its human rights deficits. Exploiting the lack of coordination, China's policy of "carrots and stick" seems to have proved more effective in pressing the West to ignore its home human rights issues.¹²⁶ As a result, the 'divide and conquer' policy works, leading to

¹¹⁶ James Reilly, 'China's Unilateral Sanctions' (2012) 35 (4) *The Washington Quarterly* 121, 133

¹¹⁷ James Reilly, 'China's Unilateral Sanctions' (2012) 35 (4) *The Washington Quarterly* 123

¹¹⁸ James Reilly, 'China's Unilateral Sanctions' (2012) 35 (4) *The Washington Quarterly* 121, 133 at 123

¹¹⁹ James Reilly, 'China's Unilateral Sanctions' (2012) 35 (4) *The Washington Quarterly* 121, 133 at 123

¹²⁰ Odd Arne Westad, 'China and Europe: Opportunities or Dangers?' in Nicholas Kitchen (ed.) *Europe in an Asian Century: Europe between the Superpowers* (SR013. LSE IDEAS, October 2012) 21

<<http://eprints.lse.ac.uk/46823/>>

¹²¹ Odd Arne Westad, 'China and Europe: Opportunities or Dangers?' in Nicholas Kitchen (ed.) *Europe in an Asian Century: Europe between the Superpowers* (SR013. LSE IDEAS, October 2012) 18

<<http://eprints.lse.ac.uk/46823/>>

¹²² Jeremy Clegg and Hinrich Voss, 'Chinese Overseas Direct Investment in the European Union' (January 2012) <http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Asia/0912ecran_cleggvooss.pdf>

¹²³ Thomas Wright, 'Sifting through Interdependence' (2013) 36 (4) *The Washington Quarterly* 7, 23

¹²⁴ Giuseppe Balducci and Jing Men (eds.) *Prospects and Challenges for EU-China Relations in the 21st Century: The Partnership and Cooperation Agreement* (European Interuniversity Press, 2010) 34

¹²⁵ Sophie Meunier, 'China as Saviour or Predator in Europe?' *The Huffington Post* (3 November 2011)

¹²⁶ David Allen Baldwin, *Economic Statecraft* (Princeton University Press, 1985) 41-50

further European fragmentation.¹²⁷ The EU is split down the middle on how to deal with the issue, with the major EU powers having given up its public criticism of China's human rights violations.¹²⁸ Generally, the EU member states are taking the lack of elementary rights in China seriously, but are proceeding in a largely uncoordinated manner.¹²⁹ With the issue unaddressed, the paradoxical Chinese model may complicate the fundamental value of human rights in those undeveloped countries.

2. A Domino Phenomena: Corrosive Effects on Western Soft Power

Despite the increased observance of human rights being a *sine qua non* for development and enhanced global influence,¹³⁰ the growth of SWFs has somewhat marginal effects on the contour of Western foreign policy.¹³¹ In particular, the Chinese SWF-related investments are perceived as a geopolitical threat,¹³² largely because they give an added advantage to the authoritarian government as against the Western model.¹³³ Representing one component of an alternative development path, SWFs suggests a possible rival to liberal free-market democracy.¹³⁴ When China's SWFs seek to play abroad by rules that emanate from an authoritarian regime, there is grave danger that Western countries will, out of economic need, end up playing by Beijing's rules.¹³⁵ The backdrop suggests a diminishing role for the proverbial sticks that have traditionally been used against China.¹³⁶ This should by no means be scrutinised without the consideration of the state capitalism backed by the Chinese Communist Party (CCP), which is more capable of riding out downturns that would otherwise have threatened its regime.¹³⁷ The CCP is skilled at using markets to create wealth that can be used to maximize its own

¹²⁷ Sophie Meunier, 'A Faustian Bargain or Just a Good Bargain? Chinese Foreign Direct Investment and Politics in Europe' (2014) 12 (1) *Asia-Europe Journal* 143, 158 at 151

¹²⁸ Giuseppe Balducci and Jing Men (eds.) *Prospects and Challenges for EU-China Relations in the 21st Century: The Partnership and Cooperation Agreement* (European Interuniversity Press, 2010) 3

¹²⁹ Odd Arne Westad, 'China and Europe: Opportunities or Dangers?' in Kitchen, Nicholas (ed.) *Europe in an Asian Century: Europe between the Superpowers* (SR013. LSE IDEAS, October 2012) <<http://eprints.lse.ac.uk/46823/>>

¹³⁰ Sonya Sceats with Shaun Breslin, 'China and the International Human Rights System' (October 2012) <http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf>

¹³¹ 'Sovereign Wealth Funds: Foreign Policy Consequences in An Era of New Money' *Hearing before the Committee on Foreign Relations United States Senate* (S. Hrg. 110-765, 2nd Session 110th Congress, 11 June 2008) <<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/pdf/CHRG-110shrg48061.pdf>>

¹³² Ronald Gilson and Curtis Milhaupt, 'Sovereign Wealth Funds and Corporate Governance: A Minimalist Response to the New Mercantilism' (2008) 60 (5) *Stanford Law Review* 1345, 1369

¹³³ Victor Shih, 'Tools of Survival: Sovereign Wealth Funds in Singapore and China' (2009) 14 *Geopolitics* 328, 344

¹³⁴ Daniel Drezner, 'The Foreign Policy Implications of Sovereign Wealth Funds' *Testimony for the Senate Foreign Relations Committee* (1 June 2008) <<http://www.foreign.senate.gov/imo/media/doc/DreznerTestimony080611a.pdf>>

¹³⁵ Didi Kirsten Tatlow, 'China's Development A 'Threat' to Democracies' *The New York Times* (3 June 2013)

¹³⁶ Salar Ghahramani, 'Governments, Financial Markets, and International Human Rights: The State's Role as Shareholder' (2011) 6 (1) *Yale Journal of International Affairs* 85, 95 at 86

¹³⁷ Daniel Drezner 'Sovereign Wealth Funds and the (In)security of Global Finance' (2008) 62 (1) *Journal of International Affairs* 115, 130

chances of political survival.¹³⁸ More controversially, China's assistance with undeveloped countries doesn't attach conditions, such as democracy and human rights. By giving loans all over the world, China is pursuing a soft but unstoppable form of economic domination.¹³⁹ For instance, China set up the China-Africa Development Fund in 2007 with \$ 5 billion, despite its Linaburg-Maduell Transparency Index being only 4.¹⁴⁰ It is arguable that China is becoming an exporter of legal and law-related ideas.¹⁴¹ Incrementally, the recipient African countries have been accepting the Chinese-version of ideological values, including human rights.

It is also notable that China has successfully been embracing a dynamic state-governed band of capitalism.¹⁴² This is a form of state capitalism in which the state uses markets primarily for political gain.¹⁴³ Such a model has so far proven strikingly competitive.¹⁴⁴ Arguably, China gives state capitalism its global significance, underscoring the importance of the ongoing debate.¹⁴⁵ Behind the autocratic capitalism model, China can use SWFs diplomacy to pursue its international objectives as well as to thwart the international objectives of the West.¹⁴⁶ This is one possible feature of what some call a "Beijing Consensus" that has emerged to rival the "Washington Consensus" model of neo-liberal market economics, relatively free trade and the rule of law.¹⁴⁷ The Chinese model runs around to some fundamental thoughts in Western democracy and human rights.¹⁴⁸ Ambitiously, China would reprise its former role as a model for foreigners, at least, in some underdeveloped countries.¹⁴⁹ The belief of China's would-be imitators that they can also create a dynamic economy without sufficient protection of human rights would worsen the situation, making it more difficult to share the above-mentioned universal value.¹⁵⁰ The global economic downturn and China's ability to remain

¹³⁸ Victor Shih, 'Tools of Survival: Sovereign Wealth Funds in Singapore and China' (2009) 14 *Geopolitics* 328, 344

¹³⁹ John Osburg, 'Global Capitalisms in Asia: Beyond State and Market in China' (2013) 72 (4) *The Journal of Asian Studies* 813, 829

¹⁴⁰ Thouraya Triki and Issa Faye, 'Africa's Quest for Development: Can Sovereign Wealth Funds Help?' (2011) 12 (4) *International Finance Review* 263, 290

¹⁴¹ Jacques deLisle, 'China's Legal Encounter with the West' (June 2008)
<<http://www.fpri.org/articles/2008/06/chinas-legal-encounter-west>>

¹⁴² Doug Guthrie, 'The United States, China and Human Rights' *Forbes* (5 April 2012)

¹⁴³ Ian Bremmer, 'State Capitalism Comes of Age' (2009) 88 (3) *Foreign Affairs* 40, 55

¹⁴⁴ Ian Bremmer, 'Gathering Storm: America and China in 2020' *The World Affairs Journal* (July/August 2010)

¹⁴⁵ Stanley Lubman, 'China's State Capitalism: The Real World Implications' *The Wall Street Journal* (1 March 2012)

¹⁴⁶ Richard Epstein and Amanda Rose, 'The Regulation of Sovereign Wealth Funds: The Virtues of Going Slow' (2009) 76 *The University of Chicago Law Review* 111, 134

¹⁴⁷ Jacques deLisle, 'China's Legal Encounter with the West' (June 2008)
<<http://www.fpri.org/articles/2008/06/chinas-legal-encounter-west>>

¹⁴⁸ 'What's Gone Wrong with Democracy' *Economist* (1 March 2014)

¹⁴⁹ Jacques deLisle, 'China's Legal Encounter with the West' (June 2008)
<<http://www.fpri.org/articles/2008/06/chinas-legal-encounter-west>>

¹⁵⁰ Shaun Breslin and Ian Taylor, 'Explaining the Rise of 'Human Rights' in Analyses of Sino-African Relations' (2008) 115 *Review of African Political Economy* 59, 71

prosperous has added to the Chinese model's appeal.¹⁵¹ More challengingly, state capitalism seems to be threatening many of the global institutions,¹⁵² which could emerge as a viable challenger to the liberal democratic path.¹⁵³ In contrast, most EU members are increasingly using their view of human rights concepts as a yardstick in those undeveloped countries to deal with financial assistance,¹⁵⁴ where the SWFs are mostly likely to attach political conditionality into their capital markets.¹⁵⁵ Given China's disregard for conditionality and its general reluctance to mandate intervention, even in case of grave human rights violations, a legitimate concern arises that China has been undermining Europe's efforts to promote liberal standards in African business and politics.¹⁵⁶ For example, when the EC tried to use economic pressure to secure human rights improvements, China's no-strings rule gives dictators the means to resist.¹⁵⁷ It is argued that the capital exporter will control bargaining leverage on sensible issues, like human rights,¹⁵⁸ which would virtually result in an erosion of Western soft power.¹⁵⁹

D. Challenges Ahead, But Still Resolvable

1. The Paramount Challenges

Global governance should be seen as a matter of creating the appropriate legal institutions to protect human rights. However, China's agenda is notably at odds with rules and norms generated by Western-dominated institutions and processes on the protection of human rights.¹⁶⁰ It is particularly difficult for the West to pursue when China is sitting on trillions of dollars.¹⁶¹ China's large SWFs

¹⁵¹ Matt Ferchen, 'Whose China Model is it anyway? The Contentious Search for Consensus' (2013) 20 (2) *Review of International Political Economy* 390, 420; Shaun Breslin, 'The "China Model" and the Global Crisis: From Friedrich List to a Chinese Mode of Governance?' (2011) 87 (6) *International Affairs* 1323, 1343

¹⁵² Ian Bremmer, *The End of the Free Market: Who Wins the War Between States and Corporations?* (Portfolio Trade, 2011)

¹⁵³ Azar Gat, 'The Return of Authoritarian Great Powers' (2007) 86 (4) *Foreign Affairs* 59, 69

¹⁵⁴ Patrick Keenan and Christiana Ochoa, 'The Human Rights Potential of Sovereign Wealth Funds' (2009) 40 *Georgetown Journal of International Law* 1151, 1179

¹⁵⁵ Daniel Drezner 'Sovereign Wealth Funds and the (In)security of Global Finance' (2008) 62 (1) *Journal of International Affairs* 115, 130

¹⁵⁶ Jonathan Holslag, '*The Limitations of EU-China Cooperation in Africa*-Testimony before the US-China Economic and Security Review Commission Hearing on the China-Europe Relationship and Transatlantic Implications' (19 April 2012)

¹⁵⁷ Sonya Sceats with Shaun Breslin, 'China and the International Human Rights System' (Chatham House, October, 2012)

<http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf> 42

¹⁵⁸ Wayne Morrison and Marc Labonte, 'China's Holdings of U.S. Securities: Implications for the U.S. Economy' (19 August 2013) <<http://www.fas.org/sgp/crs/row/RL34314.pdf>>

¹⁵⁹ Joseph Nye, 'Soft Power' (1990) 80 *Foreign Policy* 153, 171

¹⁶⁰ Jacques deLisle, 'China's Legal Encounter with the West' (June 2008)

<<http://www.fpri.org/articles/2008/06/chinas-legal-encounter-west>>

¹⁶¹ William Norris, 'Thinking Clearly About China's Economic Statecraft' *Précis* (Spring 2009)

resources allow it to be a game-changing force in both the developed and developing world, one that threatens to obliterate the competitive edge of Western corporations, and blunt criticism of human rights abuses in China.¹⁶² In practice, most EU member states are willing to leave the heavy lifting on human rights issues with regard to China to the common EU institutions.¹⁶³ In spite of efforts made recently by the European External Action Service (EEAS), there is neither the capacity nor the power within that department to deal with both policy development and coordination.¹⁶⁴ If the EU is not seen as being consistent on the issue, China would take it for granted that its government's lack of respect for citizens' human rights is a matter of no consequence as far as its relations with Europe are concerned. The contentious perception will inevitably lead to further difficulties in the European-Chinese relationship at a later stage.¹⁶⁵

Although the EU has little leverage regarding the human rights issue in China, it does need to enhance the credibility of its approach. From the host state's perspective, it is plausible to imply the causal connection and highlight the success of the "divide and conquer" tactic, which however, would not work if the EU and its member states could consistently speak with one voice.¹⁶⁶ It is advisable that all EU nations should coordinate coherently on China's violations of international norms on human rights. A further harmonisation is needed to present a viable and unified policy and help convince the member states to adopt it. After all, Europe can only have a meaningful impact on the global system if it brings together its economic weight, along with European values and principles such as good governance, rule of law and human rights as a political sounding board.¹⁶⁷

2. Review China's Influence More Objectively

China's capacity to deploy such economic pressure with its trillions of SWFs should not be overestimated, neither can it be ignored.¹⁶⁸ Overestimation on SWFs as potential tools of political

<http://web.mit.edu/cis/pdf/precis/2009spring/china_economic_statecraft.pdf>

¹⁶² Heriberto Araújo and Juan Pablo Cardenal, 'China's Economic Empire' *The New York Times* (1 June 2013)

¹⁶³ Odd Arne Westad, 'China and Europe: Opportunities or Dangers?' in Kitchen, Nicholas (ed.) *Europe in an Asian Century: Europe between the Superpowers* (SR013. LSE IDEAS, October 2012) 19

¹⁶⁴ Odd Arne Westad, 'China and Europe: Opportunities or Dangers?' in Kitchen, Nicholas (ed.) *Europe in an Asian Century: Europe between the Superpowers* (SR013. LSE IDEAS, October 2012) 19

¹⁶⁵ Odd Arne Westad, 'China and Europe: Opportunities or Dangers?' in Kitchen, Nicholas (ed.) *Europe in an Asian Century: Europe between the Superpowers* (SR013. LSE IDEAS, October 2012) 19

<<http://eprints.lse.ac.uk/46823/>>

¹⁶⁶ Gudrun Wacker, 'Testimony before the U.S.-China Economic and Security Review Commission' *Hearing on the China-Europe Relationship and Transatlantic Implications* (19 April 2012) 5

<<http://www.uscc.gov/sites/default/files/4.19.12Wacker.pdf>>

¹⁶⁷ Ulrike Guérot, 'Europe and the Future of Global Governance' (September 2013) 4

<<http://www.iai.it/pdf/CoC-Rome-Panelist-Papers.pdf>>

¹⁶⁸ James Reilly, 'China's Unilateral Sanctions' (2012) 35 (4) *The Washington Quarterly* 122, 133

influence fails to take into account its investment philosophy and motivation objectively.¹⁶⁹ Certain fears may rest upon some tenuous assumptions.¹⁷⁰ Firstly, SWFs are neither the major repositories of China's controlled wealth, nor the financial tool through which China might seek to exert financial influence for political gain.¹⁷¹ Apart from the CIC as the country's flagship SWF, China's State Administration for Foreign Exchange (SAFE), which manage China's central bank reserves and is not generally considered an SWF, has made significant investments in global equities.¹⁷² In addition, state-owned enterprises (SOEs) and State-controlled national champions represent additional distinct investment vehicles. Arguably, if China sought to use financial tools to advance foreign policy goals, such considerations would be involved in portent investment by SOEs. Secondly, SWFs' home government and host countries have mutual interests, including the stability of the financial system. As China integrates itself into the global economy, it will face a growing demand in political freedom. The increase in economic freedom is sure to have a positive impact on China's civil society and foster political reform, that is, as China moves closer toward a free-market system, people will demand greater political autonomy, which will undermine the CCP's monopoly on power.¹⁷³

China's increasingly complex global economic and strategic interests will further compromise its commitment to strict conceptions of state sovereignty.¹⁷⁴ SWFs should be held to the same high human rights standards as governments rather than the lower ones as those of private financial institutions.¹⁷⁵ Thirdly, human rights require not only formal procedures, but also a culture of the rule of the law. China lacks an independent judiciary and press that create the cornerstones in a functioning democracy.¹⁷⁶ In this regard, China's model may have emerged paradoxically to rival the "Washington Consensus" of neo-liberal market economy, i.e. the rule of law, democracy and proper

¹⁶⁹ 'Sovereign Wealth Funds: Foreign Policy Consequences in An Era of New Money' *Hearing before the Committee on Foreign Relations United States Senate* (S. Hrg. 110-765, 2nd Session 110th Congress, 11 June 2008) <<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/pdf/CHRG-110shrg48061.pdf>> 49

¹⁷⁰ Daniel Drezner, 'The Foreign Policy Implications of Sovereign Wealth Funds' *Testimony for the Senate Foreign Relations Committee* (1 June 2008)

<<http://www.foreign.senate.gov/imo/media/doc/DreznerTestimony080611a.pdf>>

¹⁷¹ 'Sovereign Wealth Funds: Foreign Policy Consequences in An Era of New Money' *Hearing before the Committee on Foreign Relations United States Senate* (S. Hrg. 110-765, 2nd Session 110th Congress, 11 June 2008) <<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/pdf/CHRG-110shrg48061.pdf>>

¹⁷² William Norris, 'Thinking Clearly About China's Economic Statecraft' *Précis* (Spring 2009)

<http://web.mit.edu/cis/pdf/precis/2009spring/china_economic_statecraft.pdf>

¹⁷³ James Dorn, 'Integrating China into the Global Economy by Nicholas R. Lardy' (2003) 22 (3) *Cato Journal* 559, 566 at 560

¹⁷⁴ Sonya Sceats with Shaun Breslin, 'China and the International Human Rights System' (Chatham House, The Royal Institute of International Affairs October, 2012)

<http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf> 56

¹⁷⁵ Salar Ghahramani, 'Sovereign Wealth Funds, Transnational Law, and the New Paradigms of International Financial Relations' (2013) 8 (2) *Yale Journal of International Affairs* 52, 64

¹⁷⁶ Tom Ginsburg, 'Judicial Independence in East Asia: Lessons for China' in Randall Peerenboom (ed.) *Judicial Independence in China: Lessons for Global Rule of Law Promotion* (Cambridge, CUP, 2010) 247-259

protection of human rights.¹⁷⁷ However, China will not become an exporter of legal and law-related ideas, such as the so-called Beijing Consensus. As Goldstein observed, it is China that needs to adapt to the world, not the other way around.¹⁷⁸ Regarding its governance in terms of authoritarianism, China may need to cultivate a reputation as a responsible member of the international economic system.¹⁷⁹ China attempts to gain influence through its powerful SWFs, but there is a long way for China to go in order to be recognised as a responsible global power.¹⁸⁰ In order to achieve such a goal, it is vital for China to undertake institutional, political and legal reform and respond effectively to the policy complexities inherent in SWFs. It is of great significance to strike a balance between ensuring the benefits from Chinese SWFs and protecting from its harmful effects.¹⁸¹

3. Separate SWFs-Based Investment from Human Rights Concerns

As discussed above, it is specifically the state ownership and a presumed tool to advance China's national interests abroad that makes SWFs of interest as a matter of foreign policy.¹⁸² More specifically, the Chinese SWFs investment is always accompanied by implicit conditionality affecting the EU's human rights policies. The 'divide and conquer' policy contradicts the trend of reducing the role of government in the global economy.¹⁸³ Given the inseparableness between economic, social and political developments, critical commercial and political pressures could be imposed on SWFs to maximise their financial performance.¹⁸⁴ Norway's Government Pension Fund, as an illustrative

¹⁷⁷ Jacques deLisle, 'Law and China's Development Model' in Philip Hsu, Yu-Shan Wu and Suisheng Zhao (eds.) *In Search of China's Development Model: Beyond the Beijing Consensus* (Routledge, 2011)

¹⁷⁸ Heriberto Araújo and Juan Pablo Cardenal, 'China's Economic Empire' *The New York Times* (1 June 2013)

¹⁷⁹ Avery Goldstein, 'The Diplomatic Face of China's Grand Strategy: A Rising Power's Emerging Choice' (2001) 168 *The China Quarterly* 835, 864

¹⁸⁰ Alex Cree, 'Managing China's Sovereign Wealth Fund Development: An American Strategy for Setting Rules and Norms' (2008) 9 *The Journal of International Policy Solutions* 27, 32

¹⁸¹ Françoise Nicolas, 'China's Direct Investment in the European Union: Challenges and Policy Responses' (2014) 7 (1) *China Economic Journal* 103, 125

¹⁸² Sovereign Wealth Funds: Foreign Policy Consequences in An Era of New Money' *Hearing before the Committee on Foreign Relations United States Senate* (S. Hrg. 110-765, 2nd Session 110th Congress, 11 June 2008) <<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/pdf/CHRG-110shrg48061.pdf>> 49, 56

¹⁸³ Philipp Hildebrand, 'The Challenge of Sovereign Wealth Funds' (16 January 2008)

<<http://www.telos-eu.com/fr/the-challenge-of-sovereign-wealth-funds.html>>; Joseph Stiglitz, 'Globalization and the Economic Role of the State in the New Millennium' (2003) 12 (1) *Industrial and Corporate Change* 3, 26

¹⁸⁴ Katharina Pistor and Kyle Hatton, 'Maximizing Autonomy in the Shadow of Great Powers: The Political Economy of Sovereign Wealth Funds' (2011) 50 (1) *Columbia Journal of Transnational Law* 1, 81

example, is vigilant in avoiding investment in companies associated with human rights abuses.¹⁸⁵ Even so, it is logical and moral to separate SWFs-based investment from human rights policies in considering China's objectives.¹⁸⁶ The proper function of government is not to restrict economic interaction at the expense of human rights.¹⁸⁷ It should make certain that SWFs operating strictly according to their commercial rather than foreign policy interests is an overriding issue.¹⁸⁸ The exercise of ownership rights shall be mainly based on the OECD Guidelines for Corporate Governance and for Multinational Enterprises.¹⁸⁹ China's SWFs should not use their stakes to exercise political influence over Western firms. The Chinese government need to get out of SWF investment and leave markets alone, after all, free trade & investment is not a privilege but a right.¹⁹⁰ As state-owned entities, SWFs should be held to the highest standards of due diligence in terms of human rights.¹⁹¹ Otherwise, it retards significant efforts at human rights promotion in China. The best way to promote human rights in China is to develop free trade and investment, which can be used as leverage to open China to competitive forces and let the rule of law and democratic value evolve.¹⁹² Rather than politics interfering with business, engagement with SWFs could result in best business practices spilling over into better political relations.¹⁹³

4. The Transnational Regulatory Framework: The U.N. "Protect, Respect, Remedy" Framework

China's laws contain many provisions that parallel those binding international legal norms, which Constitution explicitly provides that the state respects and preserves human rights.¹⁹⁴ The United Nations Universal Declaration of Human Rights (UDHR) is a common standard of achievement for

¹⁸⁵ Gordon Clark, Adam Dixon and Ashby Monk, *Sovereign Wealth Funds: Legitimacy, Governance, and Global Power* (Princeton University Press, 2013) 43; Chris Armstrong, 'Sovereign Wealth Funds and Global Justice' (2013) 27 (4) *Ethics and International Affairs* 1, 16

¹⁸⁶ Salar Ghahramani, 'Sovereign Wealth Funds, Transnational Law, and the New Paradigms of International Financial Relations' (2013) 8 (2) *Yale Journal of International Affairs* 52, 64

¹⁸⁷ Dinah L. Shelton, 'Protecting Human Rights in a Globalized World' (2002) 25 *Boston College International and Comparative Law Review* 273, 322

¹⁸⁸ *Sovereign Wealth Funds: Foreign Policy Consequences in An Era of New Money' Hearing before the Committee on Foreign Relations United States Senate* (S. Hrg. 110-765, 2nd Session 110th Congress, 11 June 2008) <<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/pdf/CHRG-110shrg48061.pdf>> 46

¹⁸⁹ Simon Chesterman, 'The Turn to Ethics: Disinvestment from Multinational Corporations for Human Rights Violations-The Case of Norway's Sovereign Wealth Fund' (2008) 23 (3) *American University International Law Review* 577, 615 at 588

¹⁹⁰ James Dorn, 'Trade and Human Rights in China' (December 2012) <<http://www.cato.org/publications/commentary/trade-human-rights-china>>

¹⁹¹ Gordon Clark, Adam Dixon and Ashby Monk, *Sovereign Wealth Funds: Legitimacy, Governance, and Global Power* (Princeton University Press, 2013) 67-85

¹⁹² James Dorn, 'Trade and Human Rights in China' *Journal of Commerce* (15 November 1996)

¹⁹³ Christina Madden, 'Sovereign Wealth Funds under Scrutiny' *Policy Innovations* (21 May 2008)

¹⁹⁴ PRC Constitution Law 2004 Article 33 (3): "The state respects and guarantees human rights."

all nations, to which China has frequently declared its adherence.¹⁹⁵ More recently, the U.N. "Protect, Respect, Remedy" framework is made up of three pillars: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights, which means to avoid infringing on the rights of others; and greater access by victims to effective remedy, judicial and non-judicial.¹⁹⁶ China is advised to adopt legislation consistent with these principles enshrined in the tri-pillar regulatory framework. Another UN Guiding Principles on Foreign Debt and Human Rights also underscores the importance of States and international financial institutions to honour their obligation to respect human rights.¹⁹⁷ The general concern to safeguard the UN human rights machinery is shared also by China.¹⁹⁸ The acceptance of international human rights law notably has coincided with certain improvement in human rights conditions in China. It is now relatively acceptable to criticize China's human rights shortcomings and to challenge regime failures to live up to the human rights legal obligations that it has accepted.¹⁹⁹

Nevertheless, the existing international soft initiatives as well as the legal regime applicable to SWFs seem insufficient in respect of China's unilateral subtle sanction. Dowell-Jones was not optimistic and observed that:

*"the mapping of human rights accountability into financial institutions has so far followed a piecemeal, soft law approach built largely around a subsidiarity model of risk that has only effectively reached a few corners of the financial markets."*²⁰⁰

It seems that much remains to be done to promote a better understanding of the legal and economic implications of the interface between the SWFs financing and human rights.²⁰¹ It remains unclear whether the non-legally binding soft initiatives would mitigate the concerns resulting from China's strategic approaches.

¹⁹⁵ Julie Liu, 'Lighting the Torch of Human Rights: The Olympic Games as a Vehicle for Human Rights Reform' (2007) 5 (2) *Northwestern Journal of International Human Rights* 213, 235

¹⁹⁶ On 16 June 2011, the UN Human Rights Council endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" proposed by UN Special Representative John Ruggie.

¹⁹⁷ UN Human Rights Council, 'Guiding Principles on Foreign Debt and Human Rights-Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development' (A/HRC/20/23, 20th Session, Agenda Item 3, 10 April 2011)
<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-23_en.pdf>

¹⁹⁸ Sonya Sceats with Shaun Breslin, 'China and the International Human Rights System' (Chatham House, The Royal Institute of International Affairs October, 2012)
<http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf> 2

¹⁹⁹ Jacques deLisle, 'China's Legal Encounter with the West' (June 2008)
<<http://www.fpri.org/articles/2008/06/chinas-legal-encounter-west>>

²⁰⁰ Mary Dowell-Jones, 'Financial Institutions and Human Rights' (2013) 13 (3) *Human Rights Law Review* 423, 468

²⁰¹ Cephas Lumina, 'Sovereign Debt and Human Rights: The United Nations Approach' in Juan Pablo Bohoslavsky and Jernej Letnar Cernic (eds.), *Making Sovereign Financing and Human Rights Work* (Oxford, Hart Publishing, 2014) 251-268

Although the scope and range of Western legal influences on China have expanded tremendously since the beginning of the Reform Era, the future trajectory is uncertain.²⁰² China's adoption of Western legal ideas still reserves so-called Chinese characteristics.²⁰³ China still has to learn to play by Western rules in relation to its SWFs to some extent, which can potentially contribute to at least rule of law and democratisation.²⁰⁴ Arguably, China has not evidenced significant sustained interest in integrating or democratizing the international regulatory system,²⁰⁵ including the norms of the protection of human rights. China's human rights record has been further marred by recalcitrance in allowing the use of the international legal means under the UN Charter to address atrocities in areas where China has influence; such as Sudan.²⁰⁶ Its engagement with international human rights law has made foreign laws and norms more salient.²⁰⁷

Conclusion

With the world's largest capital surplus, China has become a pivotal player within the global economic system. This paper explores the challenges posed by the influx of the Chinese SWFs into the EU and its potential implications for Sino-EU relations. The study also explores whether and how SWFs can be exploited to advance some strategic political objectives, such as slowing down or even blocking the promotion of human rights. To explore such controversies, this paper provides deep insights into the relationship between the sovereign financing and human rights, of which the SWFs are becoming larger sources of cross-border investments and raising delicate concerns about the protection of human rights. Conventionally, SWFs have played a constructive role in injecting liquidity into the global economy, which have proven to be a source of capital at a time of volatility in the global financial markets. China has also long been engaging in political manipulation and making use of its economic instruments to advance the political interests. Specifically, it has been deploying its SWF as leverage for strategic advantages and diplomatic objectives. In particular, China has threatened economic sanctions through SWFs to counter criticism of its human rights policy. Given amidst the current global economic crisis, China's expanding use of the unilateral sanctions has

²⁰² PRC Constitution Article 33 (3): "The state respects and guarantees human rights."

²⁰³ Benjamin Liebman, 'China's Courts: Restricted Reform' in David Kennedy and Joseph E. Stiglitz (eds.), *Law and Economics with Chinese Characteristics-Institutions for Promoting Development in the Twenty-First Century* (Oxford, OUP, 2013) 568-587

²⁰⁴ Sovereign Wealth Funds: Foreign Policy Consequences in An Era of New Money' *Hearing before the Committee on Foreign Relations United States Senate* (S. Hrg. 110-765, 2nd Session 110th Congress, 11 June 2008) <<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg48061/pdf/CHRG-110shrg48061.pdf>>

²⁰⁵ Eyal Benvenisti and George Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law' (2007) 60 (2) *Stanford Law Review* 595, 631 at 628

²⁰⁶ Jacques deLisle, 'China's Legal Encounter with the West' (June 2008) <<http://www.fpri.org/articles/2008/06/chinas-legal-encounter-west>>

²⁰⁷ Jacques deLisle, 'China's Legal Encounter with the West' (June 2008) <<http://www.fpri.org/articles/2008/06/chinas-legal-encounter-west>>

significant implications for the EU member states. If the Chinese government can blunt pressures toward human rights, then the West will need to recalculate its long-term approach toward China. Thus, there is an urgent need for more systematic and robust legal and economic thinking about the SWFs financing and human rights issue.