

FOREIGN JOURNALISM UNDER PRESSURE IN CHINA

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A thesis submitted to Johns Hopkins University in conformity with the requirements for
the degree of Master of Arts in Public Management

Baltimore, Maryland

May 2014

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Action Forcing Event

On December 11, 2013, hearings were held on the Chinese government's threat to expel twenty-three correspondents affiliated with *The New York Times* and Bloomberg News last fall. The hearing, held by the Congressional-Executive Commission on China (CECC), focused on the growing challenges of covering the world's second largest economy and opened with the Chairman of CECC, Senator Sherrod Brown from Ohio, declaring that if China does not stop its policies of harassing foreign journalists, Congress may take action of its own.¹

Statement of the Problem

A free and dynamic press has been a core tenet of the United States. It was crucial to the success of the American Revolution, and is epitomized in the First Amendment. For Americans, defending freedom of the press is important in and of itself, but it becomes even more critical when journalists from one's own country are being suppressed. Standing up for speech and renouncing censorship is, as Former Secretary of State Hillary Clinton has said, part of our "national brand."²

Foreign journalists in China regularly face highly restrictive and sometimes dangerous conditions. They are often subjected to lecturing, interrogation, surveillance, and harassment and violent assaults to themselves and to their sources.³ One of the hearing's panelists, Hannah Beech, East Asia correspondent and China bureau chief for *Time* magazine, provided a candid picture of reporting conditions. "I presumed that my phone is tapped

¹ Gary Feuerberg, "Congressional Commission Calls on China to Cease Harassing US Journalists," *Epoch Times*, December 22, 2013, accessed February 3, 2014, <http://www.theepochtimes.com/n3/411221-congressional-commission-calls-on-china-to-cease-harassing-us-journalists/>.

² Robert Burns, "Hillary Clinton Internet Speech Blasts China, Others For Web Blocks," *Huffington Post*, January 21, 2010, accessed February 11, 2014, <http://www.huffingtonpost.com/2010/01/21/hillary-clinton-internet- n 431228.html>.

³ "Freedom of the Press 2013: China," Freedom House, October 22, 2013, accessed February 11, 2014, <http://www.freedomhouse.org/report/freedom-press/2013/china#.UvF59vldUlo>.

and email monitored. I've had a Chinese assistant beaten for working for me.”⁴

Withholding, or threatening to withhold, journalist visas required by all foreign journalists to work in China, is the regime's latest in its array of tactics. Unable to renew their annual residency visas, the likelihood of the twenty-three *Times* and Bloomberg correspondents and their families having to immediately leave the country loomed as the year-end rapidly approached.

The crackdown on foreign press is believed to stem from Beijing's disapproval of unflattering articles published by both Bloomberg News and *The New York Times* about the government and Chinese business. This includes detailed investigative reports that disclose the family wealth of three top Chinese officials, Chinese President Xi Jinping, former Premier Wen Jiabao, and disgraced Chongqing party boss Bo Xilai. As a result, the Chinese language websites of these media outlets as well as those of the *Wall Street Journal* and Reuters were blocked for many months.

On a state visit to China in early December 2013, Vice President Joe Biden raised the issue with President Xi Jinping and publicly chided Beijing, saying that the United States has profound disagreements with the treatment of U.S. journalists in China.⁵

Some journalists and China pundits suggest that a countermeasure should be considered in view of the denial of journalist visa renewals; U.S. newspaper websites being blocked; journalists self-censoring coverage of the Chinese government for fear of reprisal; and cyber attacks against U.S. media institutions. Calling for a U.S. response to China's "strong-arm tactics" with the media, *The Washington Post* editorial board opined

⁴ "China's Treatment of Foreign Journalists Examined," *China Digital Times*, December 12, 2013, accessed February 12, 2014, <http://chinadigitaltimes.net/2013/12/chinas-treatment-foreign-journalists-examined/>.

⁵ Mark Lander and David E. Sanger, "China Pressures U.S. Journalists, Prompting Warning from Biden," *The New York Times*, December 4, 2013, accessed February 12, 2014, <http://www.nytimes.com/2013/12/06/world/asia/biden-faults-china-on-foreign-press-crackdown.html>.

that since Chinese journalists receive free access to the United States, Washington should insert “symmetry” into its visa policy if the Chinese government prevents American news organizations from covering the country and threatens American journalists.⁶

The New York Times and other media outlets reported that on December 19, the Chinese government issued press cards to some Western reporters, which is a prerequisite for obtaining the residence visa. All reporters from Bloomberg News but not all from the NY Times received their press cards.⁷ The development came as good news for the foreign press and seemed to signal that extreme measures, like visa retaliation, could be forgone as a policy option.

However, at the end of January 2014, China forced another *NY Times* journalist to leave the country when Beijing would not approve his visa application. The Chinese Ministry of Foreign Affairs alleged Austin Ramzy had broken visa rules, at which the Foreign Correspondents’ Club of China (FCCC) called disingenuous. The government’s denial of Ramzy’s visa is most likely connected to the journalists’ coverage of the trials of members of the New Citizens Movement, a domestic civil rights group lead by Chinese civil rights lawyer, Xu Zhiyong. *The Guardian* reports that journalists were “harassed and manhandled” and their press cards were confiscated by police.⁸

Based on the evidence- including this most recent episode of Ramzy’s visa denial- it seems clear that Beijing is not rolling back but stepping up the pressure on foreign

⁶ “China’s strong-arm tactics toward U.S. media merit a response,” *The Washington Post*, December 8, 2013, Accessed February 13, 2014, http://www.washingtonpost.com/opinions/chinas-strong-arm-tactics-toward-us-media-merit-a-response/2013/12/08/164163fc-5eb9-11e3-bc56-c6ca94801fac_story.html.

⁷ Gary Feuerberg, “Congressional Commission Calls on China to Cease Harassing US Journalists.”

⁸ Tania Branigan, “New York Times journalist forced to leave China after visa row,” *The Guardian*, January 29, 2014, accessed February 13, 2014, <http://www.theguardian.com/world/2014/jan/29/new-york-times-journalist-leave-china-visa>.

media in spite of the warning from Vice President Biden. America has a constitutional and philosophical commitment to protecting universally free speech. Its own policy for granting open access to foreign journalists reflects these core U.S. values. The damage the Chinese government has contributed to human rights, American values, the lives and livelihoods of American journalists, and hallmark American media institutions necessitates at minimum an analysis for addressing these problems. Moreover, these recent developments have become a factor for instability in the U.S.-Chinese relationship worth examining.

At the December 11 roundtable event, Chairman Brown made the case that the US could not accept China closing itself off because of its position and importance in the world as the most populous country and the United States' second-largest trading partner. Brown made another critical point: Foreign journalists need to be allowed to work unfettered because China's own journalists are subjected to harsher restrictions and therefore cannot be relied upon to present complete and accurate coverage on what is occurring in the country.⁹

Chinese Foreign Minister, Wang Yi proclaimed January 1, 2014 as the thirty-fifth anniversary of China and the US's diplomatic relationship. Wang commemorated over three decades of progress and achievement in a telephone conversation with his American counterpart, Secretary of State John Kerry. To Secretary Kerry's welcoming acknowledgment, Wang declared China's willingness to work with the US to advance cooperation and make concerted efforts to build "a new model of major country relations." Yet, Beijing's escalated control of foreign coverage of the country along with

⁹ Gary Feuerberg, "Congressional Commission Calls on China to Cease Harassing US Journalists."

its mistreatment of American journalists hampers the advancement of these diplomatic ties and undermines these mutually-agreed upon objectives.¹⁰

History

Part of what follows is a concise history of international law that obligates China to uphold human rights, including press freedom, of which it has underwritten as a member of the United Nations. Next, are the main points of the country's constitutional history addressing freedom of speech and press freedom *vis-à-vis* the state. Of final significance is China's proposal to amend international law so that it may legitimize its view and practice of subjugating all media- national as well as foreign- within China to the decrees and whims of the Communist Party.

In 1966, the United Nations General Assembly adopted a multilateral treaty called the International Covenant on Civil and Political Rights (ICCPR) in which it committed its parties to respect the freedom of speech of individuals- among other civil and political rights. In force since 1976, the treaty is governed by the United Nations Human Rights Committee. The ICCPR is part of the International Bill of Human Rights along with the Universal Declaration of Human Rights (UDHR), a declaration adopted by the U.N. General Assembly in 1948. In 1998, China became a signatory of the ICCPR, but has not since ratified the convention.¹¹ China has failed to honor Article 19 of the USDHR, which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart

¹⁰ "China ready to further advance ties with US: Chinese FM," *China Daily*, January 1, 2014, accessed February 13, 2014, http://usa.chinadaily.com.cn/china/2014-01/01/content_17208370.htm.

¹¹ Officer of the High Commissioner for Human Rights, United Nations, "International Covenant on Civil and Political Rights," accessed February 15, 2014, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

information and ideas through any media and regardless of frontiers.”¹²

Adopted in 1982, China’s constitution allows for freedoms of speech and press. However, Chinese law consists of vaguely-articulated media regulations that authorities use to denounce stories as endangering the country by sharing state secrets. In April 2010, the government amended the 1989 Law on Guarding State Secrets requiring telecommunications and Internet companies to cooperate with police and state security in investigations of leaks of state secrets by informing on customers who discuss such state secrets. What constitutes a state secret in China is vague enough to allow the government to censor any information it deems harmful to its interests. The nongovernmental advocacy group Human Rights in China indicts the new law of still failing to respect international human rights standards just as the original.¹³

In May 2010, the Chinese government promulgated its first white paper on the Internet. Of particular note in this official report is the government’s accentuated term of “Internet sovereignty”- a notion that requires full compliance to Chinese laws and regulations from all Internet users in China, including foreign organizations and individuals.¹⁴

As the Committee to Protect Journalists has pointed out in a special report, controlling the dynamic Internet is an easier campaign for international assemblies because it circumvents advocating for conventional press restrictions. At the United Nations in 2011, China- along with Uzbekistan, Tajikistan, and Russia- proposed an

¹² “The Universal Declaration of Human Rights,” United Nations, accessed February 15, 2014, <http://www.un.org/en/documents/udhr/>.

¹³ Beina Xu, “Media Censorship in China,” *Council of Foreign Relations*, last modified February 12, 2014, accessed February 17, 2014, <http://www.cfr.org/china/media-censorship-china/p11515>.

¹⁴ Ibid.

Internet “code of conduct” that would institute “international norms and rules guiding the behavior of states in the information space.”¹⁵ China and the team member countries inserted a commitment in the proposal to “curb the dissemination of information [...] that undermines other countries’ political economic and social stability.”¹⁶ Russia and China were later joined by Saudi Arabia, the United Arab Emirates, Algeria, Sudan, and Egypt to work on a proposal for the U.N.’s International Telecommunication Union (ITU) which argues for the transfer of primary Internet resources from private ownership to be controlled by the government-dominated ITU.¹⁷ These countries follow the Chinese view that the Internet should be monitored and filtered by the state. At a press conference in mid-2011, Chinese Foreign Ministry spokeswoman Jiang Yu made the following defense: “The Chinese government’s legal management of the Internet is in line with international practice.”¹⁸

Chinese Abuses against Foreign Journalism

That China has not ratified the international law tied to press freedom is expectedly consistent with its stance and ongoing behavior. China’s revisions to constitutional law and attempted revisions to international law and moral principles in recent years reflect a deep disregard for human rights. And, a disregard for press freedom reverberates in every act by the Chinese government to control, censor, and suppress. What follows are the government’s latest top abuses against press freedom and foreign (most of them American) journalists- in addition to those outlined in the Statement of the

¹⁵ “Challenged in China: The shifting dynamics of censorship and control,” Committee to Protect Journalists, March 11, 2013, 22, accessed February 17, 2014, <http://www.cpj.org/reports/china2013.pdf>.

¹⁶ Ibid.

¹⁷ Ibid., 23.

¹⁸ Ibid.

Problem. This section is concluded by a concise history of what the U.S. government has done to handle these press freedom violations.

China had promised foreign media organizations that before and during the August 2008 Olympic Games in Beijing it would allow its journalists greater freedoms to report in China.¹⁹ But when the Tibetan riots broke out on March 14, 2008, the Chinese government reneged on its promise restricting foreign journalists from entering Tibet and neighboring regions, as well as blocking Internet reports of the protests on news sites like the Cable News Network (CNN) and the British Broadcasting Company (BBC) from appearing inside China. Foreign journalists also recounted that their e-mail service had been disrupted.²⁰ There is evidence of a severe government-fuelled backlash against the foreign media. For instance, at the time of the riots, Geoff Dyer had been working for *The Financial Times* in China and described that it was a “ferocious” environment in which foreign journalists received many death threats.²¹

In February 27, 2011, a number of incidents in Beijing saw Western reporters, including American journalist, Stephen Engle of Bloomberg News and a BBC cameraman- albeit, unusually- beaten in the streets by plain-clothes security officers. The reporters were covering anti-government protests that stretched throughout a dozen Chinese cities beginning on February 20, 2011. Online activists who called for the “pro-democracy” assemblies were inspired by the Jasmine Revolution in Tunisia which had concluded the previous month. Foreign Minister Yang Jiechi chose to state that “there is

¹⁹ Beina Xu, “Media Censorship in China.”

²⁰ Jim Yardley, “As Tibet Erupted, China Security Forces Wavered,” March 24, 2008, accessed February 19, 2014, <http://www.nytimes.com/2008/03/24/world/asia/24tibet.html?pagewanted=all>.

²¹ Geoff Dyer, interview by Diane Rehm, The Diane Rehm Show, NPR, February 5, 2014, accessed February 21, 2014, <http://thedianerehmshow.org/shows/2014-02-05/geoff-dyer-contest-century/transcript>.

no such issue as Chinese police officers beating foreign journalists”- possibly rather unwisely, given the number of witnesses and the video footage circulating worldwide.²²

Beijing police warned foreign journalists that they would have their visas revoked if they conducted reports anywhere around the demonstration site without prior permission from local authorities. According to the Foreign Correspondents’ Club of China, there were at least fourteen journalists who had been contacted by police- several of whom had been followed or had their homes under surveillance by plainclothes security. Many journalists received surprise, late night visits to their homes where police checked documents and issued warnings to comply with the law. Foreign journalists in Shanghai were also told they were not allowed to report from the city’s protest site, and a dozen journalists attempting to report were detained.²³

In September 2012, after an incredibly long attempt to obtain a visa that started in 2009, the China Bureau Chief for *The Washington Post*, Andrew Higgins was finally denied credentials. Not even the enlistment of Henry Kissinger could broker the arrangement with the Chinese government. It appeared that the Chinese had not forgiven Higgins for his coverage on dissidents which caused his expulsion from the country back in 1991.²⁴

Since early 2012 and to date, *The New York Time*’s Beijing Bureau Chief, Philip

²² “China Real Time: Foreign Minister to Foreign Press: Don’t Believe Your Lying Eyes,” *The Wall Street Journal*, March 8, 2011, accessed February 22, 2014, <http://blogs.wsj.com/chinarealtime/2011/03/08/chinas-foreign-minister-to-foreign-press-don%E2%80%99t-believe-your-lying-eyes-jasmine-protests/>.

²³ Ibid.

²⁴ Will Sommer, “Post’s Chinese Visa Fight Ends With a Whimper,” *Washington City Paper*, September 17, 2012, accessed February 23, 2014, <http://www.washingtoncitypaper.com/blogs/citydesk/2012/09/17/posts-chinese-visa-fight-ends-with-a-whimper/>.

Pan has been enduring a long arbitrary wait for his visa. Although the Foreign Ministry has provided little in the way of an explanation, it is known that Pan's press accreditation is linked to the newspaper's coverage of China.²⁵

In May 2012 and January 2013, two journalists, American Melissa Chan of Al-Jazeera English and Australian Chris Buckley of the *New York Times*, respectively, were forced to leave China after the government refused to renew their visas. These were the first expulsions in fourteen years. Since the government did not issue a reason, it was widely-assumed that Chan's expulsion was retaliation for her forceful coverage of official corruption, government land grabs and black jails.²⁶ Chris Buckley was expelled, along with his family, because he supposedly lacked the proper paperwork.²⁷

In early November 2013, veteran American reporter for Reuters, Paul Mooney, saw his thirty-year career covering Asia- eighteen of which stationed in Beijing- suddenly cut short when the Chinese Foreign Ministry rejected his visa application without once again providing a reason. However, Mooney expressed a suspicion that his expulsion was punishment for his steadfast reporting on human rights abuses in China.²⁸

Foreign journalists are subject to such intense scrutiny by the Chinese government that they often choose- or rather succumb to- self-censorship, an overpowering inducement that ensures the privilege to operate in mainland China without opposition from the government. China is pressuring foreign news organizations more than ever to

²⁵ Tania Branigan, "New York Times journalist forced to leave China after visa row."

²⁶ Andrew Jacobs, "Reporter for Reuters Won't Receive China Visa," *The New York Times*, November 9, 2013, accessed February 23, 2014, http://www.nytimes.com/2013/11/10/world/asia/reporter-for-reuters-wont-receive-china-visa.html?_r=0.

²⁷ *Associated Press*, "Chris Buckley, New York Times Reporter Lacked Paperwork, China Says," January 4, 2013, accessed February 25, 2014, http://www.huffingtonpost.com/2013/01/04/chris-buckley-new-york-times-paperwork-china_n_2407703.html.

²⁸ Andrew Jacobs, "Reporter for Reuters Won't Receive China Visa."

censor their coverage, i.e., avoid sensitive topics and carefully phrase reports. And, it is becoming more difficult for news organizations to resist the demands of self-censorship. In November 2013, *The New York Times* published allegations of self-censorship made by Bloomberg journalists against their news agency's top editors for killing an investigative article for fear that Bloomberg would be expelled from China. Award-winning journalist, based out of Hong Kong, Michael Forsythe, who co-wrote the article about a Chinese business magnate and his ties to families of Party leaders, was suspended by Bloomberg News.²⁹

Perhaps the most recent shocking and comprehensive abuse to press freedom was the January 30, 2013 revelation that Chinese hackers had launched a major security breach that on *The New York Times*. China's cyber attack on the *Times* was in response to the expose which detailed the resources and financials of Wen Jiabao that ran on October 25, 2012 and made headlines all over the world the next day. Over the course of four months, the hackers penetrated the computers of fifty-three of the organization's employees, particularly targeting Shanghai Bureau Chief, David Barboza, whose article uncovered the scandal that "Wen's family has controlled assets worth at least \$2.7 billion."³⁰ Once Barboza's expose was publicized, Chinese authorities responded in textbook fashion: they blocked all access to the newspaper's English and Mandarin sites inside China, along with those of other news organizations. The Chinese government

²⁹ Edward Wong and Christine Haughney, "Bloomberg News Suspends Reporter Whose Article on China Was Not Published," *The New York Times*, November 17, 2013, accessed February 25, 2014, http://www.nytimes.com/2013/11/18/world/asia/reporter-on-unpublished-bloomberg-article-is-suspended.html?_r=0.

³⁰ "Wen Jiabo's Family Linked to Billions in Assets, NYT Reports," *Bloomberg News*, October 26, 2012, accessed February 26, 2014, <http://www.bloomberg.com/news/2012-10-26/wen-jiabao-s-family-linked-to-billions-in-assets-nyt-reports.html>.

denied any involvement in the cyber espionage, but officials at the *Times* said that this represented the first time a foreign government had sought- and succeeded- to breach their computer system.³¹

History of Policy Actions

The US's policy reactions to China's mistreatment of American journalists have largely been diplomatic. In an address at George Washington University in February 2011, with the backdrop of the Arab Spring protests, Secretary Clinton vowed that the US would advance its commitments to weaken censorship in countries with repressive governments including China.³² As reported in the Statement of the Problem section, Vice President Joe Biden pressed China publicly about press freedom, and spoke with Chinese President Xi Jinping on the issue during his December 2013 trip. On January 30, 2014, White House Press Secretary Jay Carney also issued a statement to China in response to *Times* reporter Austin Ramzy's being forced to leave China due to the delay and eventual denial of his visa. Press Secretary Carney urged China "to commit to timely visa and credentialing decisions for foreign journalists, unblock U.S. media websites, and eliminate other restrictions that impede the ability of journalists to practice their profession."³³

In September 2011, California Congressman Dana Rohrabacher (R) attempted to

³¹ Nicole Perlroth, "Hackers in China Attacked The Times for Last 4 Months, January 30, 2013, accessed February 26, 2014, <http://www.nytimes.com/2013/01/31/technology/chinese-hackers-infiltrate-new-york-times-computers.html?pagewanted=all>.

³² Hillary Rodham Clinton, "Internet Rights & Wrongs: Choices & Challenges in a Networked World," U.S. Department of State, February 15, 2011, accessed February 26, 2014, <http://www.state.gov/secretary/20092013clinton/rm/2011/02/156619.htm>.

³³ Jay Carney, "Statement by Press Secretary Jay Carney on Freedom of the Press in China," Office of the Press Secretary, The White House, January 30, 2014, accessed February 27, 2014, <http://www.whitehouse.gov/the-press-office/2014/01/30/statement-press-secretary-jay-carney-freedom-press-china>.

take legislative action against the Chinese government by targeting the Chinese journalism in the US. Congressman Rohrabacher proposed H.R. 2899 – the Chinese Media Reciprocity Act of 2011, a new law that would amend the Immigration and Nationality Act of 1965 and allow the U.S. government to revoke and limit visas issued to journalists working for China’s state media to match the number of visas issued to the U.S.-government employed reporters in China.³⁴

The bill failed to pass over concern that retaliatory limits on U.S. visas for Chinese journalists might reflect poorly on America's commitment to press freedom or trigger a visa war with China. Two years later, however, Congressman Rohrabacher resumed his push for reciprocity in an article for *Foreign Policy*- an argument he justified in view of news organizations’ and social media websites routinely being blocked; the many months foreign journalists must wait for their visas to be approved and of the devastating visa denials, as in the cases of Chan, Buckley, and Pan. In spite of longstanding appeals for more, the Chinese government has permitted only two *Voice of America* reporters to work in mainland China, while the U.S. State Department issues hundreds of international journalist visas, known as I-visas, to Chinese journalists. (On top of which, China often jams Voice of America and Radio Free Asia broadcasts and blocks their websites.) In 2011, the State Department issued 811 I-visas to Chinese nationals. Congressman Rohrabacher said the Act would also “force China to issue visas

³⁴ Dana Rohrabacher, “Rep. Rohrabacher Introduces Bill to Counter Communist Chinese State Media Advantage in the U.S.,” Press Release, September 13, 2011, accessed February 27, 2014, <http://rohrabacher.house.gov/press-release/press-release-rep-rohrabacher-introduces-bill-counter-communist-chinese-state-media>.

for *Voice of America* and *Radio Free Asia* in a timely manner-” if not, China would have to face the shutdown of the country’s journalism in the United States.³⁵

Background

On its 2013 worldwide index of press freedom, the human rights watchdog group Reporters without Borders ranked China 174 out of 179 countries.³⁶ According to an incident report published by the Foreign Correspondents’ Club of China, there were 178 cases of Chinese interference with foreign media in 2008.³⁷ That was the last year that it published tallied interferences out of concern that its operation in China would be jeopardized. The FCCC reported that from 2011 to 2013, there were twenty-seven foreign correspondents whose visas were processed with unusual delays, six of whom received explicit communication from the Foreign Ministry that their applications had been or rejected or suspended because of the content of their coverage.³⁸ Since 2008, foreign journalists have faced increased physical violence. 2012 was an especially dangerous year for foreign journalists. At least eleven journalists were assaulted by police or security agents for attempting to cover events, with some cases proving unusually violent.³⁹

It is important to understand that the Chinese Communist Ruling Party only opened itself up to the outside world and to the West in 1979. Even after over three decades, the CCP’s notion of the role of the media has not changed. In an interview with

³⁵ Dana Rohrabacher, “Why are we giving visas to Chinese spies,” *Foreign Policy*, January 8, 2013, accessed February 27, 2014, http://www.foreignpolicy.com/articles/2013/01/08/under_cover.

³⁶ Beina Xu, “Media Censorship in China.”

³⁷ “Reporting Interference Tally Update,” Foreign Correspondents’ Club of China, December 3, 2008, accessed February 28, 2014, <http://www.fccchina.org/2008/12/03/reporting-interference-tally-update/>.

³⁸ “Freedom of the Press 2013: China,” Freedom House.

³⁹ Ibid.

NPR's David Folkenflik, Orville Schell, journalist and director of the Asia Society's Center on U.S.-China Relations, throws light on this point: "This was a designation made very early in the '40s by Mao. And in a word, it is that the media should be the megaphone of the party and the state. And that sort of underlying principle continues to today. And it collides rather relentlessly with the notion that we are accustomed to in the West, that the media is an independent kind of watchdog."⁴⁰

According to the Council on Foreign Relations publication on media censorship in China, as China's global economic power increases, its leaders "are trying to balance the need for more information with their goal of controlling content and maintaining power."⁴¹ CFR Senior Fellow Elizabeth Economy describes the Chinese government of being in a state of "schizophrenia" about its media policy as the Party "goes back and forth, testing the line, knowing they need press freedom- and the information it provides- but worried about opening the door to the type of freedoms that could lead to the regime's downfall."⁴² Former CNN Beijing bureau chief and correspondent, Rebecca MacKinnon, current expert on global Internet policy at the New America Foundation, has written that "the regime actually uses the internet not only to extend its control but also to enhance its legitimacy."⁴³ And, according to Harvard University professor and co-author of a 2012 study on online media censorship in China, Gary King finds that the goal of the regime's

⁴⁰ David Folkenflik, "'New York Times' The Target of Chinese Cyber Attack," NPR, January 31, 2013, accessed February 28, 2014, <http://www.npr.org/2013/01/31/170787379/new-york-times-the-target-of-chinese-cyber-attack>.

⁴¹ Beina Xu, "Media Censorship in China."

⁴² Ibid.

⁴³ Ibid.

censorship is to suppress any content “that represent[s], reinforce[s], or spur[s] social mobilization.”⁴⁴

Reputedly, the foreign press enjoys a much more relaxed environment of freedom of movement and interview rights than the national press. China’s government will tolerate aggressive reporting on subjects like local corruption. However, as soon as foreign journalists begin to take an interest in politically sensitive regions and matters like Tibet (where travel to requires prior approval and close supervision by authorities) or dissidents of the regime, they find themselves obstructed and even the target of violence.⁴⁵ Bob Dietz of the Committee to Protect Journalists said the regime saw recent exposes on the hidden wealth of leaders’ relatives as too dangerous and going too far for the Chinese government. Said Dietz, “You begin to really threaten and undermine the power of the Party.”⁴⁶

This is the type of content that if distributed is deemed politically offensive to the government and will lead to a crackdown as well as compel press censorship. Here are the experiences of two American journalists as they illustrate the average conditions of intimidation, fear, and the pressure of self-censorship in China.

Paul Mooney explains the initial grounds for censorship laid down by the Chinese government. Normally, the foreign journalist is granted a one-year visa. Sometimes the Chinese government issues the journalist a limited visa, as in a three or six-month visa, before the reporter is allowed to stay longer in China. By issuing a trial-like visa instead

⁴⁴ “Challenged in China: The shifting dynamics of censorship and control,” Committee to Protect Journalists, 16.

⁴⁵ “Freedom of the Press 2013: China,” Freedom House.

⁴⁶ Bob Dietz, “Covering China goes far beyond the current visa woes,” Committee to Protect Foreign Journalists, December 12, 2013, accessed March 1, 2014, <https://www.cpj.org/blog/2013/12/covering-china-goes-far-beyond-the-current-visa-woes.php#more>.

of a full-year visa, the government is intending to ensure that the reporter will conform to self-censoring.⁴⁷

Hannah Beech feared that her annual visa would not be renewed after waiting several months. She was able to renew her visa, but was deliberately made to wait to the last day, the same day that her visa had expired. The Chinese Foreign Ministry was punishing Beech for reporting on Tibetan self-immolations. Because she had also entered a region where foreign journalists were forbidden to travel, she was made- along with other journalists- to write “self-criticism letters” for violating the rules laid down by the government.⁴⁸

The impact of repression on an individual journalist’s profession or physical safety is quite clear. Foreign news organizations have also found their broader ability to report in China significantly hampered. Bureau chiefs (as from the *New York Times* and the *Washington Post*) have also been blocked from securing visas, the reason usually due to their predecessor’s reporting, according to the FCCC.⁴⁹

Chinese sanctions against news organizations extend beyond the subject of visa renewal. News outlets that do not bow to the pressure of self-censorship suffer retaliation, sometimes with serious financial ramifications. In 2012 both the *New York Times* and Bloomberg News defied pressure not to run exposés about the family wealth of China’s top leaders. The blocking of both the *Times* English and newly launched Chinese-language websites for several months caused appreciable financial losses. The company’s

⁴⁷ Gary Feuerberg, “Congressional Commission Calls on China to Cease Harassing US Journalists.”

⁴⁸ Ibid.

⁴⁹ “Foreign Correspondents’ Club of China Annual Working Conditions Survey,” Foreign Correspondents’ Club of China, (Hong Kong: Foreign Correspondents’ Club of China, May 2013), accessed March 1, 2014, <http://www.cpj.org/blog/CHINA%2007%2011%2013%20FCCC%20Annual%20Working%20Conditions%20Report%20for%20pdf.pdf>.

stock value took a twenty percent hit overnight.⁵⁰ The news agency suffered additional revenue loss when it was forced to discuss new agreements with several advertisers.⁵¹

Bloomberg's financial data terminals, used by large banks and firms and central to its operations in China, were disrupted by the government's interim shutdown of its English-only website. The problem for the outlet compounded with other threatening measures. In July 2012, the *Financial Times* reported that during the first weeks after Bloomberg's article broke: "People believed to be state security agents have tailed some Bloomberg employees; Chinese bankers and financial regulators have cancelled previously arranged meetings with [...] Bloomberg's editor-in-chief; and Chinese investigators have visited local investment banks to see if they shared any information with Bloomberg."⁵²

Considering the company's loss of its prospective business associates and clients, the FCCC reports that overall Bloomberg "suffered significant commercial harm from a drop in sales of its data terminals."⁵³ Like the *Times*, Bloomberg was also a pursued target of Chinese cyber espionage (although its perpetrators were unsuccessful) - an issue alone that sows great distrust in an already profoundly complicated relationship between the world's two top economic powers.

⁵⁰ Matt Schiavenza, "What's at Stake in Bloomberg's China Coverage," November 20, 2013, accessed March 1, 2014, <http://www.theatlantic.com/china/archive/2013/11/whats-at-stake-in-bloombergs-china-coverage/281660/>.

⁵¹ Margaret Sullivan, "'Great Journalism' That Has Unwanted Business Impact in China," *New York Times*, October 26, 2012, accessed March 1, 2014, <http://publiceditor.blogs.nytimes.com/2012/10/26/great-journalism-that-has-unwanted-business-impact-in-china/>.

⁵² Simon Rabinovitch, "China Keeps Up Block on Bloomberg Website," *Financial Times*, July 28, 2012, accessed March 1, 2014, <http://www.ft.com/intl/cms/s/0/4965b226-d952-11e1-8529-00144feab49a.html#axzz2aksVfw2D>.

⁵³ "Foreign Correspondents' Club of China Annual Working Conditions Survey," Foreign Correspondents' Club of China.

Key Actors

The concluding pages of this section contain three groups of principal actors and their constituents, as well as their positions in this issue of Chinese mistreatment of foreign- and largely, American- journalism. The first body is the Chinese government as a whole; the second group consists of White House leaders and Congressional policymakers; and the third group consists of Western media institutions, news organizations, and their correspondents.

China

After Secretary Clinton's speech on internet freedom in February 2011, Beijing issued Washington a direct warning not to meddle in its affairs.⁵⁴ China's position is that foreign correspondents should respect and abide by the nation's laws for covering events inside China. Chinese officials have explicitly communicated to reporters that the refusal to approve their visa applications was linked to the content of their reporting.

During Vice President Biden's trip to Beijing early last December, the Chinese Foreign Ministry maintained that it managed foreign journalists "according to law and regulations." Hong Lei, a spokesman for the Ministry, informed the US of the Party's expectation that the media outlet's future coverage should be "objective." Hong Lei said, "As for foreign correspondents' living and working environments in China, I think as long as you hold an objective and impartial attitude, you will arrive at the right conclusion." Despite the unique wording, Beijing's message to American reporters is loud and clear: if they want the Chinese government to renew their visas and refrain from

⁵⁴ "China warns US over Clinton's web freedom call," *BBC News*, February 17, 2011, accessed March 2, 2014, <http://www.bbc.co.uk/news/world-asia-pacific-12492302>.

other forms of interference, reporters need to tailor their coverage. In his meetings with President Xi, Vice President Biden warned of potential consequences for China, coming from Congress, if American journalists were expelled. But he noted President Xi's unaffected reaction, as if insisting that its officials treated reporters according to Chinese law. It is, therefore, all the reason to believe that Washington will continue to see no change in Chinese policy and no improvement in the regime's treatment of its journalists.⁵⁵

Executive and Congressional Actors

Through her supreme diplomatic role, Secretary of State Hillary Clinton was an active crusader for internet freedom, announcing it as “a struggle for human rights, a struggle for human freedom, and a struggle for human dignity” – from her university speech.⁵⁶ In response to *Times* reporter Austin Ramzy's visa denial, White House Press Secretary Jay Carney spoke out in an official statement to China reasserting the U.S. government's strong global support “of universal rights and fundamental freedoms- central among them freedom of speech and freedom of the press.”⁵⁷ At a farewell press conference at the U.S. Embassy in Beijing on February 27, 2014, outgoing U.S. Ambassador to China Gary Locke defended universal human rights. Referencing Beijing's recent denial of visas to reporters from the *New York Times* and other news outlets, Lock also pressed Beijing to grant foreign journalists working in China the same fair treatment journalists receive in the West. Locke's replacement, former Montana

⁵⁵ Lander and Sanger, “China Pressures U.S. Journalists, Prompting Warning from Biden.”

⁵⁶ Hillary Rodham Clinton, “Internet Rights & Wrongs: Choices & Challenges in a Networked World.”

⁵⁷ Jay Carney, “Statement by Press Secretary Jay Carney on Freedom of the Press in China.”

Senator Max Baucus, will no doubt be among the major governmental actors to advance press freedom with China in the future.

Spokeswomen Marie Harf and Caitlin Hayden, of the State Department and the National Security Council, respectively, broadly acknowledged that the Administration has considered all these related problems to be vexing, and indicated that only diplomatic action has been undertaken. However, they did not address specifically whether Washington would consider retaliating by delaying and withholding Chinese journalists' visas.

"We are deeply concerned that foreign journalists in China face restrictions that impede their ability to do their jobs, including extended delays in processing journalist visas, restrictions on access to 'sensitive' locations and individuals, pressure on their local staff, blocked websites and reports of cyber hacking of media organizations," said Marie Harf. "We call upon the Chinese authorities to respect media and academic freedoms. Chinese and foreign journalists and academics should be allowed to operate freely in China. We have raised our concerns about the treatment of journalists and media organizations repeatedly and at the highest levels with the Chinese government, and will continue to do so," she added. Underscoring the State Department's position, Caitlin Hayden added that the White House supports "free and enhanced people-to-people exchanges between our two nations, including between scholars."⁵⁸

Vice President Biden and Secretary of State John Kerry represent the most dominant actors of the Administration in this issue. Second in command, Biden stood up

⁵⁸ Michael Calderone, "China Foreign Press Crackdown Prompts Calls For Visa Retaliation," *Huffington Post*, December 10, 2013, accessed March 3, 2014, http://www.huffingtonpost.com/2013/12/10/china-press-crackdown-visa-reciprocity_n_4420253.html.

for press freedom and the treatment of American journalists in the wake of visa delays and denials in his December 2013 meetings with President Xi. According to his aides, Vice President Biden intervened on behalf of the *Times* and Bloomberg News, and other news organizations, to protect their business prospects and deter Beijing from driving the outlets out of China.⁵⁹

In a September 2013 dialogue with Chinese Foreign Minister Wang Yi touching human rights, Secretary Kerry raised the issue of visas for U.S. journalists and strongly encouraged the Chinese to accord foreign media the unrestricted ability to cover events in China and to be allowed to make their reports available to the Chinese public.⁶⁰ Secretary Kerry is continuing the causes of his predecessor in advancing more press and internet freedom in China. Having raised the issues with Chinese leaders the week before, Secretary Kerry met with Chinese bloggers and journalists in Beijing, on February 15, 2014. They beseeched his help to tear down the Great Firewall, China's intricate network of blocks, filters, and censorship that restricts what its citizens can view online. Kerry iterated a belief on behalf of the Administration that increased freedom online would also bring a major economic incentive to the Chinese government.⁶¹

Senator Sherrod Brown (D-Ohio) is the chairman of the Congressional-Executive Commission on China (CECC), the independent agency congressionally mandated to monitor and report annually to Congress and the President on human rights developments

⁵⁹ Lander and Sanger, "China Pressures U.S. Journalists, Prompting Warning from Biden."

⁶⁰ Senior State Department Official, "Read Out of Secretary Kerry's Meeting With Chinese Foreign Minister Wang Yi," U.S. Department of State, (New York City), September 26, 2013, accessed March 4, 2014, <http://www.state.gov/r/pa/prs/ps/2013/09/214801.htm>.

⁶¹ Jiang Pei, "Kerry's Comments on China Internet Freedom 'May Inspire Protest,' Radio Free Asia, February 17, 2014, accessed March 5, 2014, <http://www.rfa.org/english/news/china/kerry-02172014172933.html>.

in China.⁶² In the Commission's December 2013 roundtable discussion of the ramifications of China's harassment and expulsions of U.S. journalists in December 2013, Senator Brown stated his position as a proponent of Congress intervening if the situation with the China does not improve.

Congressman Dana Rohrabacher (R-CA), the other key congressional actor, has aggressively argued for reciprocal visa action from Congress, first in his September 2011 introduction of what he called the *Chinese Media Reciprocity Act*, and secondly in the beginning of 2013 in an article for *Foreign Policy*. The Congressman's position rests on the disproportionate treatment foreign journalists receive in China compared to their Chinese counterparts in the US and in the West. The Chinese journalists employed by China's state-run media enjoy unlimited access to the US. They report without being harassed and obstructed. On top of which, Rohrabacher contends that many of these Chinese journalists are government propagandists and likely to be spies.⁶³

Foreign Media Actors

Vice President Biden's attention to China's harassment and expulsions of U.S. journalists while in China was met as a welcome sign by media institutions that perhaps the U.S. government is ready to take a more aggressive role in protecting its journalists in China. International journalist organizations have reported the tougher tactics that are emerging in China toward the foreign media and as the recent developments have arisen, they conclude that the situation is worsening. The purpose of the Foreign Correspondents' Club of China, International Federation of Journalists (IFJ), the Center

⁶² "About," Congressional-Executive Commission on China, accessed March 5, 2014, <http://www.cecc.gov/about>.

⁶³ Dana Rohrabacher, "Why are we giving visas to Chinese spies."

for International Media Assistance (CIMA), and the Committee to Protect Journalists (CPJ) is to push governments to promote social justice and rights for journalists. CIMA has recommended that the US and other Western governments "respond vociferously to assaults and visa delays of foreign correspondents" and "consider diplomatic options for signaling that visa delays or denials are unacceptable for a country of China's international stature."⁶⁴ The CPJ has proposed that the President and the State Department "engage China's leaders on press freedom," and that the Senate and House foreign affairs committees and the Tom Lantos Human Rights Commission "hold public hearings on press freedom" in China.⁶⁵

Obviously, news organizations like the *New York Times*, Bloomberg News, *The Washington Post*, *The Wall Street Journal*, and Reuters do not want to lose revenue, and like their journalists they want to be able to report safely, unfettered, and not to be pressured into self-censorship. Lawrence Ingrassia is the assistant managing editor at *The New York Times*, and edited Barboza's exposé of cronyism among China's ruling elite. Ingrassia- like many journalists- stands by the outlet's judgment to publish the stories that led to the crackdown on journalists' visas. He insinuates that self-censoring is antithetical to Western journalism's belief of press freedom, and expresses his hope that the Chinese government will accept the benefits of press freedom for their people. "We don't be intimidated. We don't worry that they shut down access to our website. We continue

⁶⁴ Sarah Cook, "The Long Shadow of Chinese Censorship: How the Communist Party's Media Restrictions Affect News Outlets Around the World," A Report to the Center for International Media Assistance, October 22, 2013, accessed March 6, 2014, <http://cima.ned.org/publications/long-shadow-chinese-censorship-how-communist-party%E2%80%99s-media-restrictions-affect-news-out>.

⁶⁵ "Challenged in China: The shifting dynamics of censorship and control," Committee to Protect Journalists, 25.

doing it and we hope and fervently believe that at some point they recognize that [...] their country, their citizens, will be better off with the free flow of information.”⁶⁶

Hannah Beech is one of many U.S. journalists who, despite the obstacles faced as a reporter in China, openly defies the pressure to self-censor: “That isn’t stopping me from writing about sensitive topics or looking specifically at the insidious way in which Chinese authorities hope to dictate coverage through controlling the visa process.”⁶⁷

Many of the American reporters harassed by the Chinese government do not agree with visa retaliation against Chinese journalists. On behalf of the FCCC, President Peter Ford stated that they “do not support efforts to restrict press freedom in one country in an effort to improve press freedom in another. We remain committed to freedom of the press.”⁶⁸ *The New Yorker*’s China correspondent, Evan Osnos told the *Huffington Post* in January 2013 that “in the China-watching crowd, opinion is split.” Osnos says he personally would not go as far as reducing the number of visas for Chinese journalists because he believes the US “should keep the moral high ground.” Nevertheless, he expressed understanding and anticipation that the U.S. government would need to take action to resolve the intensifying problem.⁶⁹

In early December 2013, Reuters correspondent Paul Mooney endorsed reciprocity as the only course to pressure China over its treatment of foreign journalists.

⁶⁶ David Folkenflik, “‘New York Times’ The Target of Chinese Cyber Attack.”

⁶⁷ Hannah Beech, “Foreign Correspondents in China Do Not Censor Themselves to Get Visas,” *Time*, December 11, 2013, accessed March 6, 2014, <http://world.time.com/2013/12/11/foreign-correspondents-in-china-do-not-censor-themselves-to-get-visas/>.

⁶⁸ Elizabeth M. Lynch, “The Chinese Media Reciprocity Act and Censorship of Foreign Journalists in China,” July 6, 2012, accessed March 6, 2014, <http://chinalawandpolicy.com/tag/visa/page/2/>.

⁶⁹ Michael Calderone, “China Foreign Press Crackdown Prompts Calls For Visa Retaliation.”

Mooney stated that he is:

not in favor of limiting the freedom of expression of Chinese journalists in the United States, but if the U.S. State Department also delayed the approvals of visas for Chinese journalists and media executives trying to work in the United States [an idea suggested by former U.S. Ambassador to China and Assistant Secretary of State, Winston Lord], there's no doubt in my mind that Beijing would soon get the message, and that Beijing's unacceptable behavior would stop.⁷⁰

Policy Proposal

The Chinese Media Reciprocity Act failed to pass because it was extreme and rigid in nature- and in reality its impact was anything but reciprocal. The US has two government-sponsored news agencies in China: Radio Free Asia and Voice of America; the remaining U.S. journalists in China work for private media outlets. China on the other hand, with its state-owned media, has thirteen government-run agencies and over 800 media personnel working in the US. If it had passed, within thirty days, the State Department would have been required to revoke the number of visas issued to Chinese journalists to equal the number of visas issued to American government journalists in China which currently stands at two. The Act would all but eliminate a Chinese media presence in the US. For the US to deny visas to a disproportionate number of Chinese journalists undermines the US' commitment to freedom of the press. While many of the Chinese reporters do work for the state-controlled media, they are still journalists and

⁷⁰ Ibid.

should be protected by freedom of the press. The Chinese journalists as a whole should not be targeted by U.S. law.⁷¹

However, denying- or just not processing- a visa to a key Chinese reporter (instead of numerous reporters) is a tool that can be used to protect American journalists in China. And, no additional legal authorization is required, as it is already valid under current law. The Immigration and Nationality Act (INA), enacted in 1968, provides the executive branch with a list of circumstances where the government can deny a visa. INA provides journalist visas “upon the basis of reciprocity” (INA Sec. 101(a)(15)(I)). Reciprocity is a foundational principle of the international order, guaranteeing that the treatment of one country to another will be returned in kind. Reciprocity- and the fear of negative reciprocity- is what prompts international actors to act reasonably.⁷²

While visa reciprocity is usually in regards to fees and other procedural aspects, reciprocal treatment can be used to deny entry to a foreign national. Section 212(a)(3)(C) allows the State Department to deny a visa where entry of the individual would have “serious adverse foreign policy consequences for the United States [...]” What is a serious adverse foreign policy consequence is left to the discretion of the State Department and its consular agents. In fact, the decision to deny a visa falls under the “Doctrine of Consular Non-reviewability.” Within the courts, the executive branch is given almost exclusive deference in immigration and visa decisions.⁷³

⁷¹ Dana Rohrabacher, “Why are we giving visas to Chinese spies.”

⁷² “Immigration and Nationality Act,” U.S. Citizenship and Immigration Services, last modified 9/10/2013, accessed March 7, 2014, <http://www.uscis.gov/laws/immigration-and-nationality-act>.

⁷³ “Consular Non-reviewability: Consular’s Office Decision to Deny, Rarely Reversed,” Beach-Oswald Immigration Law Associates, PC Washington, DC, accessed March 7, 2014, <http://lawblog.boilapc.com/2013/06/consular-non-reviewability-consulars-office-decision-to-deny-rarely-reversed/>.

Because rhetoric in Washington's frequent public reprimands of Beijing and acts of diplomacy have fallen short to counter China's continued abuses of press freedom, it is therefore proposed in this memo that the policy authorizing mechanism to resolve the problem will be the standing statute under the Immigration and Nationality Act. As the policy implementation tool, the State Department will withhold a visa to a top Chinese reporter or bureau director of its choosing. (Cases for limited replication of this action will be left to the Department's discretion.) By imposing some minor and calculated visa reciprocity, the goal of this proposal is to ultimately protect press freedom; American journalists and media businesses; and to tell the Chinese government that it has incurred this palpable consequence, which may be rescinded when Beijing stops its visa and censorship pressure of American journalists.

Analysis

Policy Analysis

The time for addressing the issue of foreign journalism under pressure solely in private and public realms of diplomacy with Chinese government officials has passed. The standing policy has been ineffective; the proposed alternative might very well not be. It is logical to conceive that this pointed action of denying a visa to a Chinese journalist is appropriate because it is an incremental step toward a more assertive policy.

In recent years, the Chinese government has magnified its media presence in the US, employing several hundred journalists in organizations like Xinhua and CCTV- which the Chinese government launched in Washington, DC to much fanfare in China, in February 2012. Given their media-related investments in the US, China would have much to lose from reciprocity. The denial of a visa- or the threat to deny- to one of these

organizations' top reporters or directors would signal to China that the US is not going to tolerate China's harassment of U.S. journalists. Using the denial of a visa as a sanctioning tool imposes a psychological impact for the Chinese journalists wondering if their visas will be next to be denied. By playing the game on China's terms, it would serve to call out their behavior and make them experience- albeit a fraction of- the restraints of operating in the US, or in other words, "a taste of their own medicine."

However, the flaw of this argument is that it is unlikely that retaliation against China would even work, given its staunch indifference to the issue. One must remember that President Xi reacted dispassionately to Vice President Biden's personal warning over Beijing's denial of visas to American journalists last December. President Xi maintained that the government's treatment of journalists subscribed to Chinese law. Chinese journalists who violate law by attempting "to investigate or report on controversial issues, question Party rule, or present a perspective that conflicts with state propaganda directives face harassment, dismissal, and abuse."⁷⁴ Punishment for these journalists also comes in harsher forms as being sentenced to prison or labor camps. According to a February 2014 report by Reporters without Borders, thirty Chinese journalists and seventy "netizens" have been imprisoned.⁷⁵ In this analysis, one must also consider that China's is a repressive society in which the regime has had no reservation of violating human rights of its own people in order to maintain control, in much worse fashion than those of foreign journalists.

Therefore, an eye-for-an-eye type of approach might very well fail, when China is willing to wage more than an eye, so to speak. This potential reality begs the question:

⁷⁴"Freedom of the Press 2013: China," Freedom House.

⁷⁵Beina Xu, "Media Censorship in China."

How far is the US prepared and willing to go if the consequence is worse than expected, or spirals out of control, or spills over to agitate other problems in the Sino-U.S. relationship? Given the possible range of complications, one wonders if pursuing the proposed policy is worthwhile. After all foreign journalists in China enjoy a freedom unfathomable to Chinese correspondents. Foreign journalists are not imprisoned; they are not prohibited from travelling the country, outside of areas deemed sensitive; and they are very rarely subjected to physical assaults. (More will be addressed as to this proposed policy's quality of effectiveness in the Political Analysis.)

The Chinese Media Reciprocity Act had been perceived as radical and fraught with risk- owing to the bill's demise. But reviving the concept of reciprocity for the purpose of restricting Chinese journalists operating in the US is useful for solving the problem at hand. The proposed policy can efficiently succeed without damaging freedom of the press too much and affecting many Chinese journalists. This policy tool is intended to be a much more tempered and far less aggressive policy alternative to the Chinese Media Reciprocity legislation- making it more practical, appealing, if not tolerable, an approach for U.S. policymakers and members of the foreign media.

The Chinese Media Reciprocity Act is inequitable. Had it passed it would have afflicted the lives of hundreds of Chinese journalists. The design of this policy proposal is to minimize damage by applying the visa sanction to a minimum number of select Chinese journalists. That is the tactic; the strategy is to curb Beijing's abuse of foreign journalism. There is no loss of sympathy for that small number of Chinese journalists who will bear the brunt of a policy created to stem China's offenses. But it is weighed as a necessary cost – or “a small price to pay”- in order to furnish this policy's stick-like

mechanism. In the long run, however, this policy action will benefit the Chinese people. By the US upholding the freedom of its press in China through this policy, some accountability and transparency will be brought to their one-Party state.

The fundamental asset of this policy proposal is its ability to respond proportionately to address the harassment, censorship, and expulsion of foreign journalists from China. This policy proposal is equitable in the face of the totality of egregious and unjust acts by the Chinese government, without forgetting the penetrating cyber attack on the *New York Times*; and, it administers justice on behalf of American and foreign journalists.

Political Analysis

The primary advantage to employing existing law as the authorization tool is that one does not have to push for new legislation that will likely be blocked by an uncooperative and extremely-polarized Congress. Besides, the Immigration and Nationality Act is a well-founded law that has governed for almost fifty years. That this policy proposal is politically feasible is even more underscored by the fact that the leading congressional actors to invoke action from the U.S. government on this issue, come from opposite sides of the aisle. Chairman Sherrod Brown of the Congressional-Executive Commission on China is a Senate Democrat; Representative Dana Rohrabacher is a Republican. This represents the nonpartisan concern to protect U.S. journalists. Therefore, it is conceivable that this proposal would be met with general acceptance from both parties, or at least by markedly less resistance than with the Chinese Media Reciprocity Act.

As China's crackdown on foreign journalists worsens by the day, following

through on the US' issued warnings of consequential action is more critical than ever. The strengths of this proposal are that it legitimizes the Administration's exhortations with decisive action and attends to this matter of urgency. The Center for International Media Assistance CIMA has noted that "to date, the response from Western governments to growing harassment of international media in China has often been timid."⁷⁶ Not only is it incumbent upon the government to protect its citizens and values, but it must act to uphold the credibility and integrity of the United States. Taking a tougher stand against Chinese aggression strengthens the image of the Administration and eschews the perception and criticism that Democrats are "too soft." At the same time, the proposed course of action satisfies Republicans who traditionally favor a hard-line approach- especially against China. Moreover, for those political leaders eager to teach China a lesson on what is acceptable conduct for a respectable member of the international community, a more assertive and counterbalanced policy is justified.

However, lecturing China for their "conduct unbecoming" a major power within the international community may very well be foolish since it is evident that China is unconcerned that its crackdowns on foreign journalism come at the expense of country's international reputation. Not to mention, China has remained firm in defending its right to manage the internet and foreign press according to its own legal and sovereign premises. A top Party official has justified its management of the internet, asserting that it conforms to "international practice."⁷⁷ For a country that adamantly protests against any infringements on its sovereign rights, China would be expected to respond to this

⁷⁶ Paul Mozur, "Report: Chinese Censorship Expanding Abroad," *The Wall Street Journal*, October 22, 2013, accessed March 9, 2014, <http://blogs.wsj.com/chinarealtime/2013/10/22/report-chinese-censorship-expanding-abroad/>.

⁷⁷ "Challenged in China: The shifting dynamics of censorship and control," Committee to Protect Journalists," 23.

proposed policy with vociferous denunciations. As a result, it is unlikely that any form of a reciprocal push against U.S.-based Chinese media would induce any acceptable change in Chinese policy. “We will likely never win a tit for tat against the Chinese government, simply because they are willing to go much further than us,” commented Robert Daly, a China expert at the Wilson Center.⁷⁸

Therefore, the logical surmise is that a policy of reciprocity against an opponent well-versed in the practice of retaliation could likely backfire. Part of the issue at hand is not solely that the Chinese government retaliated against the journalists and organizations for probing into sensitive political issues, but that their reprisals have gone "above and beyond" the journalists' offenses. The punishment, i.e., the sum of all forms of mistreatment leading up to the expulsion of foreign journalists, has exceeded the crime. Furthermore, the US could lose even more if it provokes a regime with authoritarian characteristics that by nature acts with unrestrained aggression without regard to its people or to international conventions and parties. The potential consequences could further harm Sino-American relations, on top of be damaging in the following forms: even more harassment toward foreign journalists; media websites permanently blocked; an ignited visa war between the two countries resulting in more individual journalist expulsions, entire news bureaus kicked out of China, along with business prospects wiped out.

And on the other hand, punishing Chinese journalists- no matter how very limited in number- for a situation beyond their control would paradoxically undermine the

⁷⁸ Josh Rudolph, “NYT, Bloomberg Journalists Receive Press Credentials,” *China Digital Times*, December 19, 2013, accessed March 11, 2014, <http://chinadigitaltimes.net/2013/12/nyt-bloomberg-journalists-receive-press-credentials/>.

reputation of America's commitment to free speech before the world, at the same time the US is acting in the name of protecting free speech in China. Of course, there are those U.S. politicians and certainly journalists who are against restricting any Chinese journalists the right to free speech and would favor a policy course of renewed diplomacy. Conceivably, like-minded actors would point out that it is antithetical (and hypocritical) that the State Department, the government's bastion of diplomacy, would be in favor of a policy capably combative and threatening. These opinions are also assumed to be held consistent by those public citizens who would make the proposed policy seem socially unacceptable. However, social acceptability is difficult to gauge even if it is measured and would depend on the public's level of awareness of the issue.

Opponents of the alternative policy would cite the weakness in defending the jurisdiction of a legal framework i.e., the INA, which is too sweeping, despite its long-established, binding quality. Proponents for new legislation (or another policy authorizing mechanism) would argue for a law that is tailored specifically to the dimensions of the problem with China. Furthermore, a portion of the actors in favor of a newly crafted, separate law are those who see this "moderate" policy proposal as amiss and severe. Conversely, those who sided with Representative Rohrabacher's thesis (including himself), would likely criticize the "deny-just-one-or-a-few-visas" policy as not going far enough. Finally, opponents of the Administration (most likely outside the Democrat Party) might be uncomfortable with the thought of handing over interpretive powers of the INA's vague rhetoric solely to the Department of State, when it is rarely overseen by judicial review.

Economic Analysis

The line between politics and economics is especially thin in China. The articles about the overlap of Chinese politics, i.e. the power elite, economy, and major businesses- which Beijing aims to censor- are precisely the kind of articles necessary to inform potential market investors. Even the articles about less economic-based issues, such as legal development, political unrest, environmental degradation and crackdowns on dissent are also important to businesses that invest in China because they hire companies, like the Eurasia Group for example, to inform them about these events.⁷⁹ It is crucial to their investments to know if the area where their company or factory is located is a politically explosive situation.

The policy proposal defends the economic premise that ensuring that U.S. media companies are not censored is important because information and disclosure are key to efficient markets. Accurate information creates transparency in the market and places all sides of a transaction at an equal advantage. As a result, investors and businesses are protected. Having accurate information is particularly important when it comes to China's economy, which is rather opaque. At the December 11, 2013 hearing, Chairman Brown stressed the critical need for news outlets to have access to accurate information about the world's second largest economy. Such unrestricted access is vital to the financial health of American and Western media businesses.

Because the *New York Times* and Bloomberg have had their websites blocked in China and, in the case of Bloomberg, has had its terminals sales halted, the organizations

⁷⁹ "About Eurasia Group: What We Do," Eurasia Group, accessed April 8, 2014, <http://eurasiagroup.net/about-eurasia-group/what-we-do>.

have suffered what were essentially forms of economic sanctions. Hence, the policy proposal's advantage that it responds with an appropriate punitive measure to these economic sanctions then imposed by the Chinese government. However, it must be noted that by restricting one or a select few Chinese journalists from visa accommodations, the proposal's action is far from executing a removal of Chinese media altogether. The policy proposal does not deprive the operational efforts of China's state-run media outlets from inside access to information about American markets. And, therefore, would aim to minimize any negative economic impact, especially a restriction of China's trade and investment with the US. The main purpose of visa denial as this policy proposal's sanctioning mechanism is to reciprocate similar pressure- albeit, exponentially less abusive- as Beijing's pressure of foreign journalists in China. It is not to harm Chinese business which is so intertwined with U.S. business that any act of retaliation against Chinese business would be tantamount to the US "cutting off its nose to spite its face."

The downside of this policy proposal is that if it provokes an adverse circumstance such as the scenario of the Chinese government driving an entire news bureau out of China (or more than one) - whether it be the *Times*, Bloomberg, *The Wall Street Journal*, and so forth- one can be sure that said organization(s) would suffer even more financial losses and imperiled investments than having its website blocked. Incidentally, driving out all American news bureaus would be an anticipated move in this game of tit for tat had the China Media Reciprocity Act been enacted, because it would have ended China's media presence in the US. The *New York Times* and Bloomberg are two of the world's most powerful media companies. If they are compelled to leave China, few news agencies possess the capability- or would even be willing to- take up the job of

intense reporting on China's financial issues. Still, as it has been noted, responses less flagrant as China blocking websites for any extended period of time inflict financial damage on those companies. And, conceivably, an even more troubling scenario of a contest spilling into the battle lines of business would indubitably restrict trade and investment, and exacerbate the existing tension over other U.S.-Sino economic issues, like Beijing's currency manipulation and economic espionage against the US, as Representative Rohrabacher pointed out- the implications of which would certainly be grave and far-reaching.

Recommendation

China's attempted censorship of the foreign press- through its abuse of the visa process, direct pressure of journalists with the occasional threat of violence, and cyber attacks on prominent media outlets- flagrantly violates press freedom. Besides, foreign media repression in China will likely worsen before it improves. Speaking out against Chinese treatment of foreign journalists, as Vice President Biden did in December 2013, along with the diplomatic motions of other political actors, has not coerced the Communist Party to loosen its crackdown. But punishing Chinese journalists for a situation beyond their control through a policy of reciprocity will not only work but probably backfire, as well as signal to the world that the American commitment to free speech is in fact shallow. Therefore, at this time it is recommended that the U.S. Department of State take no action with regards to this policy proposal.

By looking at several international cases, Professor Kevin D. Stringer examines the use of visas as a diplomatic tool in the "The Visa Dimension of Diplomacy." Visa diplomacy can offer a means to posture when all other diplomatic avenues have been

exhausted and ineffective. Dr. Stringer further states that the visa provides “states with a simple and low cost” measure “to use when other potential ‘weapons’ may not be available.” However, states he, the use of the visa “is a rather weak form of retorsion” and, as an instrument of coercion, is “problematic” as it can also be viewed- especially by the sanctioned state- “in the spectrum of interstate conflict below the level of warfare.”⁸⁰

Any shadow of the implication of “conflict” and “war” with China is enough to send shivers down one’s spine. Although a military conflict between the US and China emanating from American visa diplomacy is impractical, a visa war with China is conceivable and certainly would not help, what with tremendous turbulence already taking place in the international arena. Perhaps the greatest source of which, is the present escalating crisis in Ukraine, answered by the US’s active engagement in the region. With another round of six-party talks with Iran about to resume in May 2014 and the additional confrontation by the US recently denying a visa to Iran’s new ambassador to the UN, Hamid Aboutalebi, for his role in the 1979 Iranian Hostage Crisis; and North Korean belligerence in the background, for examples, it is plain to see that there are foreign policy issues of considerable gravity that take precedence over this problem with China. At a moment when the US is imposing economic sanctions and increasing the pressure on Moscow, China’s cooperation as a permanent member of the UN Security Council is crucial. The US does not need another major antagonist; not when there is talk over a mounting cold war between Moscow and Washington. Washington and Beijing need to

⁸⁰ Kevin D. Stringer, “The Visa Dimension of Diplomacy,” *Clingendael Institute 91* (The Hague: March 1, 2004): 27, accessed April 12, 2014, http://www.clingendael.nl/sites/default/files/20040300_cli_paper_dip_issue91.pdf.

“be on the best of terms” as much as possible so that the US and the West can obtain China’s support on many of these critical issues.

Returning to Dr. Stringer’s analysis, the reader learns that when “targeted at a specific group [...], visa sanctions appear not so effective in influencing a country’s policy in the desired way.”⁸¹ One reason is that there is a lack of joint application from other sanctioning nations. No other Western governments that have had their journalists impacted from this repression of speech are calling for visa reciprocity against China. Australian correspondent for the *New York Times*, Chris Buckley, was expelled from China in January 2013; for this and more, Australia has done little in the way of speaking out against China. In fact, Human Rights Watch comments: “Acknowledgement of the scale and scope of human rights abuses by the Chinese government has been noticeably absent from Australia’s public diplomacy with China.”⁸² As enumerated in the Background section, the US, constituted by its many executive and congressional actors, has certainly not stood silent on the human rights issue of press freedom- and commendably so. Still, without the customarily-sought after multilateral support with this visa policy, “going it alone” would be adverse to the spirit of striving toward international cohesion and unfavorable to the US’s reputation.

The seeming impasse between Washington and Beijing regarding its treatment of foreign journalists is frustrating, although not surprising given that at the root of the issue are two rival brands of government: a liberal democracy and an authoritarian system- albeit with a liberalized economy. The two countries are at an standstill because the very

⁸¹ Ibid., 28.

⁸² “Australia: East Asia Visit Should Highlight Rights: Foreign Minister Should Speak Out in Indonesia, China, Philippines,” Human Rights Watch, December 4, 2013, accessed April 12, 2014, <http://www.hrw.org/news/2013/12/04/australia-east-asia-visit-should-highlight-rights>.

ideals inherent of a democracy: free speech and press freedom are time-honored in American history, government, and ethos, but are not a part of China's history, and are certainly not a part of its political structure which relies upon a vast and entrenched system of censorship.

The Department of State should act with awareness of these ideological and political incompatibilities, as well as remember that China retains a vivid remembrance of its past and what it is called the "Century of Humiliation," in which China suffered repeated defeat and subjugation at the hands of Western powers. China's past, certainly amplified by its robust economic transformation, fuels its assertive projections in the realm of foreign policy. Consequently, any forms of pressure, threats, and acts of coercion are likely to be futile and met with significant opposition- even more so by a country known to denounce and resist any intrusions into its affairs.

It is not the objective of this memorandum to establish a final dismal tone and portray seeking a solution to China's repression of foreign journalism as hopeless. This is not "a lost cause," or one ever to be abandoned. The First Amendment is a shield of democracy, a powerful and inspiring force that defends against any major attempt to limit or control the right of the individual to speak and print. The U.S. government and its representatives will continue to proudly bear the First Amendment banner and those American values which have bettered the lives of millions of the world's citizens, whose governments have embraced them. When the Department of State champions America's devotion to freedom in its diplomatic channels, as Former Secretary Clinton and Secretary Kerry have done, the US's soft power and its compelling effects multiply. On this current, should it revive the discussion of the treatment of foreign journalism. The

Department of State should explore innovative approaches that thoughtfully, constructively, and patiently engage China's leaders in multilateral international forums.

Curriculum Vitae

Melissa Goodman was born May 18, 1983 in Washington, DC. She earned a Bachelor of Arts degree in History from Brigham Young University, Provo, Utah in 2008. Following graduation from Johns Hopkins University, she will join the faculty of Nanjing University, Nanjing, People's Republic of China.