

BEHIND CLOSED DOORS: BILATERAL DIALOGUES ON HUMAN RIGHTS

A REPORT BY FREE TIBET CAMPAIGN, HUMAN RIGHTS IN CHINA AND THE INTERNATIONAL CAMPAIGN FOR TIBET

Many human rights organizations were disappointed with the failure of the United Nations Commission for Human Rights to table a resolution outlining China's human rights abuses. This edited and expanded version of the joint report by HRIC, FTC and ICT highlights why the existing bilateral talks between China and Western countries are no substitute for rigorous public assessment of the issues at stake.

The formal business of the 59th Session of the United Nations Commission for Human Rights (UNCHR) (March 17-April 25, 2003) concluded without the tabling of a resolution on China. In light of ongoing and serious Chinese government political crackdowns in the name of fighting terrorism or separatism in Tibet and Xinjiang, and the suppression of peaceful political dissent, underground churches, religious groups and labor activists, the failure of the UNCHR to exercise any meaningful scrutiny of these human rights abuses raises troubling questions about the future role and efficacy of human rights mechanisms and bodies in the multilateral system.

The failure of any nation or body, particularly the United States and the European Union in light of their past positions, to put forward a Commission motion on China also reinforces a growing trend towards closed-door bilateral dialogues between individual governments and China. In the early 1990s a number of Western countries, including France, Australia, the UK, Switzerland and the U.S., sent high-level delegations to China. These formal contacts evolved in many cases into bilateral dialogues on human rights. The current generation of bilateral dialogues resumed or were initiated in 1997, at a time when many nations were reviewing their relationships with China and the failure of the UNCHR at that time to pass resolutions on China. As of 2003, China's recent dialogue partners include: Australia, Brazil (although the current status of its dialogue is uncertain), Canada, Chile, the European Union, Germany, Hungary, Japan, Norway, Switzerland, the United Kingdom and the United States. ¹

In light of the limited efficacy of a highly politicized Commission, these closed-door bilateral dialogues require more critical attention. With a goal of examining this trend towards bilateral dialogue and its impact on multilateral human rights mechanisms, Free Tibet Campaign, Human Rights in China and the International Campaign for Tibet, in partnership with the Society for Threatened People, convened a parallel NGO forum during the 59th Session of the UNCHR in Geneva on April 2, 2003. The roundtable discussion entitled 'Dialogue on Human Rights in the People's Republic of China' was attended by NGOs and representatives of eleven nations plus the EU. This report summarizes the joint briefing paper prepared by Free Tibet Campaign, HRIC and ICT, Dialogues with China – Summary and Recommendations (April 2, 2003) (Dialogues Briefing Paper)² that was circulated to all the participants at the round-table forum in Geneva, and highlights some of the key issues raised by the participants of that round-table.

Summary of Dialogues Briefing Paper

The Dialogues Briefing Paper drew upon the limited information available from official government Web sites, as well as public documents and oral interviews with government officials to present baseline information for each country's bilateral dialogue (See country by country summary chart), identify common themes and present a summary of stated outcomes and accompanying NGO concerns. The categories of baseline information for each country's dialogue include: the start dates and frequency; duration and format; any benchmarks or evaluation of the process; content; extent of transparency of the dialogue process; stated outcomes; and relationship to the work of the UNHCHR.

Main findings

Our review of the dialogues reveals several common themes: general lack of benchmarks; lack of transparency; the correlations between support for a Commission resolution, international pressure and technical cooperation programs; and the role of national self-interest.

Benchmarks: Generally there are no publicly stated benchmarks and an irregular or non-existent program of evaluation.

Among the exceptions are the EU and UK (which lists the same 'strategic objectives' as the EU with one or two additions); however neither the UK nor EU has a stated time-frame for the fulfillment of these objectives or a formal program for evaluating the performance of the dialogue against the benchmarks.

Transparency: Overall, there is very little transparency in process. Partners are more open about claiming positive results, although it is often hard to link these directly to the dialogues. Some governments try to involve NGOs and report back to NGOs, and a number publish limited information about the content and outcomes of the dialogue process on official websites; others merely state that a process is taking place. The general theme is of a process "behind closed doors."

China Resolution and International Pressure: All dialogue partners, with the exception of the U.S., have withdrawn from sponsorship or co-sponsorship of China resolutions at the UNCHR since their dialogues began. None publicly admit that there is a direct relationship, although the British Foreign Secretary Robin Cook explicitly stated during a Parliamentary hearing in 2000 that support for a resolution would mean "the end of the dialogue." However, high level discussions routinely place the resolution in the context of dialogue, and a connection is implied by the EU, which in its General Affairs Council statements each March refers to the dialogue in conjunction with its position on China at the UNCHR. Diminished international pressure has resulted in the dialogues becoming less substantive.

UN Mechanisms: Cooperation with other UN mechanisms is included among items for discussion, including ratification of relevant covenants, cooperation with the Office of the High Commissioner for Human Rights and visits by Special Rapporteurs. It is notable that compliance with these mechanisms does not come into play while considering China resolutions at the UNCHR (see above).

Technical Cooperation Programs: Legal and other technical assistance programs are becoming an increasingly large component of the bilateral dialogue processes. China is successful at establishing the parameters of these programs and there are inconsistencies amongst dialogue partners regarding the standards adopted.

National Self-Interest: Many dialogue partners, including most EU member states, have made little secret of the fact that dialogue is more conducive to the enhancement of commercial opportunities than what has been termed "confrontation" with China on human rights. Much publicity was given to the apparent reprisals China unleashed on Denmark after it sponsored a resolution at the UNCHR in 1997. Since the EU decided to adopt a common position on UNCHR the following year, France, Italy and other members have cited dialogue as a reason against supporting a resolution, while protection of trade deals appears to be the actual reason. A review of the

Swiss/China dialogue by Bern University also concluded that there were trade benefits in continuing the process. The U.S./China dialogue began only after the renewal of China's Most Favored Nation trading status was formally de-linked from human rights.

Stated Outcomes and NGO Concerns

Foreign dialogue partners point to a number of stated outcomes as evidence of progress and the effectiveness of the dialogues. These stated outcomes include: more willingness to issue invitations to Special Rapporteurs, progress toward the signing and ratification of UN covenants, political prisoner releases, greater openness in discussing human rights and greater cooperation with UN mechanisms on the part of the PRC government, and the creation of an environment more conducive to technical cooperation programs.

However, while recognizing progress in some of these areas, we identify a range of concerns regarding these stated outcomes.

Visits permitted: Although some visits have taken place and China is more open to issuing invitations to Special Rapporteurs, China has refused to accept international norms as the terms of reference for such visits. The Special Rapporteur on Torture was delayed for two years as China attempted to negotiate special terms for his visit. It is worth noting that China has specifically included encouraging visits to Tibet as a key part of its propaganda strategy.

Progress toward the signing and ratification of UN covenants: Dialogue partners point to China's signing of the International Covenant on Civil and Political Rights and ratification of other key UN treaties as signs of progress. However, it is critical to pay attention to whether there is concrete implementation of these international legal obligations and to be aware of the danger of China making use of these "good will gestures" to deflect international pressure and scrutiny. It is also clear that China views the signing and ratification of international treaties as an opportunity to shape norms to meet its own standards. For example, in October 1998 on the signing of the ICCPR, an official statement in the China Daily read: "It is not that China's stance or policies on the issue of human rights have changed.....rather that the belated favorable turn in the international atmosphere has created an opportunity for China to elaborate its perspectives."³

Political Prisoner releases: Although a number of political prisoners (particularly Tibetans) have recently been released prior to the completion of their sentences, such releases are directly associated with the progress of the U.S./China relationship rather than bilateral dialogues, and do not represent substantive change in the human rights environment in China.

Greater Openness in Discussing Human Rights: China has accepted that human rights are a legitimate subject for discussion (previously described as "an internal affair" or the imposition of Western values). At the same time, China has co-opted

many of the discussions on human rights, apparently recognizing the expediency of accepting discussions as a trade-off for silencing substantive criticism in other fora such as the UNCHR.

Greater Cooperation with UN Mechanisms: Dialogue partners state that dialogue encourages China to be more cooperative in other UN mechanisms. However, this type of trade-off undermines the mechanisms of the UN rather than supporting them, and China remains wholly capable of disrupting the Security Council and the proceedings of the UNCHR if it is criticized. China has also taken the lead in attacking the contribution and role of NGOs in the UNCHR and other international fora.

More Opportunity to Promote Technical Cooperation Programs: Dialogue partners state that dialogue creates an environment in which to promote cooperative and development projects. While these programs have some value, they also have some key problems and limitations:

- They fail to address structural systemic problems in China, such as the lack of an independent judiciary and the use of law for political control and to silence political dissent. For example, regional training of police officers to improve treatment of prisoners is an important objective. But where the detention or treatment of certain types of prisoners is the result of directives from Beijing, training programs may not have much effect. In any case, such training does not address the reason why political dissidents are in custody in the first place.
- Programs are designed to address only the formal legal processes, rather than arbitrary and extra-legal processes (such as reeducation through labor) that affect millions of people in China.
- There is a failure to consult independent NGOs in the design, implementation, monitoring and evaluation of programs.
- Programs fail to address underlying values.

General Recommendations:

1. Adopt Multi-faceted Approaches: In light of the complex challenges faced, we support multi-faceted, integrated bilateral and multi-lateral strategies to promote human rights in China. Dialogues may be part of these strategies, but must not be an obstacle to pursuing other courses of action. We recommend that a high-level Impact Assessment be designed and conducted to analyze the impact of dialogue on other strategies and that the outcome of such assessments be made public.
2. Enhance Transparency: We recommend that meetings of the 'Bern Process' be formalized and that a Web site be created to publish information from all bilateral dialogues with China (a useful initial model is the website of the WTO compliance reporting mechanism). The site should include a timetable of meetings and dialogue sessions, reports and a forum for NGO submissions. The process should include technical cooperation projects (taking into consideration

NGO concerns about their composition and limitations, as detailed above.)

3. Maintain International Pressure: International pressure has a role in encouraging progress by China. An evaluation conducted in February 2000 by Bern University into the Swiss/China dialogue concluded: "In the early years China was very much prepared to consider certain messages of the Swiss. However, as the pressure from the international community diminished and other countries took up a Human Rights dialogue in institutionalized talks, the dialogue with Switzerland obviously lost much of its importance to China. The readiness to carry out a genuine dialogue waned." A commitment is needed to pursue strategies in addition to the dialogue and the UNCHR to put pressure on China. The profile of human rights across the bilateral relationship must be enhanced to become part of all bilateral or multilateral contacts with China. A commitment must be made to raise human rights higher on the agenda in all bilateral contacts and to allocate time for robust exchanges at the highest level.
4. Consistency of International Human Rights Standards: Policies on the human rights situation in China should be part of a consistent, principled approach in which all countries are subject to the same international human rights standards, regardless of such factors as their status in the United Nations or their potential as markets. Nations must not use dialogue as an excuse not to sponsor or actively support a resolution of concern about China at the UNCHR if an objective analysis of the human rights situation justifies such a course of action. The U.S. experience clearly demonstrates that a China resolution is not incompatible with dialogue. Indeed, the willingness of U.S. officials to walk away from dialogue and support a resolution at the UNCHR added a degree of credibility and substance to its China dialogue.

Dialogue-specific Recommendations:

1. Objectives for dialogues should always be made public and be linked to a timeframe for compliance by China. The objectives should be specific and should relate to action by China, rather than merely stating the agreement to discuss an issue, provide information or accept visits from partners.
2. All dialogue should strengthen the authority of UN human rights standards and mechanisms rather than undermining them. UN bodies, including the special procedures and the human rights technical assistance program, should be involved as much as possible in the design and implementation of such programs (on the basis of the concerns articulated above).
3. A timetable and criteria should be published for regular evaluation of the dialogues. Ideally such an evaluation should be undertaken by objective, accountable bodies, such as national parliaments, and should incorporate submissions by NGOs. If the objectives or timeframe for compliance are altered during the course of evaluation, reasons for doing so should be stated.
4. Careful consideration should be given to the composition of

the agenda in order to minimize overload on thematic issues and ensure that time is given and specific strategies developed to allow progress on “minority” issues.

5. Dialogues should be conducted by high-level officials on both sides and include Ministerial exchanges. The European Union should create a permanent secretariat to oversee the dialogue and ensure better continuity. This secretariat should be headed by an official at least as senior as the head of the China dialogue team (currently the Director General of the Department for International Conferences, Ministry of Foreign Affairs).
6. Dialogue sessions should include independent social groups, experts, scholars, lawyers and other individuals. NGOs should be self-selecting and be guaranteed the right of free expression. Dialogue partners should encourage the Chinese government to engage in dialogue domestically, rather than only internationally.
7. Specific criteria should be articulated for the circumstances under which dialogue would be suspended or terminated. The continuation of dialogue at any cost should be abandoned as an operating principle.
8. International coordination is essential. The recent introduction of the 'Bern Process' seeks to increase information sharing amongst dialogue partners, but some countries (e.g. Chile) are apparently not included. Wherever possible, countries should seek to use coordinated multilateral approaches in dealing with human rights in China.

The April 2 Geneva Round-table

The April 2 Dialogue on Human Rights round-table aimed at critically reassessing the bilateral process and exploring ways in which the bilateral processes could be re-integrated with the work of multilateral fora such as UNCHR. The participants included representatives of ten governments, the EU and NGOs. Although the discussion was lively and productive, time was limited, and the link between the bilateral dialogues and the work of the UNCHR was not adequately explored beyond participants emphasising the importance of dialogue promoting cooperation with the Commission mechanisms (such as Special Rapporteurs and ratification of conventions). Some of the discussion related to the 'Bern Process' and how this process could be expanded to incorporate contributions from NGOs.

Some key issues raised and explored by the participants included:

- Who is it that we are having a dialogue with? The dialogue should go to the top political level.
- What is a measureable result? Should one meeting between China and the Dalai Lama's envoys be considered a result?
- What is or should be the relationship between trade and human rights? If China's legal reform efforts can be subjected to extensive foreign multilateral scrutiny and review, this same political will must be mobilized for human rights. What is the role of good corporate citizenship?
- Regarding cooperating projects, who decides who gets to

go abroad for training or to be included in in-country training programs? This is important in light of the significant benefits for those who participate. For example, those who attended the preparatory committees of the Beijing Women's Conference were able to network and were exposed to new ideas and international and regional NGO activities.

- How can we bridge the gap between theory and practice? When NGOs contact governments and the EU about human rights abuses, officials claim they are engaged in dialogue over these abuses.
- What is not being addressed is China's attempts to dumb down and reshape international norms (e.g. different terms of reference for visits of Special Rapporteurs).

All participants agreed that it was extremely productive to have NGOs and government representatives at the same table exchanging views and that it would be useful to continue the debate in the future. Participants agreed that there should be no precondition of dialogue that would prevent the use of other mechanisms or approaches. However, in practice, as the record demonstrates, governments have used “engagement” and dialogue to justify their failure to use multilateral approaches.

Concluding Observations

Clearly, the complexity of the challenges to end human rights abuses and promote greater protections for rights demands multiple levels of intervention by a range of actors in government, the private sector and NGOs. But dialogue partners cannot urge the development of a rule of law, greater transparency and openness in its dialogues with China on the one hand, while failing to hold themselves to the same standards and principles on the other hand. We look forward to seeing progress made in the coming months and urge individual dialogue partners to take concrete steps to implement measures that ensure greater transparency in the dialogue process, and provide greater opportunities for NGO input and participation. The final test of any approach is whether it is effective, alone or in conjunction with other approaches, in addressing the reality of pervasive human rights abuses in China. In order to make that assessment, transparency and independent NGO monitoring is necessary to ensure accountability in the process.

1. For a 1998 assessment of the dialogues, country case studies of the dialogues between China and Australia, Brazil, Canada, the EU, Norway and Sweden, and a critique of the visit to China by the U.N. Working Group on Arbitrary detention, see HRIC, “From Principle to Pragmatism: Can Dialogue Improve China's Human Rights Situation?” (June, 1998)
2. Available in full at: <http://www.tibet.org/itsn/campaigns/unchr/dialogue.summary.html>
3. *China Daily* editorial, quoted by Reuters, October 22, 1998.

BILATERAL DIALOGUES

SD-Start Date, F-Frequency

Country	Duration/Format	Benchmarks/Evaluation Process
<p>Australia – SD: 1991, resumed August 1997 – F: One session a year, alternating between China and Australia http://www.dfat.gov.au/</p>	<ul style="list-style-type: none"> – One day – Includes prison visits and police training – Cooperation projects 	None
<p>Brazil – SD: 1997 – F: At least two rounds www.mre.gov.br</p>	Joint declaration issued on strengthening human rights exchanges and co-operation	None
<p>Canada – SD: 1997 – F: Once a year, with one plurilateral symposium hosted by Canada, Norway and China www.dfait-maeci.gc.ca/</p>	<ul style="list-style-type: none"> – 2-3 days per session – Participation limited to officials, some academics and local community groups – Cooperation projects exist 	None
<p>Chile www.minrel.cl</p>	No information available	No information available
<p>EU – SD: 1995, interrupted in Spring 1996, resumed in November 1997 – F: twice a year, alternating in Presidency capital and China www.fco.gov.uk/</p>	<ul style="list-style-type: none"> – One day per session – Specialist seminars arranged i.e. abolition of the death penalty, ratification of the International Covenants, etc. – Practical cooperation projects have been in progress for ten years 	<ul style="list-style-type: none"> – Ratification /implementation of civil, political, economic, social and cultural rights covenants – Cooperation with human rights mechanisms – Compliance with ECOSOC guarantees the protection of those sentenced to death and restriction of cases where the death penalty can be imposed – Reform of administrative detention; introduction of judicial supervision of procedures; and the right to a fair and impartial trial – Respect for the fundamental rights of all prisoners – Untrammelled exercise of freedom of religion and belief – Respect for the right to organize – Respect for cultural rights/religious freedoms in Tibet/Xinjiang
<p>Germany – SD: 1999 – F: 5 sessions to date www.auswaertigesamt.de/</p>	From German side, dialogue is situated with Ministry of Justice	None

Content	Transparency	Stated Outcomes	Relationship to UNCHR
<ul style="list-style-type: none"> - Legal system reforms - Judicial administration and civil freedoms - Treatment of ethnic and religious minorities - Women's and children's rights - Treatment of Tibetans, Uighurs, Falungong, and members of unregistered Christian churches - Tibet: negotiations/dialogue with Dalai Lama, specific political prisoners, cultural and religious freedoms 	<p>www.Dfat.gov</p> <ul style="list-style-type: none"> - Last updated Nov 2002 	No specific outcomes stated	No official connection, but they have not co-sponsored a China resolution at UNCHR since the dialogue began
None	<p>www.mre.gove.br/projeto/mreweb/ingles/default.htm</p>	None	Has previously abstained on resolutions/no action motions
<ul style="list-style-type: none"> - Freedom of expression - Rights of minorities - Prison conditions - Religious Freedoms - Prisoner lists 	<p>www.dfait-maeci.gc.ca/china/relation-en.asp</p> <ul style="list-style-type: none"> - Last updated Oct 2002 	None	No official link, but Canada stopped sponsoring the China resolution at the UNCHR the year the dialogue began
No information available	No information available	No information available	No information available
<ul style="list-style-type: none"> - Timetable for ratification and implementation of ICCPR and ICESCR - Encouraging visits - Freedom of religion - Individual political prisoners - Legal/prison reform - Prison Management - Development of criminal justice system/changes to criminal procedure/corruption - Use of death penalty - Re-education through labor/non-custodial sentencing - Falungong - Tibet: negotiation with Dalai Lama for a political solution, freedom of religion, individual political prisoners 	<p>http://eropa.eu.int/comm/external_relations/human_rights/doc/report_00_en.pdf</p> <ul style="list-style-type: none"> - Page 31 - Last updated 2000 	<ul style="list-style-type: none"> - Signing of ICESCR and ICCPR and of the Memorandum of Understanding with the Office of the High Commissioner for Human Rights - Visits by the Working Group on Arbitrary Detention and the Rapporteur on Religious Intolerance - Ready to discuss detention, the legal system and the range of criminal sanctions. Initial reforms along right lines 	Has not co-sponsored a resolution at UNCHR since 1995 when dialogue was initiated
Women's Rights	No published outcomes	None stated	Aligns with EU common position

Country	Duration/Format	Benchmarks/Evaluation Process
<p>Hungary – SD: 2000 – F: Two sessions held in 2000, 2001 and 2002 session postponed b/c of 16th party Congress www.mfa.gov.hu/</p>	<p>– 2 days – Future holds twin-track: MFA to MFA, and between Hungarian and Chinese institutions</p>	<p>None</p>
<p>Japan – SD: 1997 – F: three total sessions, 1997, 1998 and 2000 www.mofa.go.jp/</p>	<p>No information available</p>	<p>No information available</p>
<p>Norway – SD: 1997 – F: Annual odin.dep.no/ud/engelsk/index-b-n-a.html</p>	<p>– Norwegian Institute for human rights established – Norwegian-Chinese working group: creating a curriculum and textbook for first human rights university course</p>	<p>No information available</p>
<p>Switzerland – SD: 1990 – F: Unknown http://www.eda.admin.ch/eda/e/home.html</p>	<p>Unknown</p>	<p>Criteria to have a bilateral dialogue: – Present cases of severe human rights violations in the country concerned – Government must be prepared to participate in an open dialogue</p>
<p>UK – SD: 1997 (post handover of Hong Kong) – F: Twice a year www.fco.gov.uk/</p>	<p>– 2 days alternating between UK and China – Visits to prisons and regions including N. Ireland and Gansu</p>	<p>– Same as EU – End to jamming of BBC World Service and BBC World Web site</p>
<p>U.S. – SD: January 1999, suspended in May 1999, resumed in late 2000 – F: Sporadic (two sessions in 2001 and December 2002) www.state.gov</p>	<p>– Meetings, alternating between China and the U.S. – 2-3 days with additional informal one-on-one meetings – Wide range of rule of law and democracy promotion programs supported by U.S. government</p>	<p>No published list, but dialogue must be “results-oriented”</p>

Content	Transparency	Stated Outcomes	Relationship to UNCHR
<ul style="list-style-type: none"> - Process of establishing “pillars of democracy, including institutions, law courts and media freedom - Main concern is political freedom 	No published information	<ul style="list-style-type: none"> - “China reacting positively” - Relationship established with ombudsmen on minority rights and general affairs 	Aligns with EU common position
<ul style="list-style-type: none"> - Freedom of expression and religion - Minority rights - Independence of the Judiciary and Due Process Procedure 	None	Agreed to meet NGOs privately	<ul style="list-style-type: none"> - Prefers dialogue not enforcement, goal is to “enhance cooperation.” - Has voted against no-action motions tabled by China to counter a resolution
<ul style="list-style-type: none"> - Freedom of expression - Freedom of religion - Labor rights - Role of NGOs - Rule of law - Criminal procedures - The use of the death penalty - The use of labor camps - Ratification of main UN human rights conventions 	www.ichrdd.ca/commdoc/publications/globalization/chinabilatdialogue.html#bilat	No information	Previously voted against no-action motions tabled by China to counter a resolution
<ul style="list-style-type: none"> - Penal law reform - Freedom of religion - Women’s rights and birth control - Minority rights including Tibet 	www.eda.admin.ch/edale/home/foreign/huright/dialog.html	The impact of the dialogue is “without exception very low, partly as non-existent” (Bern University Report)	Accepted in September 2002
<ul style="list-style-type: none"> - Death penalty - Legal reform - Religious freedom - Re-education through labor - Treatment of Falungong - Tibet: dialogue with Dalai Lama, the Panchen Lama, freedom of religion and “treatment of monks and nuns.” 	www.fco.gov.uk/files/kfile/contents,o.pdf - Page 34 - last updated 2002	Progress on implementation of rule of law and Chinese engagement with international human rights mechanisms	Adopts EU position
<ul style="list-style-type: none"> - Criminal law and justice - Xinjiang - Religious freedom - Worker rights - North Koreans in China - Family planning - Prisoners - Religious freedom - Torture - Cultural destruction 	www.state.gov	December 2002 session “incremental but unprecedented progress”	Decisions on UNCHR are made based on the situation on the ground