

Policy Department External Policies

THE HUMAN RIGHTS DIALOGUE BETWEEN THE EU AND CHINA

HUMAN RIGHTS

October 2007

EN

This study was requested by the European Parliament's Subcommittee on Human Rights.

This study is published in the following languages:

ES (OR) - EN - FR

Author: Mario Esteban
Centre for East Asian Studies
Autonomous University of Madrid

Copies can be obtained through: **Andrea Subhan**
European Parliament
Directorate-General for External Policies of the Union
Policy Department
BD4 06M071
rue Wiertz, 60
B-1047 Brussels
E-mail: andrea.subhan@europarl.europa.eu

Manuscript completed on 12 October 2007

The study is available on the Internet at:

<http://www.europarl.europa.eu/activities/expert/eStudies.do?languageEN>

Any opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

© European Communities, 2007.

Reproduction and translation, except for commercial purposes, are authorised, provided the source is acknowledged and provided the publisher is given prior notice and supplied with a copy of the publication.

How can the Human Rights Dialogue with China be improved?

This document assesses the Human Rights Dialogue between the European Union and China and makes a set of recommendations for improving the way it works. The three main headings in this report are: development and format of the dialogue, impact and recommendations.

Development of the Human Rights Dialogue between the EU and China

Human rights played a marginal role in relations between China and the European Union until the brutal repression of the Tiananmen movement in June 1989. Since then human rights have earned a more prominent role in those bilateral relations. It was against this backdrop that a Human Rights Dialogue between the EU and China was established in 1995.

That dialogue is held on a half yearly basis at a venue alternating between China and the country holding the rotating presidency of the EU. China suspended the dialogue between the spring of 1996 and November 1997 in protest against a critical resolution tabled by 10 Member States in the United Nations Commission on Human Rights. 23 rounds of dialogue have been held to date, with the next due to take place in Beijing at the end of 2007, under the Portuguese presidency. The latest session of the dialogue was held in Berlin on 15-16 May 2007. For the EU, the most important themes at that session were the ratification by China of the International Covenant on Civil and Political Rights, reform of the penal system (including the death penalty and the system of 're-education through labour'), freedom of expression and freedom of the press, as well as human rights in Tibet, Xinjiang and Inner Mongolia. As for the human rights situation in the EU, discussions centred on the protection of immigrants and the regulations on freedom of expression and freedom of the press. Cooperation within international organisations was also discussed, and especially the composition and organisation of the United Nations Human Rights Council. The EU asked China to cooperate to put a stop to situations of major human rights concern such as those in Darfur and Myanmar.

The EU has also participated in the Berne Process, since its creation in 2001, which at the initiative of the Swiss Government coordinates the countries that have human rights dialogues with China.

The Human Rights Dialogue maintained between the EU and China is cooperative in nature, enabling each side to raise with the authorities of the other, in a frank and constructive environment, the concerns it has over the human rights situation within the other's borders. This includes presentation by the EU of a list of individual cases of concern three or four weeks prior to a formal round of the dialogue, which China then responds to informally in the sidelines of the dialogue itself.

The European Delegation is made up of the troika of the 'Human Rights' Group of the Council and the Commission's Secretary-General for Human Rights, while the Chinese Delegation is led by the Director-General of the Department of International Conferences of the Ministry of Foreign Affairs and consists mainly of diplomat staff.

The content of the dialogue has changed over time, without those changes being a reflection of a long-term EU strategy. In the last two years the main themes of the dialogue have been,

respectively, freedom of religion and thought (2005) and freedom of expression, particularly on the Internet (2006). The specific concerns raised in the past two years have been over: ratification and implementation of the International Covenant on Civil and Political Rights; minority rights in Tibet and Xinjiang; abolition of the death penalty and obtaining statistics on its implementation; presumed organ transplants from executed prisoners; reform of the administrative detention system; prevention and eradication of torture, and prisoners' rights; independence of the judiciary and legal safeguards; upholding human rights in the fight against terrorism; cooperation with the United Nations on human rights issues.

In order to increase the effectiveness of the dialogue, the meetings between official representatives are supplemented with meetings with civil society and technical and financial support programmes. Those unofficial meetings take the form of two-day thematic seminars which bring together academics and NGOs from both sides. Regrettably, at the latest round of the dialogue, the legal seminar scheduled for 10-11 May did not place. It was cancelled when the Chinese delegation walked out of the meeting in protest against the participation of two NGOs selected by the EU: Human Rights in China and China Labour Bulletin.

The issues addressed so far have included abolition of the death penalty, employment rights and freedom of access to information. The outcome of these seminars is considered at the official meetings. Similarly, several cooperation programmes have been implemented via the Commission since 1997, including the EU-China Legal and Judicial Cooperation Programme, the EU-China village governance programme, various programmes in support of economic and social rights, particularly in Yunnan Province, the EU-China Human Rights Small Project Facility, various programmes for the promotion of women's rights and various projects funded through the European Initiative for Democracy and Human Rights which, for example, included three specific projects concerning China in its calls for proposals in 2004.

Impact of the Human Rights Dialogue between the EU and China: successes and failures

The EU-China bilateral dialogue on human rights provides the EU with a valuable channel through which to express directly to the Chinese authorities its concerns over the human rights situation in that country. However, that does not guarantee greater respect for human rights in China.

For example, the Commission has put forward as successes of that dialogue the signing of the International Covenant on Civil and Political Rights, the signing and ratification of the International Covenant on Economic, Social and Cultural Rights, the visits to China of various United Nations human rights officials and prisoner releases. Progress towards China's signing and ratification of United Nations human rights conventions has frequently been limited to the diplomatic level, without translating into greater rights for the Chinese people. Although major visits have been made by human rights experts from various international bodies, China has resisted those visits taking current international standards as their terms of reference and has negotiated special terms, as was the case with the Commission on Human Rights' Special Rapporteur on torture. Prisoner releases, for their part, despite being welcome, do not mean there has been a substantial change in the human rights situation in China.

What is more, even when improvements are made in the protection of human rights in China, it is extremely difficult to gauge precisely what impact the dialogue has had on those changes. Latterly, such progress has included the review by the Chinese Supreme Court of all death sentences, the setting-up of a special court for minors, the adoption of certain regulations on the interrogation and detention of prisoners as part of a national campaign for the prevention

and eradication of torture, the planned reform of the system of 're-education through labour' and the new law on organ transplants. In addition to this, greater attention is being focused on combating poverty, the development of social services such as education and health, and on environmental conservation.

Despite this progress, there remain areas in which China's human rights standards are not only far removed from internationally agreed standards, but also seem to be entrenched. Examples include the lack of freedom of expression, assembly, worship and association, discrimination against certain ethnic minorities and the lack of judicial independence and transparency.

One cannot even argue that there has been a gradual improvement in the human rights situation in China, since some areas are experiencing major deteriorations.

These include the use of thugs to suppress social movements, an increase in the control exercised over journalists, heightened Internet censorship and the harassment of lawyers who defend members of the public in legal dispute with government departments.

Recommendations

There has been a continuous improvement in the workings of the EU-China bilateral dialogue on human rights since it first began. The following are recommendations aimed at fine tuning it and ensuring it achieves more tangible results:

1. Define a joint strategy on setting the agenda for the dialogue

The drawing-up of an action plan agreed upon by both sides would help to crystallize the dialogue into concrete results and in its evaluation. In any event, it is important to avoid setting a unilateral agenda, since this would only result in increased opposition from China. It is preferable to have a consensual - albeit low profile - agenda that will enable 'backdoor' entry strategies to be sought, which should focus on vulnerable groups such as women, children, the elderly and ethnic minorities.

Moreover, although historically the dialogue has centred almost exclusively on the human rights situation in China, greater attention should now be awarded to the influence China exerts on the human rights situation in other countries. China is becoming an increasingly active member of the international community, with a growing presence in Africa and Latin America as well as in neighbouring countries such as Myanmar, and is wielding ever more influence in international fora such the United Nations and the World Trade Organisation.

There is also a need to ensure a clearer interlocking of the issues raised, which are being undermined by the EU's rotating presidency arrangements. One should not, in any event, overlook the fact that the Commission and Council services that act as the secretariat for the dialogue ensure a degree of consistency and that working as a troika means that the next presidency is involved in the work done during the presidency preceding it. Besides this, the two presidencies jointly set the agenda for the dialogue the year.

2. Strengthen EU credibility

Conversations with various Chinese academics and diplomats show that the EU's stance is not sufficiently convincing. China is unclear as to how important human rights are to the EU in its relations with China and to what point they might be overridden by the specific interests of

Member States.

In order to remedy this situation, it would be necessary to:

- a) Pinpoint the criteria for suspension or termination of the dialogue by the EU. The Chinese delegation must not perceive the EU as viewing the dialogue as an end in itself that must be maintained at all costs.
- b) Promote *de facto* the principles upheld in the Human Rights Dialogue in other facets of the relations with Beijing, such as trade and investment policy. For example, European countries which export security and surveillance technology to China, such as riot gear, incapacitating substances and movement inhibitors, should ensure that this trade does not help to undermine the human rights situation in the importing country.
- c) Enhance the profile of human rights in the bilateral relations of Member States, such as Germany, France and Spain, with China, even if this is to the detriment of certain commercial interests.
- d) Avoid double standards when it comes to assessing human rights violations committed by third countries. In this respect, the EU's attitude to the United States is in clear contrasts with that shown to certain developing countries.

3. Modify the composition of the delegations.

The EU must push for the members of the Chinese delegation not to be officials from the Ministry of Foreign Affairs, whose task it is to protect their country's interests abroad, but rather officials from other ministries, such as the Justice, Public Security or Education Ministries, whose remit allows them to exert direct influence on the human rights situation in China. Similarly, the EU should suggest that China include members of the National People's Assembly in its delegation.

The level at which the delegations operate should be enhanced. This would entail the Chinese side sending at least one deputy minister.

The head of the European Parliament's Human Rights Unit should take part not only in the working groups that precede the official dialogue, but also in that dialogue itself.

4. Establish a permanent secretariat.

The creation of a permanent secretariat specifically responsible for the bilateral Human Rights Dialogue with China, or for all bilateral dialogues held by the EU in that field, would serve to prepare for the rounds of dialogue more effectively, enhance cohesion between seminars and dialogues and, in particular, ensure the continuity and development of the process. These tasks are currently performed by the Working Group on Human Rights of the EU Council, the rotating arrangements for which complicate that role, to the extent that the same issue can be crop up at different meetings and be addressed as if it had never before been mentioned. Moreover, it is often the case that European participants are unfamiliar with the negotiating style used by the Chinese delegations. This can result in their feeling intimidated and finding it difficult to read between the lines and grasp the message the Chinese authorities wish to convey or in their falling prey to typical Chinese negotiating techniques such as long and unsubstantial speeches given to eat away as much time as possible and prevent any substantial discussions being launched. Were the participants in the dialogue to change less regularly, they could be effectively trained in how to enter into discussions with the Chinese.

The secretary would have to be someone of at least the same standing as his Chinese counterpart, currently the Director-General of the Department of International Conferences of the Ministry of Foreign Affairs. That secretary would have to participate in the other bodies stemming from EU policy vis-à-vis China, in order to ensure that human rights formed a key part of bilateral relations.

5. Enhance the role of the European Parliament

The dialogue would gain in transparency and credibility if the European Parliament were more involved in it, thanks to that institution's legitimacy and powers of scrutiny. Measures that to promote that closer involvement might include:

- a) Participation of Members of the European Parliament in each round of the dialogue as part of the EU's official delegation.
- b) Inclusion of Members of the Chinese Assembly in China's official delegation. China would be much more receptive to including parliamentarians in its delegation if the EU did likewise. Such a move would raise the profile of the National People's Assembly, which would help to spur a division of powers that does not currently exist in China. Besides this, it would directly involve in the dialogue the people who will formulate the legislation governing the human rights framework in China.
- c) Creation within the European Parliament of a 'Friends of China' group. This would facilitate exchanges of views between European politicians elected by direct universal suffrage and a body that does not answer directly to the party and is gaining in power. The opening-up of channels through which to influence China's political elite will always be a good thing, since in authoritarian regimes those elites play a pivotal role in the development of the political system.
- d) Forwarding to the European Parliament's Subcommittee on Human Rights of a detailed report on each round of the dialogue. This would help the European Parliament evaluate the dialogue and enable it to make suggestions.
- e) Presentation of an annual report at a part-session of the European Parliament on the state of the bilateral human rights dialogues held by the EU.
This would mean the progress made in those dialogues having to be assessed publicly, every year, which would make it difficult for them to be continued should they prove counterproductive or ineffective in achieving their objectives.

6. Increase participation by NGOs.

NGOs play a lesser role in this dialogue than they do in the ones between China and countries such as Australia, Canada or the United Kingdom. That situation must be rectified, for two fundamental reasons. Firstly, NGOs have first-hand and in-depth knowledge of the human rights situation in China. This enables them, especially when looking into specific cases of human rights violations, to get to places that many overstretched international services cannot. Secondly, this process could increase the opportunities international NGOs have to cooperate with Chinese NGOs, with ensuing benefits for the development of Chinese civil society. It would therefore be recommendable to:

- a) Institutionalise the meetings held prior to the dialogue between European NGOs and the members of the EU delegation, independently of the working groups in which the Chinese side also participates.

- b) Invite the NGOs to one of the official receptions that take place in conjunction with each of the rounds of dialogue held in Europe.
- c) Organise an official meeting between European NGOs and the Chinese delegation. This approach was adopted with great success by Australia in 2004. The Chinese invited the Australian NGOs to visit China and hold further meetings with Chinese officials and local NGOs.

7. Lists of individual cases.

The Commission must have at its disposal a complete, detailed and up-to-date list of Chinese prisoners whose cases are of particular concern from a human rights perspective. It would therefore be advisable to have the information compiled by various NGOs working in China. The database maintained by the Dui Hua Foundation is particularly comprehensive.

To encourage a positive response from the Chinese authorities in respect of these lists, it is important to handle this issue with the utmost discretion and not to portray the release of prisoners or the reduction of their sentences by Beijing as a political point scored by Brussels.

8. Clarify the evaluation using benchmarks.

In January 2001, the EU Council published a set of benchmarks for the evaluation of the bilateral dialogue with China. That excellent initiative could be fine tuned to make the evaluation of the dialogue more precise, by:

- a) Explaining how to use the benchmarks. For example, the benchmarks must always be interpreted as objectives of the dialogue and may also be made preconditions for it.
- b) Setting time limits for attaining the benchmarks.
- c) Laying the emphasis on trends rather than on isolated results.
- d) Coordinating benchmarks with China's other dialogue partners in the field of human rights. This will prevent a tangle of inconsistent and jumbled objectives and time limits being created. One very relevant case is that of the benchmarks set by the International Olympic Committee for China to host the 2008 Olympic Games.
- e) Developing China's capacity for gathering, analysing and disseminating data relevant to the monitoring of human rights. This would reduce the technical problems associated with the use of indicators and benchmarks.

9. Keep the dialogue within the boundaries set by the international human rights regime

During the dialogue process, the EU must make constant reference to the international agreements on human rights and the work of the various UN human rights bodies and, similarly, during the design and implementation of development assistance projects, to the United Nations Programme of Technical Assistance in the field of Human Rights. There is also a need to use the channels established by the United Nations system, such as UNESCO, the International Labour Organisation and the various UN committees, such as the Committee against Torture, to report on any human rights violations in China. This will prevent the bilateral dialogue serving, as the Chinese side hopes, to ease the pressure exerted on China with regard to human rights, which is what happened in the second half of the 1990s.

10. Establish a reasonable balance between transparency and effectiveness

Making the bilateral Human Rights Dialogue with China more open and transparent would lead to the Chinese side becoming less frank, and therefore reduce the dialogue's effectiveness. Moreover, frequent experience has shown that the regime is less inclined to implement reforms when such changes are internationally interpreted as a concession to foreign pressure. Despite this, the current close secrecy is excessive because it limits the ability of civil society, and even of some European Union institutions, to improve the dialogue and evaluate it. This makes the difference in the information available on the dialogue on the Commission's web pages a glaring one.

11. The impact of technical cooperation mechanisms and capacity-building programmes should not be exaggerated.

Measures of this type will only have an impact in the case of breaches of human rights outside the will of the Chinese authorities. It must therefore be borne in mind that they are not adequate to resolve problems such as the lack of freedom of expression and association, which pose a direct threat to the monopoly on power enjoyed by the Communist Party of China.

12. Enhance coordination between China's dialogue partners.

The Berne Process, in which Australia, Canada, Germany, Holland, Hungary, Norway, Sweden, Switzerland, the United Kingdom and the United States participate alongside the European Union, provides a valuable tool for promoting coordination between the countries that have a human rights dialogue with China. Despite the worth of this process, it is not being sufficiently well harnessed. In order to remedy this, it must be strengthened by increasing its duration and frequency. Currently, its members scarcely meet twice a year for one day, once in Berne and once in Brussels. Besides this, they only hold consultations with NGOs once a year. There is also a need to ensure a greater continuity of those participating, and for people directly involved in the implementation of cooperation programmes to be included in the delegations. Lastly, it would be desirable to alter the Chinese Government's perception of this process, which Beijing should not view as a conspiracy against China but as a means of increasing the effectiveness of the bilateral dialogues in which it participates.

13. Take advantage of the Olympic Games being held in China

The Chinese Communist Party has used the choice of Beijing to host the 2008 Olympics in its strategy of legitimisation as being symbolic of China's great achievements during the reform period, presenting it as irrefutable proof of the international prestige that the country has acquired in recent years. The fact that the Chinese authorities refer to recognition by the international community as a source of legitimacy confers the international community greater capacity to exert pressure on China over issues such as respect for international human rights law. The 2008 Olympics therefore provide a strategic opportunity to promote respect for human rights in China, especially in matters directly related to the Games such as labour law, freedom of the press and the right to housing. This point should be emphasised as it could prove counterproductive to link the holding of the Olympic Games in China with issues such as the humanitarian crisis in Darfur. That could easily be perceived in China as a trap designed to undermine the country's image internationally rather than as stemming from a genuine and objective concern to improve the human rights situation in China and third

countries.

With regard to labour laws, some of the merchandising for the 2008 Olympics in Beijing would appear to have been manufactured by workers, and in some cases minors, who have to endure inhumane working conditions: marathon working days, inadequate safety measures and wages under the minimum wage. Such violations of Chinese workers' labour rights both by local and foreign companies are widespread and lead to tragedies such as accidents at work, violent protests and suicides, etc. - this despite the fact that the fourth generation of leaders placing much more emphasis on the protection of labour rights than its predecessors, as are shown by the measures adopted by the Wen Jiabao Government to improve safety in mines and protect the interests of migrant domestic workers.

The main reason that these policies and the rules protecting the rights of Chinese workers are ineffective is because members of local administrations and employers cooperate to oppose the interests of the workers. This is possible because of the lack of any fundamental labour laws such as on collective bargaining and the right to strike or to form trade unions. The international community must urge the Chinese Government to provide workers with the tools they need to their assert their rights and to act as a mediator in conflicts between employers and workers without automatically taking the side of the former.

Another issue closely linked to the Olympic Games is that of the freedom of the press and the right to information. There are more journalists in jail in China than in any other country - 31 - and the authorities are clearly intent on controlling the media. In these circumstances, the measures in place since January 2007 to reduce working restrictions on foreign journalists, including ones from Taiwan, Hong Kong and Macao, should be seen as an experiment to test the effects of relaxing the rules concerning information. The EU must work to ensure that this situation continues as long as possible. Foreign journalists will themselves have a great deal to say through their work, which is very often sensationalist and laden with prejudice when it comes to reporting on China.

Neither should it be forgotten that over a million people have lost their homes owing to the Olympics being held in Beijing, and that in many cases this has happened without sufficient prior notification and without adequate compensation.

Selected bibliography

Baker, P., 'Human Rights, Europe, and the People's Republic of China', *China Quarterly*, No 169, 2002, pp. 45-63.

Centre of Housing Rights and Evictions, *Mega-Events, Olympic Games and Housing Rights: Opportunities for the Olympic Movement and Others*, Geneva, 2007.

Commission of the European Union, *EU – China: Closer partners, growing responsibilities*, Brussels, 2006.

Council of the European Union, *EU Annual Report on Human Rights – 2006*, Brussels, 2006.

Council of the European Union, *European Union Guidelines on Human Rights Dialogues*, Brussels, 2001.

Free Tibet Campaign, Human Rights in China and The International Campaign for Tibet, 'Behind Closed Doors: Bilateral Dialogues on Human Rights', *China Rights Forum*, No 2, 2003, pp. 22-29.

Carin Zissis, *Olympic pressure on China*, Council on Foreign Relations, Washington and Nueva York, 2007.

PlayFair 2008, *No medal for the Olympics on labour rights*, Brussels, 2007.

Rights and Democracy, *Bilateral Human Rights Dialogue with China: Undermining the International Human Rights Regime*, Montreal, 2001.

Rights and Democracy and Human Rights in China, *Human Rights & the International Trade in Security and Surveillance Technology - Case Study: China*, Montreal, 2005.

The Parliament of the Commonwealth of Australia, *Australia's Human Rights Dialogue Process*, Commonwealth of Australia, Canberra, 2005.

Sophia Woodman and Carole Samdup, *Canada's Bilateral Human Rights Dialogue with China: Considerations for a Policy Review*, Rights and Democracy, Montreal, 2005.

Other sources:

Human Rights Forum

China Labour Bulletin - E-Bulletin