

Engaging China on Human Rights

Remarks to The Brookings Institution

John Kamm
Executive Director
The Dui Hua Foundation

Thursday, October 14, 2004



It's a special pleasure to be here at the Brookings Institution this afternoon, at the kind invitation of Richard Bush. Richard and I go back nearly 15 years, when he helped Congressman Steve Solarz run the House Foreign Relations Committee's Subcommittee on Asia. Richard helped arrange some of the first hearings on China's Most Favored Nation trading status and the country's human rights record. I was invited to testify in my capacity as President of the American Chamber of Commerce at hearings held on May 15 and 16, 1990, and there I made a pledge to use whatever relationships and goodwill I enjoyed in Beijing to lobby the Chinese government to release prisoners of conscience. All I have been doing since then is trying to fulfill this promise, made at a hearing to which I was invited by Richard Bush, someone who cares deeply about human rights, and who has given me much encouragement and support over many years. Thank you, Richard.

Since the early 1990s, when I was beginning my human rights work, the Chinese government has initiated bilateral human rights exchanges with about a dozen countries. There have been 19 rounds of the Sino-EU dialogue on human rights. The last session, which took place a few weeks ago, included a three-day visit by the EU Troika to Tibet and follow-up discussions on China's ratification of the International Covenant on Civil and Political Rights, the subject of a joint EU-China seminar held in Beijing in July. The United Kingdom has held 12 rounds of its human rights dialogue with China (the most recent in London in May), and the Swiss have held seven. The latest round of the Sino-Norwegian Dialogue on Human Rights and the Rule of Law—the eighth—took place in Beijing in June. Both the Swiss and the Norwegians have visited the Ministry of Justice's training center for prison guards in Baoding, Hebei Province, and training

programs between the countries' respective prison services and China's are being considered.

Beijing suspended the official dialogue between the US and China on March 23 in response to the introduction by the US of a country resolution on China at the annual meeting of the UN Human Rights Commission in Geneva. The last round of the Sino-US dialogue on human rights took place in Washington in November 2002. China's Ministry of Foreign Affairs says that it was the 13th round of talks dating back to the early 1990s; no one at the State Department is keeping score. Representatives of the two governments held expert talks on the fate of China's counterrevolutionaries in November 2003 and March 2004, but there has been no formal round of the dialogue for nearly two years.

In all, there have been about 100 rounds of human rights talks between the Chinese government and foreign governments over the past ten years. The subject of human rights has also figured prominently in bilateral discussions between China and countries with whom no formal agreement on an ongoing dialogue has been reached—countries such as France, Sweden, and Italy. Hungary has an official human rights dialogue with China (the only one with a former socialist country), and there is a less formal exchange with Brazil, a developing country with a large land mass, restive minorities, a yawning standard-of-living gap between rich and poor, and police forces known for their cruel and arbitrary use of power. Brazil and China have lots to talk about.

Beijing has an active technical assistance program with the Office of the United Nations High Commissioner for Human Rights. China has just hosted the third visit of the Working Group on Arbitrary Detention. Over the past ten years, the Working Group has issued 39 opinions covering 208 individuals said by petitioners to have been arbitrarily detained in China. Of those, 180 were determined by the Working Group to have been arbitrarily detained. No determination was issued for the remaining 28, either because they had been freed before a finding was made or because of a lack of available information. The Working Group has never issued an opinion favorable to the Chinese government. Despite this, China's cooperation with the Working Group has been increasing in recent years.

The UN's religious intolerance rapporteur and representatives of other treaty bodies and thematic mechanisms—though not the Special Rapporteur on

Torture—have visited the country. The torture rapporteur wants unfettered access, without notice, to any and all detention centers. In light of recent statistics and accounts coming from China that suggest the problem of police torture is even bigger than previously thought, it is vitally important that a visit take place soon and that the Special Rapporteur have the freedom to exercise his mandate without conditions.

Beijing sent a team of about 40 diplomats to Geneva to attend the UN Human Rights Commission meeting, and their lobbying effort against the US-sponsored resolution can best be described as a “full court press.” By contrast, the US effort to pass the China resolution in Geneva was relatively low-key. Beijing is proud that it has signed more international human rights treaties than the US, and it sometimes files reports called for under the treaties’ obligations in a more timely fashion than the US. Every year, immediately after the release of the State Department’s country report on China, Beijing releases its own report on human rights in the US. It is clearly in competition with the US, and that is not a bad thing.

The Chinese government has a good working relationship with the International Committee for the Red Cross with regard to refugees and humanitarian law as applied to warfare, though an agreement granting ICRC access to Chinese prisons is apparently not on the horizon. Based on what I’m hearing in Beijing and elsewhere, an ICRC office in Beijing is a real possibility in the not too distant future. China sits on the governing council of the International Labor Organization, and has ratified several ILO conventions. It has responded in writing to complaints lodged with the ILO’s Freedom of Association Committee by trade unions. Less known is the work of UNESCO on behalf of Chinese detainees, but it is substantial.

To manage the booming dialogue business with foreign countries and the UN, China’s Ministry of Foreign Affairs has established a Human Rights Division in the Department of International Organizations and Conferences. It has appointed a Special Representative on Human Rights to specifically manage the dialogues. The fast-growing human rights division and the “International Department” above it have been led by some of China’s most able and promising diplomats, including Wang Guangya, China’s Ambassador to the United Nations, who served as director-general from 1993 to 1999, and Li Baodong, who, with Assistant Secretary Lorne Craner and Ambassador Sandy Randt, negotiated a number of important prisoner releases in the period between 9-11 and the March 2004 Geneva meeting.

The MFA's human rights division has been staffed by a bright, well-traveled, and knowledgeable cadre of young men and women who are among the best and brightest in the diplomatic corps. China takes talking about human rights very seriously.

In addition to the task of managing the country's human rights dialogues with foreign governments, the Ministry of Foreign Affairs encourages and offers guidance to other ministries involved in human rights exchanges with non-governmental organizations. The national human rights bodies of the Scandinavian countries are especially active in China. The Norwegian Institute of Human Rights recently spearheaded an effort to translate, publish, and distribute 3,000 copies of a textbook that is currently being used in the handful of Chinese universities that offer courses in international human rights law. Sweden's Raoul Wallenberg Institute operates its own office in Beijing. The Danish Institute for Human Rights has organized seminars on capital punishment in several cities around China. They helped prompt a spate of articles on the death penalty in China's legal newspapers and no doubt contributed to the debate underway in China over whether to curtail the use of capital punishment. Recently, a Chinese official for the first time provided an estimate of the number of people executed in China each year: about 10,000, many of whom paid the ultimate price for non-violent, economic crimes like tax evasion and corruption.

Since 1990, I have been discussing with the Chinese government the cases of individuals detained for the non-violent expression of their political and religious beliefs. I have made about 70 trips to China to carry on this dialogue. Most of my meetings are held in Beijing, but I have traveled to Lhasa to meet prisoners under house arrest, and I have been allowed into prisons in Beijing, Tianjin, Shanghai, Hebei, Guangdong, and Fujian. I have presented to representatives of the Chinese government lists totaling roughly 900 names of people detained in political cases. Many of the names have been found in libraries and bookstores around the world where Dui Hua's researchers regularly look for information on political crime in "open source," officially authorized publications.

What has all this talk about and research on human rights in China yielded in terms of real progress? Is the human rights dialogue with the Chinese government worthwhile, and if so, how should it best be pursued? Is Beijing using the dialogue to give the appearance of doing something about its record on civil and political liberties, all the while suppressing dissent and

thwarting calls for reform, or are the exchanges contributing to the promise—most recently made in an amendment to the constitution—that the Chinese government respects and protects human rights? Should the US try to resume the dialogue or allow the present suspension to become a freeze reminiscent of the 1995–1997 period, when there was no dialogue and little communication between the two governments on human rights?

Without question, the Chinese government has used human rights dialogues to further its domestic and foreign policy goals. It has rid itself of troublesome dissidents by sending them into exile, thwarted the US in its effort to censure human rights offenders in the UN, come close to persuading the EU to lift the arms embargo imposed after Tiananmen, and presented a kinder, gentler image as part of the effort to secure the 2008 Summer Olympic Games. But the fact that China has successfully used the dialogues to further its goals is not in itself an argument against holding human rights talks with Beijing. Rather, realization of how well the Chinese government is playing its cards should prompt us to better use the dialogues to attain our own policy goals of promoting human rights and democracy and to make China pay the highest possible price for achieving its own goals. Diplomacy is, after all, warfare by other means.

To judge from the comments of many people in Washington—current and former members of Congress, officials in the both the Clinton and Bush administrations, journalists, analysts, and representatives of human rights groups—the human rights dialogue with China seems to have little value. Releases of prisoners who are the focus of much discussion in the dialogues are routinely dismissed as cynical exercises in public relations. A common reaction to releases of political prisoners is the oft-heard remark that the Chinese government can simply go out and round up a few more dissidents to fill the cells of those released. While such an idea holds a certain appeal, it is not in fact reflective of the way the political security police operate. The Communist Party and the government it controls imprison people perceived as threats to their grip on power, pure and simple. The number and availability of prison cells is not a consideration.

Prior to every annual meeting of the UN Commission in Geneva, the House of Representatives considers and unanimously passes a resolution demanding that the US sponsor a China resolution despite the knowledge that the effort will fail badly and provide Beijing with an excuse to suspend the dialogue. The prevailing attitude of “so what?” is well illustrated by the

March 23 response of the State Department spokesman to a journalist seeking the US government's reaction to the most recent suspension: "That China doesn't want to have another round of discussions doesn't bother us . . . since the last three or four rounds of discussions we had didn't lead anywhere."

To officials in China who worked to make possible the releases of dozens of prisoners they had been told the US cared deeply about, who provided information about more than 200 prisoners whose names were on State Department lists, and who organized the first ever talks with a foreign country on China's population of imprisoned counterrevolutionaries, remarks like these were quite a surprise. There are several reasons why the human rights dialogue between the US and China remains stalled—the Abu Ghraib debacle and its consequences for American human rights diplomacy, the departure of senior officials handling human rights in both capitals, disagreements over the fate of Uyghur prisoners held in Guantanamo, uncertainties caused by the US election, and now the consolidation of power by Hu Jintao in China—but one of the most insidious is the widespread view that the human rights dialogue with China is of little worth. This mindset not only affects the question of whether or not to have more dialogues, but also acts as a disincentive to good preparation and follow up.

When the dialogue is eventually resumed (an announcement to this effect might come out of the meeting between President Bush and President Hu at next month's APEC summit in Chile), it may not yield the kind of results that were achieved in the two and a half year period after the September 11 attacks—at least for a while. It is probable that China will reward the EU and European countries with human rights gestures in the area of legal, systemic reform, possibly as part of a deal involving the lifting of the arms embargo. The fates of important political prisoners—people like Rebiya Kadeer and Yang Jianli who were at the center of talks between Washington and Beijing when the dialogue was abruptly cancelled – remain uncertain.

Having discussed China's political prisoners with officials of the Chinese government for almost 15 years, I know better than most the disappointment and frustration that accompany efforts to engage Beijing in discussions on human rights. But it is simply not the case that the dialogue with China has yielded nothing of value, and the US government should publicly say so while also continuing to press for more tangible results in a quicker timeframe. There's a big difference between saying that nothing has been

achieved and saying that not enough has been achieved. We may well have accomplished precious little through dialogue, but what little we've accomplished is nevertheless precious.

Dialogues that focus on well-documented abuses insure that the issue of China's human rights record remains on the minds of Chinese leaders. The leadership must hear, over and over again, that arrests of Internet dissidents and journalists like *The New York Times* researcher Zhao Yan, destruction of house churches, and suppression of calls for greater autonomy in Tibet and Xinjiang are bad for China's international image and stand in the way of the country assuming its rightful place in the world as a great power.

The Chinese government is learning what the US government learned in the 1950s: that the perception abroad of how a government treats its own people has an impact on that government's ability to achieve its foreign policy goals. Excellent studies on how international public opinion contributed to civil rights reforms in post-war America have been written by Azza Salama Layton (*International Politics and Civil Rights Policies in the United States, 1941-1960*, Cambridge University Press, 2000) and Mary Dudziak (*Cold War Civil Rights*, Princeton University Press, 2000). I have taken to recommending their works to Chinese officials who complain that American criticism of their rights records constitutes "interference in China's internal affairs." I tell them that, as an American, I am grateful to those foreigners who, 50 years ago, criticized the US for its racist policies at a time when most Americans, including their elected officials, deeply resented foreign meddling in our internal affairs. What China considers interference in the area of human rights should not be feared, it should be welcomed.

There is little question that the three invitations to representatives of His Holiness the Dalai Lama to visit Beijing and Lhasa have been extended at least in part by Beijing's desire to appear open and receptive to dialogue on how to best address the question of Tibet. Hu Jintao was party secretary in Tibet, and he has a keen sense of what is politically possible and acceptable to different sides when it comes to questions related to Tibetan autonomy and the Dalai Lama's return to Lhasa.

Concern in Beijing over China's reputation as the execution capital of the world—a country that executes more people every year than the rest of the world combined—has been a factor in the debate over not whether but how to curtail the use of capital punishment. China's decision to sign the

ICCPR—thereby satisfying a goal of American and European human rights diplomacy—has given impetus to popular calls to abolish forms of arbitrary detention like reeducation through labor, custody and education, and legal education. One form of arbitrary detention—“custody and repatriation”—was abolished last year. China is readying itself for the Olympics in 2008. It won’t modify its stance on Taiwan, and the fact that the mainland is hosting the Olympics will probably not act as an effective deterrent to the use of force in the Taiwan Strait. But I’m quite sure that Beijing is prepared to be more flexible on a number of issues in the area of human rights, and to make meaningful concessions. The opportunities to press for human rights reforms are there for the international community to exploit.

China’s dialogues on human rights with foreign countries have contributed to the drive to introduce more transparency in the country’s legal and penal systems. In both ancient and modern China, transparency has been seen as the first step, the necessary ingredient, for political reform. With little modification, the words of Confucius on transparency—words written more than 2,000 years ago—are the words of Hu Jintao today.

In *The Analects*, the Sage was asked what he’d do first if he became the highest ranking official in the Kingdom of Wei.

“What is necessary is to rectify names. If names are not correct, language is not in accordance with the truth, and if language is not in accordance with the truth, affairs cannot be carried on to success. When affairs cannot be carried on to success, rites and music do not flourish, and punishments will not be properly awarded. The people will not know how to move hand or foot. . . . Therefore, a superior man considers it necessary that the names he uses are spoken correctly and that what he says can be carried out appropriately. In his words, there must be nothing incorrect.”

Five years ago, the Chinese government resisted accepting and responding to lists of prisoners handed over before and during human rights talks. Now, accepting and replying to inquiries in writing is commonplace. In the last 12 months, Dui Hua has received information on 150 prisoners asked about through our own and others’ dialogues. Our research into Chinese “open source” materials—police records, sentencing yearbooks, county gazetteers, and so forth—has doubled the number of known political and religious prisoners. Yet we still know fewer than 10 percent of their names. I and my colleagues are determined to double this percentage and then double it again,

realizing the truth of what Milan Kundera has written, that the struggle of man against power is the struggle of memory against forgetting.

Through the dialogue and our work on specific cases that the dialogue has facilitated, we have uncovered regulations that allow for medical parole after one-third of the sentence is served (used to good effect in the Ngawang Choephel case), that permit early release for prisoners convicted as juveniles (used in the Ngawang Sangdrol case), that allow time spent under residential surveillance to be counted against a defendant's sentence (employed in the Fong Fuming case), and that prohibit putting Hong Kong people into reeducation through labor camps (confirmed in the Alex Ho Waito case). We have found the names of people convicted of "inciting subversion" on the websites of Chinese courts, asked about them and received information in reply.

Despite calls from the leadership for more transparency and accountability, progress has been slow. Nevertheless, some interesting admissions are turning up in China's domestic media. In July, the website of China's *Legal Daily* posted a story about a bible-distributor allegedly beaten to death in a public security detention center. To the best of my knowledge, this is the first time an official publication authorized by the Chinese government has covered a story about the alleged torture of a person of faith, and it comes at a time when the official line is that freedom of religion is flourishing in China.

In May, the central government announced a nationwide investigation of what it called "violations of human rights due to dereliction of duty by officials." Major crimes now being investigated include use of torture and extortion to extract confessions, illegal detention, and mistreatment of prisoners by guards and wardens. Recently, a newspaper story documented results of the investigation in Sichuan Province. In the first six months of the year, 510 cases of human rights abuses had been reported to the procuratorate. Of these, 255 had been or were being investigated. The cases involved 286 people, many of them police engaged in torture. As a result of these crimes, 118 people have lost their lives. The numbers released by the Sichuan government, if reflective of the state of affairs in the country as a whole, suggest a level of human rights violations many times the number reported by the Supreme People's Procuratorate in March.

We know that prisoners whose names appear on lists handed over during the dialogues have a good chance of securing early release or better treatment. At the 12th session of the Sino-US dialogue on human rights held in October 2001, Chinese diplomats provided information about roughly 50 prisoners then in prison for political or religious crimes. Since then, more than half of these individuals have been released, many of them early. They include brave men and women like the singing nuns of Drapchi, Ngawang Sangdrol and Phuntsog Nyidron; China's longest serving political prisoner, Jigme Sangpo; the chairman of the China Democracy Party, Xu Wenli, and his vice-chairman, Wang Youcai; the labor leader Kang Yuchun; and the political reformer Fang Jue.

When China's AIDS doctor Jiang Yanyong was detained earlier this year for daring to call for a reassessment of the June 4, 1989 killings, intense international pressure was brought to bear. He was released after several weeks in detention, though he is not free to travel or talk to the press. The most forceful and eloquent voice for labor rights in China today is Han Dongfang, operating in Hong Kong and speaking through Radio Free Asia to workers on the mainland. He is alive today because Beijing yielded to international pressure and released him in 1992.

I am convinced that one of the reasons we have witnessed such a surge in religiosity in China, especially in the countryside, is that many of the house church preachers and Catholic clerics released from prison in the 1990s, due in large part to international pressure, returned to their communities and bore witness to their faith, a faith that overcame suffering and ultimately set them free. Prisoners of faith have acted as magnets for the converted.

Nor is it the case that most activists freed from prison go overseas and become irrelevant. For the relatively small number of dissidents who have left their homeland to save their health, the power of wireless technology and the Internet has enabled them to continue to speak to and on behalf of their fellow citizens, the best efforts of the Chinese government notwithstanding. Scores of Internet essayists are in prison for "incitement to subversion." Their numbers are swelling.

The Buddhist spiritual leader Tenzin Delek Rinpoche was sentenced to death with a two-year reprieve in January 2003. As the day of decision draws near, and the Rinpoche's life hangs in the balance, his name is on the lips of many

people around the world. The Chinese government has an opportunity to demonstrate leniency, and I pray that it will.

A few days ago, I saw an early cut of Ngawang Choephel's documentary film about traditional Tibetan song and dance, *Through the Hollow Bamboo: Tibet in Song*. This was the film he was working on when he was arrested in Tibet in 1995. It's an extraordinary, hauntingly beautiful work, revealing forms of art rarely seen outside of Tibet, including a school of Tibetan folk opera on the verge of extinction. Ngawang Choephel was freed from an 18-year prison term, a sentence he could not have survived, as the result of an international effort that I and others involved in the Sino-US dialogue on human rights helped bring to a successful conclusion. When you weigh the pros and cons of conducting a rights dialogue with China against goals like preserving Tibetan culture, make sure you take a look at Ngawang Choephel's film. When you save a life, you save so much.

Serious abuses of fundamental rights continue, and as tensions in a rapidly developing China rise and Hu Jintao makes the concessions he thinks necessary to consolidate power, we will see, at least in the short term, more tough reactions to dissent and acts of protest. We are seeing and we will see even more clearly the ugliest features of police power unleashed, but we will also bear witness to acts of courage by people who defy it and work against it, both inside and outside the government.

Since the close of the party plenum at which Jiang Zemin stepped down as Chairman of the Military Commission, we have learned of the detention of the journalist Zhao Yan by the state security police. Zhao is apparently being held on suspicion of obtaining and handing over to his employer, *The New York Times*, information on Jiang's impending resignation. (The *Times* vigorously denies he was involved in the story.) We have heard of long sentences being passed on China Democracy Party member Kong Youping (15 years for subversion) and the Internet essayist and opposition political party organizer Huang Jinqiu (12 years for subversion). More and more people who are protesting the loss of homes or pensions are being thrown in prison for the crime of "creating a serious disturbance."

Tragedies like the beating death of Jiang Zongxiu, the bible distributor I mentioned a few minutes ago, are taking place, almost all unreported. We know so little about them except what we learn through the courageous work of NGOs working on religious freedom. But the suffering of Christians in

China pales in comparison to the suffering of Christians in North Korea, who are forced to abandon loved ones and risk their own lives for freedom in China. We shouldn't forget that, with notable and cruel exceptions, Beijing has allowed hundreds of thousands of refugees to stay on its territory, and it has arranged for more than 500 North Koreans who "touch base" at foreign embassies in Beijing to go to South Korea via third countries. I salute those in China's diplomatic service who have made possible these humanitarian gestures, and I encourage you to do more.

There are as many Catholic priests and bishops in prison in China today as at any time in recent years. For people of faith in China, this is their time on the cross. Yet even in this veil of tears tales of hope and salvation emerge. Four years ago, my friend Congresswoman Nancy Pelosi urged me to work hard on the case of Father Jiang Surang, a priest from Zhejiang Province imprisoned for publishing unauthorized Bibles. I am happy to report that through the dialogue we have received confirmation of his release 18 months prior to the end of his term.

Hu Jintao's first major test of whether or not he plans to translate the promise of more respect for and protection of human rights, enshrined in China's constitution, into a greater reality will come at next month's meeting of the Standing Committee of the National People's Congress (NPC). Earlier this year, Chinese diplomats told me and others in Beijing that legislation "fundamentally reforming" the system of arbitrary detention known as "reeducation through labor" (RTL) would be considered at the meeting. Unfortunately, plans by reformers to do away with such practices as RTL and "custody and repatriation," abolished last year following the beating death of a migrant worker in a Guangzhou detention system, were dealt a blow when police in Guangdong sentenced without trial a Democratic candidate in Hong Kong's Legislative Council elections to six months in a "custody and education" camp.

Yet I believe that reforms will move forward, and RTL and other forms of police detention that violate due process rights will eventually be abolished. We will need to scrutinize carefully what replaces them. The United States should join with the other dialogue countries in making respect for a fair trial a cornerstone of our human rights policy, and of our own dialogue with China. There is no rule of law without the presumption of innocence and respect for due process rights, conditions shockingly absent in such cases as that of Chen Yulin, a Hong Kong resident and British citizen recently

sentenced to life in prison for allegedly spying for Britain in pre-handover Hong Kong.

The NPC's Standing Committee is also said to be considering curbing the use of the death penalty by returning the power to approve executions to the Supreme People's Court in Beijing. Whether or not this happens remains to be seen. Thousands of lives hang in the balance. The steadfastness of European countries in making capital punishment a priority of their dialogues with China could well pay off in a sharp reduction in executions. Seldom does one see a better example of the virtues that come with multilateral engagement on global issues. The United States is not in a position to talk to other countries about capital punishment, being one of a handful of countries that execute people for crimes committed as juveniles.

The United States must always speak out for people persecuted for their beliefs, for their passion for democratic change, and for their commitment to a world that truly respects human rights and the rule of law. We must embrace those not afraid to think and speak freely, even at the cost of imprisonment. We must speak their names to power, and we must keep speaking their names, knowing that by doing so we are saving lives and bringing closer the day when justice flows down like the great Yangtze River and righteousness a mighty stream.

Engaging China on human rights through every means, including a well informed, results-oriented dialogue like the one I and The Dui Hua Foundation have worked hard to achieve, can contribute to more transparency and to a growing rights consciousness among both officials and the common people. And it can help save a few good lives that might otherwise perish.

With all its drawbacks and many disappointments, engaging China on human rights has been a force for change and, on balance, a force for good. We should resume the dialogue and persevere, always looking for ways to improve our work, and strive to fulfill the prophecy of Isaiah, to open the eyes of the blind, free those in prison, and bring out of darkness those living in the shadow of prison walls.

Thank you.