



Submission No 9

Inquiry into Australia's Human Rights Dialogue Process

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Australia's Human Rights Dialogue Process

**Submission to Inquiry by Federal Parliament's
Human Rights Sub-Committee, of the Joint Standing
Committee on Foreign Affairs, Defence and Trade.**



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CONTENTS

Main Points	2
Introduction	3
Bilateral Human Rights Dialogue Processes between China and other states: Context and Common Themes	6
Common Themes.....	6
Analysis of outcomes of Bilateral Human Rights Dialogues with China	8
Deficiencies of Bilateral Human Rights Dialogue with China.....	10
Lack of Meaningful and Tangible Outcomes	10
Process Deficiencies Outside of and Resulting from the Bilateral Dialogue	11
Process Deficiencies Inherent to the Bilateral Dialogue.....	11
Australia’s abuse of the Bilateral Human Rights Dialogue as a trade opportunity	13
Trade promotion emphasis of the Human Rights Technical Cooperation (HRTC).....	13
Recommendations.....	15
Australia’s approach to human rights in China	15
Australia’s Bilateral Human Rights Dialogue with China	16
Sources.....	18

Main Points

- China has engaged a number of countries in Bilateral Human Rights Dialogues since 1997. This bilateralisation of what was a multilateral accountability system has led to a weakening in multilateral initiatives on Human Rights in China. There is also an element of feedback in this trend - as multilateral approaches have been abandoned by a succession of countries, the effectiveness of bilateral dialogue processes has also diminished.
- ATC is in favour of continuation of the dialogue only if it is treated as one component of a multi-faceted approach by Australia to Human Rights in China.
- The process should be transparent and participatory.
- The dialogue process should include objectives, timelines and evaluation mechanisms to ensure outcomes can be achieved.
- Australia should coordinate its approach to the Bilateral Dialogue with other countries engaging in similar processes. This will be a step towards ensuring the dialogue becomes an effective process, one that achieves tangible and measurable results.
- Other recommendations are made with regard to Australia's overall approach to China's Human Rights performance and to the Bilateral Dialogue as a component of that broader approach.

Introduction

ATC congratulates and warmly thanks the Members of the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade for establishing the current inquiry into the important matter of Australia's Bilateral Dialogue experience with China, Iran and Vietnam.

This submission focuses specifically on Australia's Bilateral Dialogue with China. It is based on our research report *Fig Leaf: Australia's Bilateral Human Rights Dialogue with China*, (2004), available on the ATC website. We have closely monitored and engaged with the Australia-China Human Rights Bilateral Dialogue process since its resumption in 1997. Analysis of the Bilateral Dialogue processes with which China has engaged other countries highlights similarities across Bilateral Dialogue experiences and provides a richer analysis of the Australian experience.

China's human rights record remains a controversial issue in the foreign policies of most Western nations. This is due primarily to the tension between adherence to the principles entrenched in the international human rights regime, economic self-interest, and geopolitical concerns. China has deployed significant procedural dexterity at the United Nations (UN) bodies that monitor human rights, i.e. effective and frustrating blocking and stalling. This was used by Australia and other countries as a cynical excuse – cynical because the public justification ignores the clear promised trade benefits that lie behind the change in approach – for ceasing action in those fora and moving to an exclusively bilateral approach.

Thus there has been a shift in the manner in which China is held accountable for its compliance to human rights principles - from multilateral to bilateral dialogue. The bilateralization of multilateral processes threatens to undermine the universality and credibility of the international human rights regime entrenched in the UN.¹ And so there is much at stake in the bilateral dialogue process, including and extending beyond the current human rights situation in China and the Australia-China relationship. Ensuring that bilateral processes enhance the authority of multilateral frameworks, rather than undermine them, is critical.

Australia is noted for being the first country to initiate a bilateral dialogue on human rights with China in 1991. The strategy then involved human rights delegations of politicians, scholars and human rights experts in 1991 and 1992 for which there are extensive public reports. The report for the 1991 delegation visit, which included a visit to Lhasa in Tibet and its environs, includes frank description of the climate of fear that was evident to delegation members, the ability of delegation members to seek out and talk with people of their choosing despite the efforts of the Chinese side to 'quarantine' delegation members from ordinary Tibetans, and the robust exchanges that occurred between the members of the delegation and their Chinese counterparts.²

¹ Dr Ann Kent, (1999), *China, the United Nations, and Human Rights: The Limits of Compliance*, Philadelphia, University of Pennsylvania Press, p. 243, in International Centre for Human Rights and Democratic Development, (2000), *The Bilateral Human Rights Dialogue with China: Undermining the International Human Rights Regime*, Montreal, ICHRDD, p1.

² Senator Chris Schacht, (1991), Report of The Australian Human Rights Delegation to China, 14-26 July 1991, Canberra, Commonwealth of Australia.

Australia Tibet Council – Submission to Inquiry into Australia's Human Rights Dialogue Process

The 1992 delegation had its scheduled Tibet visit cancelled yet it too was able to provide frank and fearless reporting.³

The exchanges were stalled by Beijing as Australia continued to co-sponsor the annually proposed China Resolution at the United Nations Commission on Human Rights (UNCHR). Relations became increasingly strained when Prime Minister John Howard received the Dalai Lama in 1996.

There are two ways to tell the story of how the Bilateral Human Rights Dialogue was re-established. One version is surface-deep: in March 1997, Prime Minister Howard travelled to China and at that time proposed the establishment of a formal and regular bilateral dialogue on human rights. China accepted the proposal in the following months and Australia changed its UNCHR strategy of co-sponsorship of the China Resolution characterising it as “empty sloganeering.”⁴ The Government advocated a shift to bilateral dialogue as a mechanism through which Australia will be able “to address human rights issues... in a constructive and practical way.”⁵

Behind the scenes however, a different story was clear: immediately before the UNCHR session in 1997, Australia entered into a deal with China: Australia would stop co-sponsoring the resolution and in return would enter into a private dialogue with China. After the Commission that year the other crucial element of the trade-off was revealed: an unscheduled visit to Australia by then Vice-Premier Zhu Rongji, at the head of the most powerful Chinese business delegation yet to come to Australia. At the end of this visit, China made several important concessions on trade. It is difficult to exaggerate the blatancy of this payoff: Zhu simultaneously cancelled visits to Ireland, the Netherlands, Austria and Luxembourg because those countries had supported the China resolution that year.

The message was loud and clear and well understood by Australia. Since 1997 Australia has used the Bilateral Dialogue as the only formal instrument with which to engage China on human rights issues. Australia no longer even mentions Tibet in annual country statements to the UNCHR.

The re-established Bilateral Dialogue consists practically of an annual meeting of a small number of officials over no more than a few days. Australia and China alternate as hosts for the Dialogue. On the Australian side, by way of involvement of civil society, DFAT writes to previously interested civil society groups canvassing ideas for discussion topics – suggestions for matters to raise at the dialogue. Some weeks later the dialogue occurs and this is heralded by a media release from the Foreign Minister. Depending on the timing of the dialogue, one to three months afterwards there is a formal debriefing for civil society – an agenda item at the next scheduled half-yearly DFAT-NGO consultation, usually a one-day meeting spread over two days. The Bilateral Dialogue is generally allocated around forty-five minutes – around half an hour of presentation by DFAT followed by fifteen minutes of discussion. There

³ Senator Chris Schacht, (1993), Report of The Second Australian Human Rights Delegation to China, 8-20 November 1992, Canberra, Australian Government Publishing Service.

⁴ Foreign Minister Alexander Downer, (1997), ‘Australia and China: Engagement and Cooperation,’ Address to the 1997 Australia in Asia Series, September 10.

⁵ Foreign Minister Alexander Downer, (1997), letter to Australia Tibet Council, 1 May.

are occasional informal debriefings by DFAT for civil society, held under the Chatham House Rule.

Australia's dialogue, like those of other countries, includes no specific objectives, benchmarks or timelines. It is matched by an almost complete disregard of available multilateral mechanisms culminating in a weaker approach overall to human rights in China. Yet Australian officials continue to assert that this mechanism is more productive than that of the resolution process.⁶

⁶ This paragraph based primarily on Dr Ann Kent, 'Form Over Substance: Australia-China Bilateral Human Rights Dialogue,' *China Rights Forum*, Fall 1999.

Bilateral Human Rights Dialogue Processes between China and other states: Context and Common Themes

The bilateral dialogue process was taken up or re-established by a number of Western countries in 1997 in the face of trenchant procedural dexterity by the Chinese leadership in the multilateral UNCHR and the cynical pronouncement of that process as having failed. China became increasingly aggressive in its approach to that forum, each year threatening industrialised nations with denial of access to the Chinese market on the one hand, and offering substantial financial incentives to low income countries on the other, to ensure no prospect of an outcome at the forum counter to its interests. Other nations have taken up Bilateral Dialogues post 1997. China's current Bilateral Dialogue partners are:

- Australia
- Brazil (current status uncertain)
- Canada
- Chile
- European Union
- Germany (to date covering legal reform only)
- Hungary
- Japan (our understanding is that this dialogue is in abeyance)
- Norway
- Switzerland
- United Kingdom
- United States

Common Themes

A number of themes common to all or the majority of Bilateral Dialogues with China are evident:

Benchmarks: Generally there are no publicly stated benchmarks and an irregular or non-existent programme of evaluation. Amongst 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 have a stated timeframe for the fulfilment of these objectives, and no formal programme of evaluation of the performance of the dialogue against the benchmarks.

Australia's approach to the dialogue includes no articulation of expected outcomes, no timeline over which progress might be measured, no benchmarks for measuring success, and no evaluation process.

Transparency: Very little transparency of 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 debrief to NGOs, and a number publish limited information about the content and outcomes of the dialogue process on Ministry websites; others merely state that a process is taking place. The general theme is of a process 'behind closed doors.'

This description fits Australia's dialogue, as discussed above in the introduction.

China Resolution and International Pressure: All dialogue partners, with the exception of USA, have withdrawn from sponsorship or co-sponsorship of China resolutions at UNCHR since their dialogues began. None publicly admit that there is a direct relationship, although the British Foreign Secretary Robin Cook explicitly stated that support for a resolution would mean “the end of the dialogue” during a Parliamentary hearing in 2000. Diminished international pressure has resulted in the dialogues becoming less substantive.

Australia has muted itself at the UNCHR since the Bilateral Dialogue resumed in 1997, no longer co-sponsoring the ‘China Resolution’. Incredibly, in recent years Tibet is not even mentioned in Australia’s remarks to the forum. This year, as well as sending a delegation, Australia chaired the Commission and made little of that opportunity.

UN Mechanisms: Co-operation with other UN mechanisms are included as items for discussion in many Bilateral Dialogues, including ratification of relevant covenants, co-operation with the Office of the High Commissioner for Human Rights and visits by Special Rapporteurs. It is notable that non-compliance with these mechanisms does not come into play in considering China resolutions at UNCHR (see above).

Australia should at the UNCHR, vote according to its assessment of countries’ compliance or otherwise with UN mechanisms.

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

Australia’s Human Rights Technical Cooperation, initially an ‘add on’ to the dialogue and now trumpeted as an ongoing justification for the dialogue is discussed below.

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 argued against supporting a resolution, citing dialogue as the reason why; in reality preferring to protect trade deals. A review in 2000 of the Swiss/China dialogue by Bern University (discussed below) also concluded that there were trade benefits to continuing the process.

This description fits the Australian Dialogue, perhaps more than most others, and dates back to the very re-establishment of the dialogue in 1997. The Dialogue was born of a deal that centred on trade concerns – Zhu Rongji’s visit at the head of a high-powered business delegation and ensuing trade concessions. This is discussed further below.

Analysis of outcomes of Bilateral Human Rights Dialogues with China

The outcomes of countries' Bilateral Human Rights Dialogues with China are generally non-tangible and not measurable. This description fits the Australian Dialogue. Australia Tibet Council is unaware of any specific, tangible measurable outcomes that can be attributed to the Australian dialogue. Australian officials nevertheless assert that this mechanism is more productive than that of the UNCHR resolution process. Following is an analysis of the outcomes of Bilateral Dialogues overall.

Visits permitted

Stated Outcome: Some human rights-related visits have taken place, and China is more open to issuing invitations to United Nations Special Rapporteurs.

Analysis: China has refused to accept the international norms for terms of reference for such visits. The Special Rapporteur on Torture is now preparing to visit but was held up for two years as China attempted to negotiate special terms for his visit. Further it is worth noting that China specifically listed encouraging visits to Tibet as a key part of its propaganda strategy.⁷

Progress towards signing and ratification of UN covenants

Stated outcome: China has signed the International Covenant on Civil and Political Rights and is making progress on other UN instruments.

Analysis: In October 1998 on the signing of the ICCPR an official statement in China Daily read: "It is not that China's stance or policies on the issue of human rights have changed.....rather that the belated favourable turn in the international atmosphere has created an opportunity for China to elaborate its perspectives...." This demonstrates China's overall strategy of shaping the norms to meet its own standards.

Political Prisoner releases

Stated outcome: A number of political prisoners (including Tibetans) have been released recently prior to the completion of their sentences.

Analysis: Such releases are directly associated with the progress of the US/China relationship rather than any or all of the bilateral dialogues. Further, the release of a limited number of political prisoners does not represent substantive change in the human rights environment in China. If more continue to be arrested and sentenced to prison, such releases are worth little in terms of systemic change, although they are of course important for the individuals concerned.

The Australian government intimates that the dialogue is useful by noting for example that "the Chinese were, however, more forthcoming than in previous years, in the

⁷ Comrade Tenzin, (1993), speech to Regional Conference on External Propaganda Work Beijing, March 11, in the 'TAR Conference on External Propaganda Work', held by Australia Tibet Council.

margins of the Dialogue, in responding to queries about individual Tibetans whose welfare is of concern to the community.”⁸

Greater openness to discussion on human rights

Stated outcome: China has accepted that human rights are a legitimate subject for discussion (previously described as “an internal affair” or the imposition of Western values).

Analysis: China has co-opted many of the discussions on human rights and realised the expediency of accepting discussions as a trade off for silencing substantive criticism in other fora such as UNCHR. Beyond that, talking is one thing and doing is another.

Greater Co-operation with UN Mechanisms

Stated outcome: Dialogue encourages China to be more co-operative in other UN mechanisms.

Analysis: This type of trade-off undermines the mechanisms of the UN rather than supports them and China remains wholly capable of being disruptive in the Security Council and in the proceedings of the UNCHR if it is criticised. China has also taken the lead in attacking the contribution and role of NGOs in UNCHR and other international fora.

More opportunity to promote Technical Cooperation programmes

Stated outcome: Dialogue creates an environment in which to promote co-operative and development projects.

Analysis: the Human Rights Technical Cooperation (HRTC) was originally an ‘add on’ to the Australian dialogue. Funded through the aid budget, it remains no more than a fraction of total bilateral aid to China. Whilst this and other technical cooperation programmes have some value, there are key problems and limitations, as follows:

- They fail to address structural systemic problems in China, such as the non-independence of the judiciary. For example regional training of police officers to alter treatment of prisoners is an important objective, but where the policies concerning the detention or treatment of certain kinds of dissidents are being directed from Beijing, behaviours may not be altered, and such training does not address the reason why that dissident is in custody in the first place.
- They are designed to address only the formal legal processes, rather than the arbitrary and extra-legal processes (such as re-education through labour) which affect millions of people in China.
- There is a failure to consult independent NGOs in their design, implementation, monitoring and evaluation.
- They fail to address underlying values – the premise for such programs, including Australia’s, is that human rights abuses occur in China because of ignorance. In fact human rights abuses occur as part of policy set and enforced at the highest levels.

⁸ John Langtry, Acting Assistant Secretary, East Asia Branch, DFAT, (2001), letter to Australia Tibet Council, 6 November.

Deficiencies of Bilateral Human Rights Dialogue with China

Deficiencies in the Bilateral Human Rights Dialogue relate to:

- Lack of any meaningful or tangible outcomes
- Process Deficiencies:
 - Outside of and resulting from the Bilateral Dialogue
 - Inherent to the Dialogue

Lack of Meaningful and Tangible Outcomes

First and foremost, over the years that the Bilateral Dialogue has been in place, there are few if any positive results that are tangible or indeed measurable. In August 1999 Australia Tibet Council prepared an analysis in the form of a 'Report Card' on Australia's Bilateral Human Rights Dialogue with China, measuring China's Human Rights performance in Tibet against twelve internationally accepted human rights indicators (freedom of religion, freedom of expression, right to development, freedom from torture, rights of the child, right to self-determination, right to education, women's rights, rule of law, labour rights, militarisation and environmental protection). The analysis indicated no improvements across any of the indicators and in several cases actual deterioration in conditions. At that time the Australian Government was also unable to point to any positive outcomes for Tibetan people.

The period since then is characterised by a continuation of the Dialogue's non-contribution to meaningful, tangible improvements in the human rights situation in China. The connection between any positive changes in the human rights situation in China and the Australian Dialogue is not clear.

The experience of other countries is similar. Further, there is evidence that dialogues have become less effective over time. A Bern University evaluation of the Swiss dialogue in 2000 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 institutionalised talks, the dialogue with Switzerland obviously lost much of its importance to China. The readiness to carry out a genuine dialogue waned.”⁹

This assessment is echoed anonymously by officials from other dialogue countries. In 2001, at an informal meeting in Bern called by the Swiss Foreign Ministry representatives from Australia, Canada, Hungary, Japan, Norway, Switzerland, Sweden, and the UK participated. Other participants were representatives from the European Union and the Office of the UN High Commissioner for Human Rights.. A report of the meeting included the note that:

There was some concern that while initially the Chinese side responded to the case lists of political prisoners that the dialogues gave them, this is no longer happening to the same extent. Nevertheless, the dialogues will persist with this approach.¹⁰

⁹ In Free Tibet Campaign, Human Rights in China and International Campaign for Tibet, (2003), *Bilateral Human Rights Dialogue with China – Summary and Recommendations*, International Tibet Support Network, London, accessible at <http://www.tibet.org/itsn/campaigns/unchr/dialogue.summary.html>.

¹⁰ Report held by Australia Tibet Council.

This meeting developed into the 'Bern Process', a limited attempt by dialogue countries to share information and a process which remains informal.

The other key point here is that the dialogues are most effective when other, multilateral pressure is being applied.

Beyond the lack of positive outcomes, analysis of the Dialogue process is instructive. Process deficiencies lie in two areas: First are the deficiencies outside of the Dialogue process – that is, the 'cost' of the Dialogue in terms of other foregone opportunities to exert pressure and effect change. Second are deficiencies internal to the Dialogue process.

Process Deficiencies Outside of and Resulting from the Bilateral Dialogue

The costs of the Bilateral Dialogue are many and varied – and significant. First, the experience of Dialogues shows that in all cases, with one exception – the US – engagement in a Bilateral Dialogue has led to unacknowledged but evident decisions to discontinue use of multilateral mechanisms to work for improvement in the human rights situation in China. The United Nations' Human Rights Commission provides the starkest example of this. Since Bilateral Dialogues were instituted by China with a number of countries in 1996-97, action at the annual HRC sessions criticising China has all but ceased. Only the US continues to sponsor a resolution critical of China whereas previously, many countries, including Australia were active in this forum.

This represents a weakening of multilateral human rights instruments – action at the UNCHR should be based on careful consideration of countries' human rights performance. Instead Australia mutes itself with regard to China at UNCHR rather than calling China to account on human rights. This is not because the situation has improved in China and in this way the standing of authority of the UNCHR is devalued. As such this constitutes an undermining of the UNCHR and, given its role in the multilateral human rights accountability framework, this is an undermining of the multilateral human rights framework itself.

Process Deficiencies Inherent to the Bilateral Dialogue

ATC has shared its views with Government and the Department of Foreign Affairs and Trade on numerous occasions in relation to the serious flaws in the Bilateral Dialogue process. First and foremost the dialogue is characterised by a closed and undemocratic nature and is not representative of the ideals of our democratic processes, nor is it representative of the values that we are presumably trying to model for the Chinese leadership, such as transparency, accountability and inclusivity. The general critique of Bilateral Dialogues internationally provided above goes some way to describing the Australian Dialogue in particular. Following are some further points:

Lack of accountability – the dialogue is held in secret. The government does nothing towards actively encouraging public discussion or debate about the dialogue

Australia Tibet Council – Submission to Inquiry into Australia's Human Rights Dialogue Process

here in Australia let alone in China or Tibet. Even the financial cost of the dialogue is not publicly reported.

Lack of resources – compared to the human and other resources the government puts into other aspects of its relationship with China, especially trade, the investment in the Human Rights Dialogue is miniscule. The Dialogue itself lasts only a few days a year, and involves only a small group of officials. The current Australia-China Free Trade Agreement Feasibility Study by the Department of Foreign Affairs and Trade provides a useful comparison. This is a two year exercise, established by agreement between Trade Minister Mark Vaile and the Chinese Vice Minister for Commerce, Yu Guangzhou. It was signed by them in the presence of Prime Minister Howard and President Hu Jintao. Beyond that one Feasibility Study are numerous and highly publicised Government efforts in support of trade-specific initiatives such as gas export deals.

Australia's abuse of the Bilateral Human Rights Dialogue as a trade opportunity

As noted above Australia's Bilateral Human Rights Dialogue has little to show by way of meaningful and tangible human rights outcomes. The process has been more useful to Australia as a way of securing commercial opportunities. This is perhaps not surprising given that, as noted above, it was a commercial pay-off that clinched the reestablishment of the process in 1997.

The dialogue is a fig leaf for both Australia and China. From China's point of view, bilateral dialogues disable international criticism of its human rights performance, and the pressure for change and improvement is removed. From Australia's point of view, the dialogue becomes a way to do little for human rights in China, thus neutralising a prickly component of the bilateral relationship, allowing a clear run in pursuit of trade opportunities.

Many dialogue partners, including most European Union member states, have made little secret of the fact that the dialogue is more conducive to the enhancement of commercial opportunities than what has been termed "confrontation" with China on human rights. A Bern University review of the Swiss Dialogue in February 2000 concluded that continuing the dialogue was justified by the fear that terminating would be a threat to the bilateral relations:

Without exception, everyone agreed that the dialogue has an eminently important domestic policy component: despite the obvious violations of even central principles of Human Rights in China, it justifies the continuation and the expansion of Swiss trade relations with China.¹¹

In this way the Dialogue is used to promote Australia's trade interests with China. There is a feedback loop at play here also. The development of trade linkages, in the context of human rights exchanges being limited to bilateral dialogue mechanisms, leads to a fear of discontinuing the dialogue because of the potential impact on the trade relationship. This was another finding of the Swiss study.

Trade promotion emphasis of the Human Rights Technical Cooperation (HRTC)¹²

If the dialogue itself is a fig leaf for a pursuit of trade opportunities, then the human rights technical cooperation that comes with the dialogue is a fig leaf on a fig leaf. The trade promotion dimension of the Australian dialogue extends into the heart of the makeup of the dialogue process. Australia's dialogue, like others, includes a technical cooperation program – the Human Rights Technical Cooperation (HRTC). The HRTC is funded through the bilateral aid program and the Australian Agency for International Development (AusAID) is formally in charge. In practice, the running

¹¹ Schläppi and Künzli, in Free Tibet Campaign, Human Rights in China, International Campaign for Tibet, (2003), *Bilateral Human Rights Dialogues with China – Summary and Recommendations*, available at <http://www.tibet.org/itsn/campaigns/unchr/dialogue.summary.html>, accessed 3 June 2004.

¹² This section derived from Sophia Woodman, (2004), 'Bilateral Aid to Improve Human Rights: Donors need to adopt a more coherent and thoughtful strategy', in *China Perspectives*, No.51, January-February 2004, p.28 onwards and available online at <http://www.cefc.com.hk/cgi-bin/sommaireuk.cgi?numero=51>, accessed 15 June 2004. .

of the program is contracted by AusAID to the Human Rights and Equal Opportunities Commission (HREOC).¹³

Foreign Minister Alexander Downer set out ambitious goals for it at the time of the first dialogue meeting, stating that it would involve the two sides working together “to achieve practical outcomes which actually improve the lives of individuals,” through a concentration on “institutional strengthening, policy development, research, training and administrative resources in the human rights field.”¹⁴ However, according to AusAID, projects undertaken in the first two years of the program were dedicated to “awareness-raising,” while a new set of activities agreed at the third dialogue in August 1999 had “a greater focus on developing practical strategies to promote human rights.”¹⁵

In the China context, the rule of law has been a key element of the broader bilateral aid programmes of the countries under consideration, many of which make supporting the development of a market economy in China through economic reform a principal focus. Multinationals headquartered in the West have a strong interest in China developing a legal system that can protect their investments, and this concern may be the most important reason why Western governments are keen to contribute to this aspect of China’s development. A HREOC official linked Australia’s human rights cooperation with China to *constructing a legal system that would facilitate trade*, saying that China’s commitment to this objective made cooperation easier.¹⁶ Australia’s possible interest in legal reform for the same reasons was not mentioned.

We are not arguing that human rights and trade shouldn’t be considered in an integrated fashion. On the contrary, our view is that they are interlinked and for practical purposes not separable. But economic concerns should not negate, smother or deny human rights agendas. The dialogue should not be held hostage to trade concerns.

¹³ HREOC is Australia’s national human rights institution and thus focussed primarily on domestic human rights concerns.

¹⁴ DFAT, “Human Rights: Australia-China Human Rights Technical Assistance Program,” September 10, 1999, in Sophia Woodman (2003), unpublished paper.

¹⁵ AusAID, “Aid Program Strategy 2000-2001,” p.13, in Sophia Woodman (2003).

¹⁶ Fleay, citing interview with legal and human rights consultant to HREOC, in Sophia Woodman, (2004).

Recommendations

Australia Tibet Council makes two sets of recommendations in considering the Bilateral Dialogue process. The first set of recommendations relate to Australia's approach to human rights in China – they address the deficiencies outside of and resultant from the manner in which the dialogue is pursued. The second set address specifically to deficiencies within the dialogue process. Both sets together provide steps towards making the dialogue an effective process.

Australia's approach to human rights in China

Adopt Multi-Faceted Approaches

1. In light of the complex challenges faced, we support multi-faceted, integrated bilateral and multi-lateral strategies to promote human rights in China. Australia's bilateral dialogue may be a part of these strategies, but must not be an obstacle to pursuing other courses of action. We recommend that a high-level Impact Assessment is designed and conducted, to analyse the impact of the dialogue on other strategies, for example Australia's non-action at the UNCHR, with the outcome of the assessment to be made public.

Australia must demonstrate a commitment to pursue broader 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, particularly through trade contacts, to become part of all bilateral or multilateral contacts with China. A commitment must be made that human rights are raised further up the agenda in all bilateral contacts and that time is allocated for robust exchanges at the highest level.

Maintain International Pressure

2. International pressure has a role in encouraging progress by China and Australia should pursue this unilaterally as well as encourage other countries to do the same. Australia is a middle power and small compared to China on many measures. By pursuing an exclusively bilateral approach in dealing with China on its human rights performance, Australia disables itself before entering any dialogue process. Frankly this is the same for other middle powers, and a beauty of the multilateral system is that it allows for meaningful engagement of a larger country by smaller countries with shared areas of concern.

Beyond that, ongoing multilateral pressure gives 'spine' to bilateral dialogues. An evaluation conducted 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 institutionalised talks, the dialogue with Switzerland obviously lost much of its importance to China. The readiness to carry out a genuine dialogue waned."

Ensure Consistency of International Human Rights Standards

3. Australia's approach to 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. Australia must not use the dialogue as an excuse not to sponsor or actively support a resolution of concern about China at the UNCHR, should an objective analysis of the human rights situation in China justify such a course of action. Threats that support for a China resolution would result in the cancellation of the dialogues can be disregarded. The US experience clearly demonstrates that they are not mutually exclusive strategies, and the US willingness to walk away from dialogue and support a resolution at the UNCHR has added a degree of credibility and substance to its China dialogue.

Enhance Transparency

4. Australia's human rights relationship with China, across the board, should be made transparent, and available for public consideration. This should include what Australia is doing directly with China, and what Australia is doing in conjunction with other countries, towards improving the human rights situation in China.

Tibet

5. Australia should strongly promote dialogue and later negotiations between the Chinese leadership and the Dalai Lama, towards resolution of the Tibet issue. The Middle Way Approach, first proposed by the Dalai Lama in the nineteen eighties and consistently offered by the Tibetans to the Chinese since then, calls for true autonomy for Tibet within China.

Australia's Bilateral Human Rights Dialogue with China

Transparency

1. Objectives for the dialogues should 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 agreements to talk about an issue, provide information or accept visits from partners. Australia's use of, and role in the Bern Process should also be made transparent.

Evaluation

2. A timetable and criteria should be published for regular evaluation of the dialogues. Evaluation should be undertaken by Federal Parliament through the Human Rights Sub-Committee or an appropriate alternative body. Regular evaluations should incorporate submissions from civil society. If, during the course of evaluation of the dialogue the objectives or timeframe for compliance are altered, reasons should be given for doing so. Evaluations should include the Human Rights Technical Cooperation.

Careful consideration should be given to the composition of the agenda, to minimise overload on thematic issues and ensure that time is given and specific strategies developed to progress 'minority' issues.

Dialogue Coordination

3. International coordination amongst dialogue countries is essential. The recent introduction of the Bern Process has sought to increase information-sharing amongst dialogue partners, but some countries (eg Chile) are not apparently

included. Australia should, through a coordinated dialogue process, seek to reestablish the basis for a multilateral approach to dealing with human rights in China. Meetings should be held regularly and more frequently and include civil society participation.

Status

4. Dialogues should be conducted by high-level officials on both sides and include Ministerial exchanges. DFAT should establish a permanent secretariat to ensure continuity of process.

Participation

5. 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 try to encourage the Chinese government to engage in dialogue domestically, rather than only internationally.

Suspension or Termination of the Dialogue

6. 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.

Strengthen UN human rights standards and mechanisms

7. 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 programme, should be involved as much as possible in the design and implementation of such programmes.

The HRTC could usefully support the Chinese government's preparation of a National Human Rights Plan of Action, which should be done in accordance with the guidelines set out by the Office of the High Commissioner, and with input from them.

Tibet

8. Australia should use the bilateral dialogue to promote dialogue and negotiations between the Chinese leadership and the Dalai Lama, towards resolution of the Tibet issue. The Middle Way Approach, first proposed by the Dalai Lama in the nineteen eighties and consistently offered by the Tibetans to the Chinese since then, calls for true autonomy for Tibet within China.

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Other correspondence and articles as listed in footnotes.