

Recent Developments in Dui Hua's Dialogue on Human Rights with the Chinese Government

Testimony to the Congressional-Executive Commission on China

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Chairman Hagel, Distinguished Members of the Congressional-Executive Commission on China:

In May 1990, I intervened, for the first time, on behalf of a political prisoner in China, raising the name of a student leader jailed during the spring 1989 political disturbances, at a banquet in Hong Kong with a Chinese minister. Later that month, I gave my first testimony to Congress, addressing the question of human rights and China's Most Favored Nation status (MFN). I have come back to Congress several times over the last 16 years to report on the progress of the dialogue with the Chinese government being conducted by me and my foundation, a dialogue that has seen me make approximately 100 trips to Chinese cities - 75 to Beijing - to discuss cases, exchange information, visit prisons, and attend trials. Today I welcome the opportunity of briefing the Commission on recent developments.

Ministry of Justice Stops Accepting Prisoner Lists

The framework for Dui Hua's dialogue with the Chinese government was established in November 1991 at a meeting in Beijing's Great Hall of the People between me and a member of the Standing Committee of the Political Bureau of the Chinese Communist Party, one of China's most senior leaders. From the outset, it was clear that an important focus of this dialogue would be prisoners. The senior leader stated that if a foreigner came to China, pounded the table, and demanded the release of a prisoner, the Chinese government would not respond. But if a foreigner came as a friend and showed respect, providing information on prisoners, indeed releasing them early, "was no big deal."

After this meeting, I began to visit prisons. The Ministry of Justice, which runs China's 700 prisons and 300 re-education through labor camps, began accepting my requests for information on prisoners in the form of lists of 20-25 names.

In April 1992 I was given an audience with a vice minister of the Ministry of Justice. I was advised that a decision had been made to accept any inquiries about prisoners that I might have, and to answer the inquiries to the best of the ministry's ability. I was invited to ask about any prisoner, and I asked about Wei Jingsheng. Then and thereafter I asked about many others.

During the first half of the 1990s, my dialogue with the Chinese government went smoothly. Getting information on prisoners was commonplace, and there were many releases of high-profile prisoners. At the time, Beijing was worried about losing its MFN trade status. In 1994, President Clinton de-linked China's MFN from its human rights record. Chinese officials had said that if the US reduced its pressure, China would respond with human rights moves. I decided to take the Chinese government up on its offer. In December 1994, the Ministry of Justice for the first time sent a written reply to a prisoner list by fax, standard practice for the next 10 years. In January 1995, the State Council and the Ministry of Justice agreed to receive from me four lists of 25 names, one each quarter, in calendar year 1995.

In May 1995, the Chinese government suspended the prisoner information project because the State Department had granted a visa to Taiwan President Lee Tenghui. The Ministry of Justice continued to receive my lists, but contrary to what it had promised it was not willing to provide information. I turned to the US Congress for help, and beginning in 1996 more than three dozen members of the House and the Senate, several of whom are distinguished members of this Commission, wrote letters to the Chinese government asking it to honor the commitment that had been made. In 1997, Beijing badly wanted a state visit to the US for Jiang Zemin. In October 1997, President Jiang made the visit, and in talks with President Clinton agreed to resume providing me with information about prisoners. The agreement was listed as an achievement of the summit in the statement issued by the White House, and was singled out in a Senate Resolution on the Jiang visit introduced by Senator Feinstein, a distinguished member of this Commission, and Chairman Hagel.

By early 1999, the Ministry of Justice had, for the most part, finished responding to 1995's list of 100 names, many of whom had been obscure prisoners hardly known to the outside world. Based on information provided on 70 percent of the names, more than half of the prisoners on the list had been granted early release or sentence reductions after the list's submission. Based on interviews with released prisoners and members of their families, I have no doubt that "the list of 100" played a significant role in securing early release and better treatment for dozens of people who would otherwise have been forgotten.

In April 1999, the State Department introduced a resolution criticizing China at the annual meeting of the UN Commission on Human Rights in Geneva. The Ministry of Justice again suspended providing information about prisoners to me. The next month, NATO warplanes bombed the Chinese embassy in Belgrade, and Beijing suspended the official dialogue on human rights with the US.

The following year (2000), the Chinese government badly wanted to secure Permanent Normal Trade Relations (PNTR). It silently acquiesced in the establishment of this Commission as part of the effort to get PNTR. The Ministry of Justice began allowing me back into prisons and once more provided information on prisoners. By now, Dui Hua had been established, and we were engaged in a worldwide, open source search for the names of individuals detained in political cases. Our database had been set up and our lists were becoming longer and more detailed. (A recent breakdown of our database is appended to this testimony.) The information we received from the Ministry of Justice, which we shared with this Commission and with NGOs and governments engaged in rights dialogues, was increasingly valuable to an understanding of how China's penal system treated prisoners convicted in political cases.

In late July 2001, Secretary of State Colin Powell visited Beijing to help repair relations badly frayed by the EP3 incident. Agreement was reached to resume the official rights dialogue that had been suspended in May 1999 in the wake of the NATO bombing of the Chinese embassy in Belgrade. Secretary Powell tasked the newly confirmed Assistant Secretary of State for Democracy, Human Rights and Labor Lorne Craner with preparing for a round of the dialogue to be held in Beijing. Mr. Craner turned to Dui Hua and other NGOs to assemble a list of names of individuals detained in political cases (Dui Hua contributed the names of 50 "counterrevolutionaries"), and this list of 75 names was handed to China's Ministry of Foreign Affairs in the late summer of 2001.

After the terrorist attacks of September 11, 2001, the Chinese government made a strategic decision to side with the US and to seek ways to exploit the new international environment to improve relations with the US and achieve other foreign policy goals. As part of this decision, detailed information would be given on prisoners, and those identified by the US as important cases would be granted early release. In October 2001, a session of the official human rights dialogue was held in Washington. Detailed information was provided on 68 of the 75 names on the list. Early releases of important prisoners began in January 2002. The first to benefit was the Tibetan ethnomusicologist Ngawang Choephel.

In the ensuing months, nearly all of the well-known prisoners on Mr. Craner's list - including Jigme Sangpo, Xu Wenli, Wang Youcai, Ngawang Sangdrol, and finally Rebiya Kadeer - were released from prison. Several were allowed to leave China for medical treatment. (I made two trips to Lhasa, accompanied by officials of the Ministry of Foreign Affairs, to verify that Tibetan prisoners wanted to leave for the United States.) Not only were well-known prisoners released. I recently looked at what had happened to the 60 people who were actually serving prison sentences in September 2001 when the Chinese response was being prepared. I am attaching a brief analysis to this testimony. Of the sixty, 27 have been granted early release, and four have been given sentence reductions. In other words, if you were on the list, you had a better than 50 percent chance of being released or given a sentence reduction in the ensuing five years. That's three times better than the rate of early release recorded for political prisoners that we know of who were serving sentences as of September 2001 but who weren't on Craner's list. (Unfortunately, the rate of parole and sentence reduction for political prisoners, even those on important lists, remains well below the rate for ordinary prisoners.)

How was this result achieved? Good cooperation with our Chinese counterparts, coordination with allied governments, steady follow-up (the names appeared on several subsequent lists handed over by Dui Hua, the US and other governments), linking better treatment of prisoners to "rule of law" issues, and always emphasizing the need for human rights improvements, as measured in concrete terms, if US-China relations are to improve.

A little known example of how the Craner list was used to address a systemic issue is the two rounds of talks on sentence reduction and parole for prisoners serving sentences for counterrevolution and endangering state security that were organized by the State Department and the Ministry of Foreign Affairs in February 2004 and August 2005. In these talks, ably led by the State Department's Bureau of Democracy, Human Rights and Labor and China's Supreme People's Court, Beijing affirmed that individuals serving sentences for counterrevolution and endangering state security enjoy the same opportunities for sentence reduction and parole as other prisoners. National reviews of sentence reduction and parole cases had begun on a trial basis in 2003 and they were expanded in 2004 and 2005. In 2005 Dui Hua heard reports that at the local level a policy of non-discrimination towards those convicted of counterrevolution and endangering state security was being followed. In January 2005, the Ministry of Foreign Affairs took the extraordinary step of emailing Dui Hua information on a large group of such prisoners, most of whose names were unknown, who had in fact been granted sentence reduction or parole in recent months.

My last meeting with the Ministry of Justice took place in April 2005. Senior officials of the Prison Administration Bureau and the Department of Judicial Assistance and International Affairs received me in the Minister's Conference Room. It was an unusually friendly meeting. We discussed the possibility of Dui Hua hosting a delegation from the Prison Administration Bureau. I was asked to prepare a detailed proposal for the Ministry's consideration. I handed over a short prisoner list. The senior representative of the Prison Administration Bureau promised that he would personally look into the cases. I was told that I would receive the desired information through the usual channel, that is, by fax or email to my San Francisco office. Weeks and then months went by without Dui Hua receiving the information.

I visited Beijing in October 2005 and brought with me a detailed proposal on the delegation and a new prisoner list. I called the International Affairs Department of the Justice Ministry to schedule a meeting and was told that I was welcome "as an old friend" to visit the ministry but only if I agreed to three conditions: There would be no discussion of "human rights dialogues," the names of "criminals" (i.e. prisoners) could not be raised during the meeting, and a prisoner list could not be handed over. I refused to agree to these conditions, and protested that the ministry's new position was contrary to longstanding practice reaffirmed as recently as April. It ran counter to China's policies of encouraging transparency and

conducting dialogues based on equality and mutual respect.

I sought the assistance of China's Ministry of Foreign Affairs. I discussed the situation with officials of the Departments of North American and Oceanian Affairs and International Organizations and Conferences, the UN missions in New York and Geneva, and the Chinese embassy in Washington. I am grateful for the work of several Chinese diplomats on this matter. I have recently been told that there is nothing personal in the decision to stop providing information on prisoners and that I am welcome to continue visiting China.

In February 2006, a senior Ministry of Foreign Affairs official advised me that I would get "good news" from the Ministry of Justice soon. I received information on a few prisoners channeled through the Ministry of Foreign Affairs. I was further heartened when President Hu Jintao visited Washington on April 20 and announced that China was prepared to "enhance" its dialogues and exchanges with the US side in the area of human rights.

On August 24, 2006 I met with Ministry of Foreign Affairs officials in Beijing. I was informed that the Ministry of Justice had not changed its position. I was told that "people are fed up" with receiving prisoner lists from foreigners. Such lists represented attempts to interfere in China's internal affairs and were disrespectful of China's independent judiciary. Foreign countries have no right to submit them, and China is under no obligation to reply to them. When I sought an explanation for the Ministry of Justice's decision to stop accepting lists and discussing cases, I was told that the Ministry of Justice is "unhappy and disappointed over how the information has been used." Specifically, I was told that the impression had been given that prisoners were released early as a result of foreign pressure instead of as a result of "the normal workings of the Chinese legal system."

At the meeting I asked the Ministry of Foreign Affairs to try one more time to convince the Ministry of Justice to change its position. I requested an update on a set of nine prisoners, all of whom the Ministry of Justice had provided written information on, all longer than three years ago.

On September 14, 2006, I received the Ministry of Foreign Affairs' formal response: As the bilateral dialogue between the US and China has not been resumed, discussion or exchange of information on individual cases is not appropriate. I was also reminded that the basic principle for the rule of law is independence of judicial organs, a principle the Ministry of Foreign Affairs and, it hopes, "our American friends" will observe.

Dui Hua Responds

Since Dui Hua cannot accept the Ministry of Justice's new policy of "three no's" - no mention of human rights dialogues, no raising the cases of prisoners, and no prisoner lists - the foundation will no longer seek meetings with the Ministry of Justice in Beijing. The question will be revisited if and when the official human rights dialogue between the United States and China resumes.

Dui Hua holds that the Ministry of Justice's "three no's" policy overturns many years of cooperation that have enjoyed the support of leaders and senior officials of both the United States and China. The Ministry's behavior towards Dui Hua does not square with the policy of conducting dialogues based on equality and mutual respect. It is a setback for the principles of transparency and open governance, and calls into question President Hu Jintao's April 20 promise to enhance dialogue and exchanges on human rights between the two sides.

Dui Hua points out that the foundation is an international human rights organization that enjoys non-governmental consultative status with the Human Rights Council of the United Nations, a status that we

would not enjoy had China chosen to oppose it. Although it actively supports dialogue on human rights between the Chinese and American governments (as it does the eight other official dialogues), Dui Hua's own dialogue is not dependent on the US-China dialogue and has never been viewed in such terms. On many occasions during long periods when the official dialogue was suspended (e.g. calendar year 2000), Dui Hua's own programs with the Ministry of Justice were plentiful and productive. If such things as prison visits and exchange of information on cases were appropriate then, why are they inappropriate now?

Dui Hua agrees that the basic principle of rule of law is independence of the judicial organs, but we fail to see how asking questions about cases represents interference. Underpinning the principle of independence is transparency and openness of the legal system. "In speaking about laws, proceed from an examination of cases "yi an shuo fa," is a favorite saying of members of China's judiciary, and in its attempt to understand China's security, legal, and prison policies and systems Dui Hua is doing just that.

As for the question of how the information has been used, Dui Hua has reviewed all written communications from the Ministry of Justice since 1994, as well as the notes of meetings since 1991. It cannot find language asking that information be kept confidential, nor setting any other limits on how the information was to be used. On the contrary, there are several expressions of mutual esteem and desire for further cooperation. Prior to August 24, 2006, Dui Hua had never received a complaint from a Chinese official over how the information on prisoners had been used.

It is true that the impression has been given that prisoners who are the focus of international concern are more likely to receive better treatment than those who are not the focus of concern (a situation hardly unique to China), but the experience of the last 16 years tells me that interventions like my 1995 list and Mr. Craner's 2001 list have in fact prompted better treatment for many prisoners. That has been the case-until now, at least. Dui Hua is concerned that prisoners who manage to get information on their situations to the outside world-and their families- may be suffering consequences, including delays or cancellations of sentence reductions, denial of family visits and the like.

A Window Closes, A Window Opens?

During the period of difficulties with the Ministry of Justice, Dui Hua has enjoyed good relations with Chinese courts, including the Supreme People's Court. The court has arranged for wide-ranging discussions with senior judges and staff of the court on such topics as sentencing and application of the death penalty. (Interestingly, individual cases were discussed and sometimes raised by the Chinese side. No judge has ever accused Dui Hua of "interference" for asking details of a case.) It made arrangements for Dui Hua to begin attending Chinese trials. We have been encouraged by the willingness of the courts to be more open and receptive to foreigners and are looking forward to finding more ways to cooperate with both the court system and with China's procurators.

Of special interest to Dui Hua is the question of the availability of verdicts. Obviously, if verdicts become more widely available, the work of promoting transparency (and finding out about cases) would be greatly enhanced. At present, verdicts in many cases-including "sensitive ones" like those involving capital punishment, state secrets and juveniles-are not made available by courts and are even being denied to the families of those sentenced. The determination of what is "sensitive," especially with regard to state security cases, is often in the hands of the police who make the arrest. The present system of withholding verdicts from the public is the subject of much debate in China, and there have been a few local experiments at making the publication and dissemination of verdicts less restrictive.

I was especially disappointed to read, therefore, that the Chinese government has promulgated new rules forbidding the release by courts of news related to "state secrets, business secrets and personal information, including in cases related to juveniles and those that are not tried publicly." The rules, which

have yet to be published, set up a new system of court spokesmen and stipulate punishment for court officials who leak information, which covers "any document passing through upper level and lower level courts." This presumably includes verdicts, but Dui Hua is seeking clarification.

These rules come on the heels of other measures to restrict the operations of foreign news media and punish domestic media for unauthorized reporting on natural disasters and mass incidents. They are of a piece with the decision to shut down the prisoner information project with Dui Hua, and other actions the Chinese government has taken like harassing and jailing journalists, and closing down publications, websites and blogs. I will briefly discuss the reasons for the ongoing clampdown in my oral remarks and will be happy to explore it further during the discussion period following our testimonies.

Recommendations

I would like to conclude this testimony with a few recommendations:

1. When and if the official dialogue between the US and China resumes, consideration of a list of individuals detained for the non-violent expression of their political and religious beliefs must form a key element of it, as it has in all previous sessions. The State Department should have on hand a continuously updated list of prisoners that can be readily handed over to Chinese officials at short notice, and it should rely on the CECC's database and Dui Hua's database to prepare it.
2. In its dealings with the governments of countries that have human rights dialogues with China, the State Department should encourage the practice of asking about cases of concern in the form of prisoner lists, and push for greater sharing of information and other forms of cooperation. The Berne Process, a five-year-old grouping of countries that have dialogues and exchanges with China on human rights, has shown some modest results in these areas but has recently come under attack by the Chinese government. The State Department should make clear its support for the Berne Process, and raise the level of its participation in the group's meetings.
3. The State Department should examine ways to better utilize the United Nations system to bring cases of concern to the attention of working groups and thematic mechanisms, the International Labor Organization, and UNESCO. The US should join the Human Rights Council at the earliest opportunity.
4. The Chinese government appears to have come to the conclusion that interest in human rights among people in Washington has waned and that issues like North Korea, Iran, and currency exchange rates are what occupy policy makers and legislators. Reading press accounts of recent visits by Congressmen and Senators to China, I have been struck by how human rights is rarely if ever mentioned. I wonder if members are willing to bring prisoner lists to China, as they did in the past. I am confident that Senator Hagel and commissioners will take steps to disabuse the Chinese government of the notion that members of Congress and the people they represent no longer care about the fate of prisoners of conscience in China.
5. It is vital that funding of open-source research and the databases it feeds be maintained at least at present levels. I am troubled by reports that State Department funding for Dui Hua's database might be reduced. I have brought with me two representative "finds" made recently in libraries in China, one giving the first-ever detailed statistics for executions carried out in a Chinese county, the other giving details of a hitherto-unknown political party with more than 2,000 members operating in Henan Province. Its leaders are almost certainly still in prison. They are alone, but they are no longer unknown, and we will not forget them.

Thank you again for inviting me to testify today, and for the important work of the Congressional-

Executive Commission on China. Dui Hua looks forward to even more cooperation with the commission in the future.