



SUBMISSION TO THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL ON HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

Prepared for Professor John Ruggie, January, 2006

THE IMPACT OF TRANSNATIONAL CORPORATIONS ON THE RIGHT TO FREEDOM OF EXPRESSION IN THE PEOPLE'S REPUBLIC OF CHINA

In advance of the Special Representative's interim report to the UN Commission on Human Rights, HRIC would like to make the following submission, highlighting the role of transnational corporations with respect to an overarching human rights issue facing China today: the lack of freedom of expression.

The rights to freedom of expression, access to information, and freedom of association are increasingly impacted by the presence of international corporations in China. These are also areas in which corporate leadership and vision could make a contribution and a difference, and in which the development of the international legal framework with regard to business is critical.

Overview

Article 35 of the Chinese Constitution protects "freedom of speech, of the press, of assembly, of association, of procession and of demonstration," and other constitutional provisions protect freedom of privacy of correspondence (article 40), and the right to criticize the government (article 41).

However, the right to freedom of expression is constrained in China through the criminal and state secrets legal framework, and supported by broader police and social controls as well as sophisticated technology censorship and surveillance tools. HRIC and other groups have documented an increasing and disproportionate invocation of state secrets crimes against lawyers, journalists, Internet activists and other human rights defenders as a means of controlling dissent.

The state secrets framework criminalizes the distribution of information determined by government departments to be classified on criteria including whether it is harmful to national security. Publicly available information can also be retroactively classified if it is deemed to have caused harmful consequences. The definition of what constitutes a state secret, however, "matters that affect the security and interests of the state" (PRC Law on the Protection of State Secrets, Art. 2), is extremely broad and the restriction on freedom of expression goes far beyond the "least restrictive" standard as required under international law.

Presence of Foreign IT Companies in China

Freedom of expression and access to information has also been impacted by the presence of foreign IT companies in China. The investments, projects and operations of those companies have greatly increased, following the PRC's accession to the WTO in 2001 and

the subsequent opening of the technology services sectors. This increased presence has contributed to new and sophisticated techniques to curtail freedom of expression which has had a direct impact on individuals. Millions of dollars have been invested by foreign Internet providers and high technology companies, who sell both hardware and software technology products such as remote camera surveillance and systems that track Internet users, not only to the private sector, but also to the state security and police organs in advance of the Olympics.

IT companies in China also support restrictions on access to information. In 2002, over a thousand IT companies, including foreign companies such as Yahoo!, signed onto the PRC-issued "Public Pledge of Self-Regulation and Professional Ethics for China's Internet Industry." The pledge, which includes provisions stating that companies signing the pledge will not allow the posting of and will remove any information considered harmful, or which may disrupt social stability, has an impact on both the content of information people can access in China through Web searches using Google and Yahoo!, for example, and also on the privacy of individual people's email accounts. The impact on individuals can be seen in both the recent removal by Microsoft of the blog of outspoken journalist Zhao Jing, and in the case of Shi Tao.

The Case of Shi Tao

Shi Tao, a journalist from the *Contemporary Business News* and an online essayist, was detained shortly after he sent an e-mail to an overseas Web site regarding instructions issued by the Central Propaganda Department on maintaining social stability during the 15th anniversary of the June 4th crackdown. On April 27, 2005, Shi was convicted of "illegally providing state secrets abroad," and sentenced to ten years in prison; his appeal was denied on June 2, 2005. The April 27 judgment of the Changsha Intermediate People's Court in Hunan states that Yahoo Holdings (Hong Kong) Ltd. provided the Chinese investigating organs with detailed information linking Shi's personal e-mail account and the message at issue to the IP address and physical location of his computer. (See attached information compiled by HRIC on Shi Tao's case).

The direct involvement of Yahoo! in the imprisonment of an individual for exercising his right to freedom of expression contravenes the norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights that emphasizes the responsibility of all businesses to respect human rights within their spheres of activity and influence.

Recommendations to the Special Representative

In light of the increasingly sophisticated and comprehensive architecture of information control in the PRC and the complex human rights impacts of the activities of transnational corporations, as well as the vast economic activities of the PRC abroad, there is an urgent need for clarification of guidelines elaborating the human rights obligations of transnational and multinational enterprises doing business abroad, particularly in countries whose legal systems fail to support human rights. HRIC respectfully suggests the following areas for attention:

- Development of best practices in the IT sector:

The increasing presence of high technology businesses in China has facilitated the restriction of freedom of expression, calling for greater analysis of the responsibilities of businesses in such an environment.

HRIC and others, including Reporters Without Borders, are actively addressing these issues. For your reference, we attach *Human Rights and Spam: A China Case Study* prepared by HRIC for the 2005 Center for Democracy & Technology compendium on Spam. The *Case Study* includes a framework of best practices tailored for use by the information technology companies operating at the service provider, hardware and connectivity levels.

Recommendation: HRIC urges the Special Representative to promote the development of targeted and specific guidelines for different sectors. Guidelines that are focused sectorally will be more effective than those that are broadly drawn, allowing for the identification of the particular human rights issues and concerns facing companies working in different areas, including information technology, manufacturing, and services.

- Impact of labor rights and freedom of association:

Despite protections in the Chinese labor law, actual management practice and poor law enforcement results in widespread underpayment and non-payment of wages, poor living conditions, and unhealthy and unsafe working conditions. The attached report by the China Labour Bulletin, *Deadly Dust*, documents the ongoing silicosis epidemic among jewelry workers in Guangdong. Lack of freedom of association undermines workers' ability to address these issues and protect their own rights.

Recommendation: HRIC urges the Special Representative to strengthen the UN Norms as the baseline in international law of the human rights responsibilities of businesses, including by calling on governments to implement their international legal obligations and by clarifying the responsibilities of those businesses when they operate in countries unwilling to support human rights, or whose legal systems fail to do so. Further, we urge the Special Representative to build on the recommendations made by treaty bodies and other special mechanisms, including the recommendation made by the Committee on Economic, Social and Cultural Rights during its review of China's first periodic report in 2005, to withdraw its declaration with respect to article 8(1)a (the right to form independent trade unions).

- Human rights-related impacts of the 2008 Olympics:

Preparations for the 2008 Olympics have attracted the participation of foreign companies across diverse sectors, including construction, advertising, architecture, and legal services. The beneficiaries of the Olympic Games, and as such of the contracts agreed to between foreign companies and Beijing as the host city, have always been presented as the people of Beijing, and more broadly, of China. This is documented not only in China's numerous promises to the International Olympics Committee before being granted the right to host the Games, and also in its 2002 *Olympic Action Plan*.

However, during preparations for the 2008 Games numerous human rights violations related to China's Olympic hosting obligations and promises, including labor rights violations, detrimental impacts on the environment, and hundreds of thousands of forced evictions have been documented.

Recommendation: HRIC urges the Special Representative to promote the development of human rights impact assessment tools that will allow companies to evaluate the impact that their contracts and investments in China have on individuals living there. These tools have already been developed by several leading international human rights organizations, including the Canada-based *Rights & Democracy*. The development and use of these tools will strengthen the monitoring and evaluation of transnational corporations, as well as the implementation of the UN Norms.

- The PRC's investments abroad:

It should be noted that in addition to increasing investments into China, China's business investments overseas have also been rapidly expanding over the past ten years. In 2004, China had economic investments in 168 countries worth billions of dollars. Its trade volume with Africa alone, for example, reached US \$29.462 billion in 2003, with over \$3 billion invested in Sudan.

Recommendation: HRIC urges the Special Representative to pay particular attention to the situation of poor countries facing a dominant political power such as China in negotiating investment and trade deals favorable towards its own domestic business, and clarify the respective roles and responsibilities of governments and businesses in those situations.

ATTACHMENTS

1. China Labour Bulletin, *Deadly Dust: The Silicosis Epidemic among Guangdong Jewelry Workers and the Defects of China's Occupational Illnesses Prevention and Compensation System*, 2005.
This recent report by the China Labour Bulletin explores not only the serious health and safety risks undertaken by gem workers in southern China, but also the efforts that workers have made to seek redress from the factories they work in.
2. Sharon Hom, Amy Tai and Gabriel Nichols, *The Rise of the Internet and Advancing Human Rights*, CHINA RIGHTS FORUM, No. 3, 2004, 37–41.
This article explores both the constraints put on the Internet in China, and ways that it can be used to advance human rights and access to information there. The article calls for alliances of conscience that will ensure that the Internet and other advanced technologies function as a force for beneficial change rather than effective tools of repression in China.
3. Sharon Hom, *Trade, Investment and Human Rights: China's Window of Opportunity*, CHINA RIGHTS FORUM, No. 3, 2005, 13–18.
This article examines the challenges and opportunities presented by China's increasing integration into the international economy, and the window of opportunity presented by its accession to the WTO, building on the linkages between trade and human rights.
4. HRIC with the China Labour Bulletin, *Labor and State Secrets*, CHINA RIGHTS FORUM, No. 3, 2004, 23–33.
This article looks not only at the serious labor rights problems in China, but also at the State Secrets legal framework and the impact that has on protecting workers' rights.
5. HRIC, *Human Rights and Spam: A China Case Study*, in SPAM 2005: TECHNOLOGY, LAW AND POLICY, Center for Democracy & Technology.
This *Case Study* prepared by HRIC illustrates how anti-spam technologies and policies can be used by repressive governments to censor speech and severely compromise the ability of activists to use email as a part of their work. The *Study* also suggests a framework of best practices for information technology companies operating in China at different levels.
6. HRIC Brief, *China's Strategic Global Influence*, CHINA RIGHTS FORUM, No. 3, 2005, 21–27.
This article identifies investments that the Chinese government and Chinese companies have made internationally, and includes a map showing where those investments have been made.
7. HRIC Brief, *Olympics Update: Promises, Promises*, CHINA RIGHTS FORUM, No. 1 2005, 109–114.
This article compares the human rights, environmental and other commitments that China made as host of the Beijing Olympics with action it has actually taken in preparation for the Games. The article suggests various ways that governments, the International Olympic Committee, businesses and others can contribute to ensuring that preparatory work for the Games does not have a detrimental impact on human rights.
8. Case Highlight: HRIC Packet on the case of Shi Tao and Yahoo.
HRIC has created an online resource centre for the case of Shi Tao. This packet excerpts some of the most relevant sources.