



Droits et Démocratie
Rights & Democracy

Centre international des droits de la personne et du développement démocratique
International Centre for Human Rights and Democratic Development



MEETING REPORT

Human Rights & the International Trade in Security and Surveillance Technology Case Study: China

**Montréal, Québec
October 31, 2005**

Introduction

On October 31st, 2005, Human Rights in China and Rights & Democracy hosted a roundtable event on human rights and the international trade in information and communications technologies (ICTs). Using China as a case study, the meeting examined how the application of ICTs for security and surveillance purposes can result in human rights violations and undermine democracy in the absence of checks and balances taken for granted in most democratic nations. The meeting brought together more than 30 civil society representatives, government delegates and technical experts¹. Through a series of presentations and discussions, participants addressed the technologies themselves, the tenants of human rights law, the challenges faced by human rights defenders in China and regulatory frameworks governing the export of security and surveillance technology. The following report provides brief summaries of the presentations.

Panel 1: Overview of the issues

The first panel reviewed key issues related to the trade in ICTs and human rights. It detailed how security and surveillance technology works and continued with a discussion of the human rights implications of the export of certain ICTs to China. The morning panel concluded with a presentation on human rights violations in China in general and the nature of state obligations.

a. The technology & how it works

Censorship and surveillance are closely related. Technologies which perform surveillance operations can easily lend themselves to facilitating censorship and vice versa. However, the presence of surveillance technologies, for instance, does not necessarily denote that

¹ see list on page 7.

ensorship is taking place. In China, the mere existence of surveillance technologies linked to internet use has created a culture of fear which leads to “self-censorship”.

Corporations that have exported technologies which can be used for censorship purposes often maintain that the software itself is neutral. This leads corporations to deny their responsibility for the end use of the software and avoid adequate due diligence.

China's surveillance network incorporates not only internet surveillance but speech and face recognition, closed-circuit television, smart cards and credit records. Surveillance and “C4I” technologies (command, control, communication, computers and intelligence) are commonly used by military, law enforcement and emergency services, as well as commercial and private organizations. While these systems may have legitimate military, police and civilian uses, they also have inherent capabilities that can facilitate human rights violations.

b. Selling security technology to the Chinese market

In China, trade policy is fuelled, in part, by national security interests and a defence discourse. China's prior utilization of dual-use technologies for military purposes, its historical re-exportation of military technology and its clear objective of ensuring social control - combined with its poor human rights record - are among the factors which lead analysts to believe that certain ICTs will be used for surveillance and repression.

The human rights costs of China's use of surveillance technologies are endured by the dissidents and human rights defenders who are subject to punishment when exercising their rights to freedom of expression and association. The link between human rights and business, intertwined with China's international human rights obligations and commitments, corporate social responsibility, and multilateral guidelines and norms cannot be ignored.

c. Human Rights Violations and State Obligations

States hold the primary responsibility for ensuring that human rights are protected, promoted and fulfilled. China has ratified several human rights treaties. It has signed, but not ratified, the International Covenant on Civil and Political Rights. Although China is not legally bound by the treaty provisions until ratification takes place, its signature does imply the intent to ratify and requires that that the spirit of the treaty be respected.

China's security and surveillance practices result in specific violations of human rights law including the right to privacy and to information, freedom of expression, and freedom of association. States exporting ICTs to China must consider their own extra-territorial human rights obligations and ensure that international trade does not threaten to undermine human rights standards in the importing countries. This can be done through a number of means such as ensuring adequate regulation of companies exporting to countries where serious human rights violations persist.

Panel 2: China Case Study: Converging forces and strategic opportunities

During the second panel, two examples were presented in order to illustrate how ICTs could be used to undermine human rights in China. This was followed by an overview of efforts to promote legal reforms in China in the interests of economic governance and human rights protection.

a. Olympic commitments

The unprecedented security measures and state-of-the-art technology deployed during the Athens 2004 Olympics provided a telling preview of what can be expected in Beijing 2008. Beijing's Olympic security budget is estimated to surpass Athens's US\$1.3 billion, encompassing more than 450 technology projects. These projects will undoubtedly include such cutting-edge technologies as C4I, Tetra, and SIS (System Integration Services).

Given the Chinese government's track record on human rights, serious questions have been raised regarding how the technology and technical know-how will be used during, and, more importantly, after the Olympics. Beijing has committed itself to a "People's", "High-Tech", and "Green" Olympics, yet current and ongoing practices have demonstrated otherwise. These practices include continued crackdowns on freedom of expression, a widening gap between urban and rural development and forced evictions to venue construction.

The Beijing Olympics provide foreign governments, the business community, civil society, and the IOC with a unique opportunity to step up to their responsibilities. The panel presented key leverage points for ensuring that human rights and democracy are not undermined by the inevitable technology transfers occurring in the lead-up to the Olympics.

b. The Tibet railway & and regional military applications

As the longest and most elevated railway in the world, the Gormo-Lhasa Railway requires advanced engineering technology in its construction and operation. GSM-R wireless communication standard is expected to be employed on the railway, which will play a strategic role alongside the construction of an oil pipeline in Tibet.

The railway has profound implications for China's domestic and international security strategies. The GSM-R itself integrates three system technologies to provide one of the most precise location-tracking systems available. Meanwhile, China's Second Artillery has already deployed over 100 nuclear missiles along the railway. In short, the railroad will open previously unrealized strategic, tactical and conventional possibilities for the People's Liberation Army (PLA) to direct military firepower across South Asia and beyond.

c. Promoting the rule of law in China's new economy

China views the meaning of "rule of law" differently than it is commonly understood in democracies. In China, law is used to punish dissidents but rarely protects those who are most vulnerable. China lacks an independent judiciary, the presumption of innocence and adequate access to legal defence. Prisoners of conscience are generally assumed to be guilty.

Nevertheless, there are various means of maintaining dialogue with the Chinese government on the rule of law. Possible activities include funding law programmes, technical assistance programmes and general exchanges in the form of seminars. Packaging, partners and place remain central in using strategic opportunities to build the rule of law in China. Meanwhile, contrary to popular belief, there is a lack of empirical evidence showing that economic growth alone creates more opportunities to advocate democracy in China. Bilateral human rights dialogues with China have also had limited success in terms of the fulfillment of its human rights treaty obligations and, therefore, other multilateral approaches should be pursued and enhanced.

Panel 3: Strategies and processes for policy coherence

As innovation of ICTs often outpaces export controls, ensuring policy coherence with human rights is increasingly difficult. The first afternoon panel examined legislation, safeguards and other policies designed to ensure that trade in ICTs complies with the human rights obligations of the exporting country.

a. The UN Norms and human rights impact assessments

The UN Norms were developed by the UN Sub-commission on the Promotion and Protection of Human Rights and adopted in 2003². The advantage of the Norms is that they draw upon international law and outline obligations drawn from all major human rights treaties. Among the weaknesses of the Norms are their non-binding nature and lack of government support.

The goal of "Human Rights Impact Assessments" (HRIA) is to prevent human rights violations caused by international investment policies or programmes. The Rights & Democracy HRIA project is based on the UN Norms and driven by civil society groups. At present, five case studies are underway. One case study examines the export of ICTs to China, specifically in relation to the Gormo-Lhasa railway³.

² For full text of the Norms:
[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument)

³ For more information on the Human Rights Impact Assessment project, visit www.dd-rd.ca

b. Building business strategies around ethics: Opportunities and challenges

There are many benefits and opportunities for corporations developing business strategies around ethics. In China, opportunities exist for ethical business practices and specifically for internet content providers that have developed anti-censorship technology.

c. Privacy Legislation, pressures and direction

Privacy legislation and instruments have had limited success in regulating trade in surveillance technology. Privacy laws do not address security and surveillance equipment per se, and most hold exemptions for issues related to policing and national security. Several multilateral instruments and processes exist, including the EU Directive, the OECD guidelines, the APEC Guidelines, the Conference on Data Commissioners, and the ISO Standardization Processes. A Privacy Impact Assessment process being developed by the Canadian Standards Association could act as a safeguard against the export of surveillance technology.

Current challenges to developing privacy legislation include a lack of leadership in Western countries, a lack of oversight models, and ‘carve-outs’ for national security and anti-terrorism trends. Opportunities include the debates around the Arar Commission findings, “lawful access” legislation, the Cybercrime Convention, as well as the review of the Canadian Privacy Act. In addition, two conferences will take place in Montreal in 2007 that will address privacy concerns⁴.

d. Multilateral safeguard mechanisms

Multilateral trade and investment liberalization has itself reduced the interest and capacity of states to distinguish between recipient countries when exporting dual-use technologies. Still, while the actual legal nature of extraterritorial human rights obligations is still a debate within UN circles, many would argue that in promoting the export of dual-use technology to non-democratic states, governments risk complicity with human rights treaty violations. Although there may not be any actual intent by such governments or corporations to facilitate human rights violations, their failure to conduct due diligence in the face of a reasonable expectation of human rights abuse is cause for serious concern and must be addressed.

The EU adopted a Code of Conduct for Arms Exports in 1998 which makes special reference to human rights concerns including specific references to international human rights instruments including the Universal Declaration on Human Rights and the International Covenant on Civil & Political Rights. The Organisation for Security and Co-operation in Europe’s *Document on Small Arms and Light Weapons* also makes reference to human rights and requires states to consider proposed exports of small arms in light of the respect for human rights and fundamental freedoms in the recipient country. While surveillance and security technology may not be considered as “small

⁴ The *Computers, Freedom and Privacy Conference* and the *International Conference on Data Protection and Privacy Commissioners* will be held in Montreal in 2007.

arms” in the conventional sense, their military applications are clear and therefore relevant when designing export control regulations.

Alternately, States may wish to consider the adoption of an "open grid" system promoting cooperation rather than competition. Such a system could decrease tension that fuels the arm race, leading to greater global stability.

e. National level policies (export control legislation)

In Canada, export controls are driven by policy-level considerations based on security-related criteria. The objective of export controls in Canada is to assure that Canadian technology will not be problematic in terms of human rights violations or security threats. At the same time, care must be taken that export controls do not negatively affect competitiveness and harm business.

In Canada, the control list is developed through participation in the Wassenaar Arrangement. The Wassenaar process revises its list of dual-use technologies and munitions annually and Canada complies with its recommendations. Other military products or technology exported from Canada require a permit that is evaluated on a case-by-case basis (with some exceptions) using human rights and other criteria. While there is no policy of embargo, an area control list exists.

Panel 4: Technology as a catalyst for the promotion of human rights & democratic development

ICTs can be instrumental in promoting human rights and democracy. ICTs have created new opportunities for civil society collaboration both within and across borders, while fostering conditions for the realization of human rights and strengthening of democracy. The final panel of the day was devoted to providing examples of innovative uses of ICTs.

a. HRIC's E-Activism Project

The HRIC E-Activism Project links state-of-the-art technology and human networks to create a virtual public space and open information commons to empower the rising civil society within mainland China. Each week, an e-newsletter consisting of news gathered from websites blocked from mainland access and subscriber-submitted articles is successfully sent in past the firewall. The e-newsletter includes a proxy link allowing recipients to access the uncensored Internet, and additional technology to empirically track receipt of the email.

By assessing the project through interconnected quantitative and qualitative factors, HRIC is now able to better map how and where users are accessing the Internet and obtaining information. The project continues to evaluate alternative means to evade sensors while analyzing incoming statistics. Questions to address include how to expand access to the “most vulnerable groups” and others in controlled computing environments.

b. Internet Anti-censorship for the Voice of America and Radio Free Asia

Since discovering that broadcasts on shortwave frequencies were being blocked by the Government of China, Voice of America (VOA) and Radio Free Asia (RFA) have been developing technical solutions to bypass censorship. A team of Chinese-speaking technicians has managed to create a stable programme of sending millions of emails with VOA and RFA news to China every day. From the proxy links provided in the emails, users are able to access the Internet. Technicians are currently evaluating other means of using technology to disseminate information and promote free speech.

Conclusions and areas for follow-up

As a result of the discussions, participants understood that the issue of international trade in security and surveillance technology is multi-layered and can be approached from a variety of perspectives. While there was no ambition to create a follow-up work program related specifically to this meeting, some areas of common interest surfaced for possible future collaboration. These included further work on internet censorship and internet advocacy, monitoring of State support to the ICT sector, application of human rights impact assessments to specific export priorities and review of national export control processes.

In addition, several events were highlighted as important opportunities for the human rights community. These events include the UN World Summit on the Information Society (Tunis, 2005), the Computers, Freedom and Privacy Conference (Montreal, 2007), the International Conference on Data Protection and Privacy Commissioners (Montreal 2007) and the Olympic Games (Beijing 2008).

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Rights & Democracy (*International Centre for Human Rights and Democratic Development*) is an independent Canadian institution created by an Act of Parliament. It has an international mandate to promote, advocate and defend the democratic and human rights set out in the International Bill of Human Rights. In 2001, Rights & Democracy published a report entitled *China's Golden Shield: Corporations and the Development of Surveillance Technology in China*, which looked at the involvement of Canadian business in the provision of surveillance technology to China. In 2004, it

published the follow-up essay *Human Rights at Risk on the Cyber-battlefield*.
<http://www.dd-rd.ca>

Human Rights in China is an international non-governmental organization engaged in research, education and advocacy. HRIC is currently in the second year of a three year pilot Internet Project that links cutting-edge technology solutions with existing activist networks in China to create uncensored pathways of information flow. HRIC has recently published *Human Rights and SPAM: A China Case Study* as part of the Center for Democracy and Technology's *SPAM 2005: Law, Policy and Technology* publication. The case study analyzes the potential implications of spam technology on human rights, and also includes a framework for developing best practices for IT companies doing business in China. <http://www.hrichina.org>