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More than just talk? A Literature Review on Promoting Human Rights through Political Dialogue

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Introduction

This literature review on human rights promotion through political dialogue is specifically on all aspects of bilateral relations that form part of Norwegian country-level dialogue aiming to promote human rights. Political dialogue is not limited to those countries with which Norway has a formalised human rights dialogue; human rights dialogue is part of a broader canvas of bilateral political dialogue. The review will not be discussing Norwegian policies in multilateral fora (as for instance the Universal Periodic Review mechanism) and individual aid interventions unless they are tied to an on-going human rights dialogue. As will be argued in the course of this review, political dialogue on human rights can be construed as an alternative to policies in multilateral fora, in particular the main UN organs on human rights. Norwegian financial support to human rights interventions was evaluated in 2011 (Norad 2011), including programme activities related to the dialogue with Indonesia, though not with the other dialogue partners China and Vietnam.

Norway has a broad engagement with a large number of countries, including support for democracy and human rights (Norad 2014). In the recent *White Paper No. 10 (2014-15)* on human rights as a goal and instrument in foreign and development policy, the White Paper reaffirms the government policy of development cooperation with focus countries, denoting long-term engagement on development including political affairs. Focus countries include countries in development on the one hand, and vulnerable (fragile/failed) countries on the other. Different policies and instruments apply to each category, depending on the solidity of institutions, poverty levels, presence or absence of armed conflict. For the former group, the developmental potential is obviously higher than for the latter where institution- and peacebuilding is of higher urgency. Norwegian engagement in focus countries is broad and long-term and political dialogue forms one element of this engagement. An article in *Bistandsaktuelt* finds that the human rights situation has generally worsened in most of the focus countries (Speed 2015), which would seem to necessitate political dialogue on human rights among other concerns.

Secondly, Norway may be engaged in countries that do not enjoy the status of focus country, but because of investments and the presence of Norwegian corporations and business enterprises. If these are public sector corporations or corporations with significant public ownership, the Norwegian state has a responsibility to ensure that the corporations act in accordance with the UN Guiding Principles on Business and Human Rights, the so-called Ruggie Principles (United Nations 2011).

Thirdly, Norway has a formalised human rights dialogue with a few countries. At present, Norway is conducting three human rights dialogues with China, Indonesia and Vietnam. The one with China has been dormant since the Nobel Peace Prize was awarded to the dissident Liu Xiaobo in 2010. There are many other on-going human rights dialogues, of course, conducted in particular by large international actors such as the European Union and the United States, but also bilaterally by Australia and Canada, to mention only two.

The primary purpose of this review is not to assess the Norwegian dialogues *per se*, but to assess to what extent political human rights dialogue contributes to better human rights performance generally. The purpose is to examine written sources on the dialogues in Norway and elsewhere. Informants were contacted to fill in gaps in the literature. Dialogues may include (1) agreement-based dialogues, (2) human rights dialogues among like-minded states,

(3) bilateral political dialogues and (4) structured human rights dialogues. The first relates to EU agreements and is not subject to discussion. The second type of dialogue takes place at the multilateral level, but this review is primarily on bilateral relations. The third is on bilateral relations and therefore is of high relevance to this review. However, there is a paucity of written sources in the public domain and following up this type of dialogue will require resources beyond the purview of this review. The fourth is on structured human rights dialogues and as the source material is more easily available, they constitute the focus of attention for this review.

Substantively, the review has sought to provide answers to the following set of questions:

1. What is a political human rights dialogue? What are the intention and rationale underlying this type of engagement and what does it seek to accomplish? How and by whom is it initiated? Is conditionality involved? How does a human rights dialogue differ from aid conditionality and tougher measures such as sanctions? What is the comparative advantage of political human rights dialogue relative to other procedures?
2. How can the effectiveness of political dialogues be gauged? Is it by acknowledgement of the issues, political commitments, legislative changes, policy statements and/or administrative enforcement on the part of the targeted party? How can attribution be established, i.e. isolating the effectiveness of political dialogue from multiple other intervening factors over time?
3. What are the procedures for political dialogue? Confidential or open? Which dialogue party may raise topics and which one is expected to respond? Are minutes taken from the deliberations and are the results communicated to the general public? What are the (dis)advantages of confidentiality vs. openness?
4. How comprehensive or specific is the dialogue? Does it attempt to cover a wide range of rights or does it confine itself to a select few? Which rights are selected for dialoguing and what are the selection criteria? Are there common issues across the dialogues with specific countries or do the issues vary from one dialogue to another?
5. Who are the participants in the dialogues and at what level? Only diplomats or acknowledged experts within specific fields of human rights? Do domestic CSOs play a part? Public officials, academics, interest groups, and ordinary citizens?
6. What types of activities are organized in addition to the political dialogue? Does it involve development aid or technical assistance? What types of aid/cooperation are offered, and how do these activities play into the political dialogue?
7. What is the time horizon of political dialogue? Are there benchmarks to be reached within a specified period of time or are the dialogues open-ended with no specific completion date? What results can realistically be expected?
8. What conditions are conducive to political dialogue? Under what conditions can success be expected? Does success presuppose parity among the partners? Is it a one-way or reciprocal exercise?
9. What lessons can be drawn so far? How can political dialogue contribute to better human rights observance as compared to other contributory factors?

Methodology and structure of the review

The list of countries with which x number of donors have or have had a bilateral dialogue could potentially be very long. Selections have to be made, based on the availability of relevant material. Furthermore, as this is a *literature* review, the material has to be publicly available in one way or the other. Bilateral political dialogue may be held under confidentiality to the effect that the public at large has very little knowledge of what has happened and what came out of it. Therefore, access to internal material is highly limited. The accessible information from public sources may be incomplete and only permit cursory observations.

The review has been structured in response to the above set of questions and has drawn upon available literature in order to provide answers. This set of questions forms the various sections of the review. All questions may not have not been answered fully or exhaustively but the available literature, including so-called grey material, has a least provided partial answers and suggested avenues for further investigation. A serious constraint is confidentiality clauses on internal memos that might exist.

Question 1 concerns the various definitions of human rights dialogues. Four definitions are given and explained, including structured human rights dialogues. Question 2 looks at the role of human rights dialogue as a tool for the promotion of human rights. There has been a considerable growth in recent years in academic literature on human rights commitment and compliance and on explanations for the degree of compliance. Models and methods have been devised to assess progress towards better performance.

Question 3 is about the procedures for human rights dialogues. Openness vs. confidentiality touches on quiet diplomacy vs. public accountability. If the dialogue is quiet, negotiations may be easier, but results may not be communicated beyond those directly involved. Question 4 focuses on the contents of the dialogues. To some extent this question also touches on the purpose of the dialogues and the uneasy borderline between political and technical issues. Focusing on specific rights may make it easier to reach results than applying an all-inclusive approach in which everything is of equal importance. Question 5 is about the participants to the dialogue. Broad participation makes for a more inclusive approach and, together with a narrow focus, may result in a less politicized and more technical process that may be congenial for success. Dialogues usually include bilateral political consultations as well as thematic working groups. Question 6 is on technical cooperation and the review makes the point that tying political dialogue to an aid/assistance package is likely to produce positive results if capacity constraints rather than lack of political will are among the main impediments to progress in terms of human rights performance. Question 7 is on the time horizon and the review argues that time is important in order to measure progress against benchmarks and objectives. It should be acknowledged, however, that politics does not necessarily conform to the time schedule of a conventional development project. Rather, politics has its own logic that may be highly unpredictable. On the other hand, if the dialogue is too open-ended, partners may lose patience and increasingly doubt the utility of the entire exercise.

Finally, the answers to questions 8 and 9 allow some preliminary conclusions. Question 8 is about identifying factors that may be conducive for a successful dialogue and the review makes the point that a successful dialogue is very much dependent on domestic mobilisation

and on a regime type that is democratically accountable to its population. Question 9 is about experiences and learning. Positive results may be a reflection of favourable initial conditions and may provide learning experiences for later interventions. Positive outcomes may result from a constellation of conditions. The analytical task of specifying how much is attributable to political human rights dialogue is not easy. There is no clear-cut evidence to support the claim that private dialogue is more effective than public statements. Yet most are in favour of dialogue independently of its effects.

Data collection

As can be seen from the select bibliography in the Annex, there is hardly any book-length discussion of human rights dialogues. Kitzelbach's work on the EU-China dialogue is the first of its kind (Kitzelbach 2014). Otherwise, there are scattered journal articles and official public statements of various sorts, usually from the legislative and executive branches of government. The data collection was largely dependent on what can be found online, particularly with regard to so-called grey literature. As said above, the review has not had access to memos, minutes and other internal material at ministries here and abroad which leaves a gap in knowledge about political dialogue at the field level, particularly with regard to development partners. The review has drawn upon academic literature that situates dialogue as one tool alongside others that may contribute to better human rights performance.

What is a political human rights dialogue and what is it for?

A political dialogue can be multi-faceted and take different forms, depending on the context and purpose. In the case of the European Union, an EU Council paper points to four different categories (Council of the European Union 2008: 2ff.). Briefly summarised by Kitzelbach, the dialogues can be summarised into four main categories: agreement-based dialogues; dialogues among like-minded at multilateral fora for coordination purposes; ad-hoc dialogues as part of general foreign policy; and finally, structured human rights dialogues (Kitzelbach 2010: 6ff.). While agreement-based dialogues are typical of multilateral organisations, including the EU, the other types are also applicable to bilateral state-to-state dialogue, in particular the third and fourth category. The following describes the main categories of dialogue, inside as well as outside the EU. The second category falls outside the scope of this review as the focus is on bilateral relations.

First, there are *agreement-based dialogues* of the European Union. This category is broad, comprising candidate countries, neighbourhood policy, relations with Asian countries, but most relevant for this review, the agreements with the ACP countries. This policy dates back to an EC resolution in 1986 when the question of fundamental rights was extended from the candidate countries to the countries receiving aid. In 1991 a Council of Ministers resolution specified the elements of a package of support for democracy and human rights. For the ACP countries, the first versions of the agreements had no specific reference to democracy and human rights. The EC attempted to insert a paragraph about *policy dialogue*, but this was perceived by the cooperation countries as political interference and as an attempt to bring in conditionality, ie to make aid disbursements contingent on certain conditions to be met. With Lomé IV, the duration of the agreement was doubled (from five to ten years) and secondly, a

long clause on human rights was inserted and it was opened up for direct support to local organisations in a conscious effort to decentralise aid. The renegotiation of Lomé IV in 1995 and its Cotonou follow-up in 2000 continued this process and the Commission made a move to link human rights to democracy and rule of law, upgrade these to *essential elements* and introduce a suspension clause. Human rights is an essential element in the Agreement, meaning that if serious human rights violations are perpetrated in an ACP country, a political dialogue is set in motion through the application of Article 8 of the Agreement and Article 96 providing for consultations. At this point, there was no opposition in principle from the ACP group. Instead, the group wanted the procedures for using the suspension clause (Article 366a) to be clarified. In return for having accepted the suspension clause, the ACP countries managed to insert a consultation procedure in the revised agreement text.

In the negotiations for the Cotonou Agreement, a vexed question was whether *good governance* should qualify as an essential element as many ACP negotiators found the concept too vague and subjective to be clearly defined and even-handedly applied. In the event, it was not named an essential element as proposed by the EU, but instead became a so-called *fundamental element* and the application of the term was limited in the sense that “only serious cases of corruption, including acts of bribery leading to such corruption” would count as a violation of this element. Though the ACP states have been reluctant, they have nonetheless accepted the elements in exchange for a consultation procedure that allow them a degree of influence on decisions made.

In all cases for consultations, the initiating partner was not unexpectedly the EU, but the reasons for initiating the procedures may vary from case to case. A common reason for a number of countries was a coup d'état. Another reason was a flawed electoral process, but electoral processes may often be an integral part of the effort to restore regime legitimacy after a coup. For some countries, there was a more complex situation as human rights, democratic principles and rule of law (Zimbabwe) were all contributing factors for EU action. In general, the EU has not taken the Art. 96 (consultation)/Art. 366a (suspension) procedure to address deeper and socially embedded problems of human rights. Its main concern, to judge from the case material, has been with the breach of democratic principles. Looking at EU remedies, in the coup d'état cases, resumption of the electoral process by appropriate arrangements was a common remedy, in some cases coupled with judicial reform and other rule of law initiatives. The Zimbabwe case constituted a “difficult” partnership where sanctions have taken the place of positive inducements. The EU policy in these cases is to continue the dialogue, not to terminate the partnership.

The sanctioning measures undertaken usually consist of reductions or suspension in general aid transfers and other arrangements assumed not to be of direct benefit to the population and targeting of aid to address the particular issue(s) and continuation of humanitarian and related types of aid “directly” benefiting the population or parts of it. In cases of conflict or post-conflict situations, EU assists in peace-building operations. As for positive measures, EU supports promotional activities aimed at restoring and improving democracy and human rights and these types of incentives have assumed more importance recently.

The ACP group saw Art. 8 on political dialogue as a prelude to Art. 96 consultations and not as a preventive tool. This scepticism was not entirely unwarranted despite the procedure that both parties can initiate Art 96 proceedings. In the spirit of partnership the ACP group wanted

to make the initiation of Art. 96 consultations a joint decision by both parties and brought it up in the Cotonou revision negotiations in 2005. However, the EU rejected this proposal, saying it would rob the article of its purpose and opted instead for “intensified dialogue” under Art. 8. As the EU is practically the only party to invoke Art. 96 proceedings, agreeing to a joint decision would probably tie its hands more than thought desirable, even though the asymmetry of relations would thereby be somewhat mitigated. The ACP group does not dispute the value of political consultations, but they would like a stronger hand in how these consultations are conducted. The documentation providing the basis for consultations is usually formulated by EU officials and not jointly with ACP partners. While the ACP group is pleased with the leverage given in political dialogue and has no major problems with the Cotonou agreement as it stands, it remains the case that the definition of essential elements and their parameters and indicators rest with the EU and the power to impose sanctions on those that do not abide by them.

From the inauspicious beginnings in the Lomé Conventions, human rights have over the ensuing period been submerged in a comprehensive governance doctrine which has not been negotiated with the ACP countries and does not have the legal groundings of the Lomé and Cotonou agreements (Third World Quarterly 2010). In 2007, the European Commission introduced the governance incentive tranche which, depending on the EC’s assessment, recipient countries may receive more aid by as much as 35%. The EC has developed the Governance Profiles (GP) as a programming tool in order to assess recipient country’s core governance issues and respond accordingly. The GP has nine (9) areas of concern: (1) Political /democratic governance; (2) Political governance/rule of law; (3) Control of corruption; (4) Government effectiveness; (5) Economic governance; (6) Internal and external security; (7) Social governance; (8) International and regional context and; (9) Quality of partnership.

As this exercise is already tied in with programming of aid, it is hard to see how a “dialogue” on governance can be free of a bundle of strings attached. The Cotonou Working Group of CONCORD found the entire process on governance to be a sham (CONCORD 2006, CONCORD 2011) and a cautious report has drawn attention to several difficulties with the Governance Incentive Tranche, not least of which is the methodology of governance indicators (African Governance Institute/European Centre for Development Policy Management 2011). The OECD Development Centre has published a study on the potential for abuse of such indicators (Arndt and Oman 2006). The Overseas Development Institute has also drawn attention to the pitfalls associated with tying performance to aid allocations (Macrae et al 2004).

The development towards more comprehensive types of governance conditionality, coupled with incentives and performance monitoring, does not bode well for a partnership based on a modicum of mutuality. In fact, it is hard to see what the ACP countries bring to the table in this domain as they to a large degree are “dialogical” recipients of whatever elements happen to be on the EU agenda at any particular point in time. Even though the opportunities are there for the ACP group to raise issues within the framework of the agreement, they have largely desisted from doing so, focussing on select issues of trade and migration. (for further details on issues raised in this section, see Stokke 2007).

Secondly, there are *human rights dialogues among like-minded states*. This type of dialogue is not primarily aimed at diffusing human rights norms to specific recipient countries, but to

coordinate action among the like-minded in multilateral fora, in particular the UN organs tasked with promoting human rights. As state actions in multilateral fora are beyond the terms of reference for this review, they are not discussed although the proliferation of bilateral human rights dialogue is very much perceived as an alternative to resolutions in public multilateral fora, such as the Human Rights Council and its predecessor, the Commission on Human Rights.

Thirdly, there may be human rights-related discussions in *regular political dialogues* between the EU and third country partners. Kinzelbach has noted in her paper on EU human rights dialogues that “human rights concerns are only exceptionally taken up in regular political dialogue” and secondly, that “the chances that human rights issues get discussed in any great detail at the political level seem to shrink rather than to grow once a dedicated human rights dialogue is set up (Kinzelbach 2011: 7-8). The temptation to drop human rights from the high political agenda emerges once the dialogue has been delegated to the technical expertise on both sides and thus to some degree de-politicized. Australia has for a number of years conducted a political dialogue with Indonesia. While that dialogue covers a range of subjects, not least the economy and trade, human rights do not feature among them (Australian Government 2015). However, judging by recent events, the dialogue is currently in the doldrums, due to wrangling over burden sharing of refugees and the execution of two Australian nationals in Indonesia (Sydney Morning Herald, 29 June 2015). While there is (or was) a political dialogue, there has not been a human rights dialogue which might seem somewhat odd given that the two countries are next-door neighbours (and given that remote Norway has one), but it could be precisely because they are neighbours.

Political dialogue is also a tool in bilateral aid relations between donors and recipients, usually applied when something has gone wrong. The standard procedure is, as outlined by Anna Lekvall, that the Minister of Foreign Affairs, or some other official high up in the ministerial hierarchy, meets with a group of ambassadors from Western countries at the MFA offices or at equivalent locations. The donor side brings a list of concerns to be aired at the meeting, covering human rights abuses, corruption, electoral fraud and suchlike. The recipient side would note the concerns, reconfirm the government’s commitment to democracy and promise to look into the matter. At the next meeting new concerns will be aired to replace the old ones, without checking whether any follow-up action was taken on previously aired concerns.

As Anna Lekvall has observed, “(p)olitical dialogue seems to be a forum for continually bringing up new concerns, but they were seldom dealt with or resolved. It was not really a dialogue; it was more a listing of issues of which the senior leadership was well aware. For the partner government, the meetings served as a temperature check on donors, checking how concerned they are” (Lekvall 2013: 81). Lekvall doubts “whether a general dialogue is as important as some donors seem to think. The risk is that it becomes a smokescreen – it looks important but replaces more fundamental efforts to strengthen democracy.” (Lekvall 2013: 81) In her view, there is a risk of loss of credibility, both in the eyes of the partner government as well as the domestic constituency. This is so because “the closed format of political dialogue means that local parliamentarians, the media, social partners and political parties are not included.” (Lekvall 2013: 82). Under the circumstances, it might be imperative to maintain good relations with the recipient government to keep development projects running and aid dispersals flowing. This highly ritual exercise seems to run against some basic principles of democracy and inclusiveness, not uncommon in the world of diplomatic

relations. Lekvall finds that it is safer for donors to stay in the comfort zone of established protocols of state-to-state relations, spending time in coordination meetings with other donors in the capitals of recipient countries.

At a deeper level, it attests to the difficulties of development aid coming to terms with the messy world of politics. To ensure results, technocratic and mechanistic procedures within a monstrous bureaucratic set-up are introduced, such as Performance Assessment Frameworks. In Mozambique, there are reportedly 29 sectoral and thematic working groups meeting regularly to assist in formulating and implementing government policy. As Lekvall argues, “(s)chemes seem on paper to be clear, concrete, controllable and politically neutral, but they risk becoming quite mechanistic monitoring and reporting activities, and may say little about the real political dynamics”. (Lekvall 2013: 83).

Human rights are singularly political in nature, but they require a change of perception of the role of politics in development cooperation in order to be taken seriously. That change came in the post-Cold War atmosphere of the 1990s. With the positive changes associated with the end of the Cold War, and as democratic regimes replaced authoritarian regimes, the time was opportune for rethinking how human rights problems would be handled in the 1990s (Weiss 1995). As stated by two analysts: “While these governments were far from perfect in their human rights performance, their human rights problems were often a result of poor state capacity (such as weak legal systems) rather than malign intention. Thus aiding these governments to protect human rights, instead of ‘naming and shaming’ them on human rights deficiencies, became an important avenue of work for the human rights community, further adding to the new, more political mix of developing priorities” (Carrothers and De Gramont 2013: 62).

The shift from ‘naming and shaming’ to aid and assistance is evident in justifying the emergence of human rights dialogues in the 1990s. The fourth and final component is thus *structured human rights dialogues*. They constitute a separate course of action from initiatives in multilateral fora, primarily concerned with proposing and adopting resolutions in UN human rights organs. It is not entirely clear why and when one course of action is chosen instead of another. Public and quiet forms of diplomacy coexist, but shifting to quiet diplomacy signifies a belief that more can be accomplished by this discreet course of action. Even though the power asymmetry is less evident in human rights dialogues than in agreement-based dialogues where the threat of sanctions is never far removed from the negotiating table, the agenda is still pre-defined by one of the parties, usually the one who initiates the dialogue. While the dialogues are supposed to be reciprocal, more time is spent on human rights concerns in one of the parties than in the other.

Political dialogue only works up to the point when aid providers get sufficiently frustrated and have few other options except to resort to the familiar conditionality tool of aid cuts (Carrothers and De Gramont 2013: 109). The threat of sanctions is regarded as more effective than political dialogue as a tool in itself. They find that “(s)electivity and conditionality allow donors to establish some redlines of undemocratic activity they are unwilling to tolerate and has resulted in some new money for high-performing developing countries. But overall these measures have fallen short of any major shift in using aid to support and stimulate improved political performance.” (Carrothers and De Gramont 2013: 109).

Politically motivated aid tends to fall into three categories; (a) support for the reform of state institutions (ministries, legislatures, judiciaries); (b) civil society development (NGOs, but also media, trade unions, business associations); and (c) support to core democratic political processes (elections, political parties). However, as Carrothers and De Gramont (2013: 111) observe, selectivity in allocations tends to reflect geopolitical preferences. Hence, the US allocated USD 597 million for Afghanistan, USD 229.5 for Iraq, but only a paltry USD 0.5 million for Malawi in fiscal year 2011. Sectoral distribution is similarly skewed; public sector administration and legal and judicial development received close to 30 per cent of official DAC aid in 2009; parties and legislatures on the other hand just one per cent. While parties and parliaments are core democratic institutions, the perception among donors seem be that they are just a little bit too political, certainly more so than public administration. Adding democratic to governance is like adding politics to administration.

Nonetheless, political aid emerged in a big way in the 1990s and onwards, yet Carrothers and De Gramont see it as a half-way house, as the ‘almost’ revolution. The conception of governance has been broadened from stressing administrative effectiveness and efficiency to including the citizenry at large and stressing government accountability, but promoting democracy *per se* is not seen as a priority overriding development objectives and may meet with resistance from less than democratic regimes. However, with aid agencies subsumed under Ministries of Foreign Affairs in several Western countries, aid is increasingly entangled with foreign policy objectives and recipient countries are hence seen in a wider context than hitherto. On the other hand, competence in adapting political aid to local development contexts may be less evident among diplomats than among aid practitioners who may have years of experience from local development work.

In sum, human rights can be promoted in a number of ways. In this section, I have listed four: (i) agreement-based dialogue such as the Cotonou Agreement; (ii) sponsoring resolutions in multilateral fora such as the UN Human Rights Council and taking part in the Universal Periodic Review process; (iii) country-level political dialogue at the diplomatic/ambassadorial level; and (iv) structured human rights dialogues at both diplomatic and expert levels. Political dialogues do not have to be official. Norway has sponsored for many years the Nansen Dialogue Network which works in the independent states of former Yugoslavia with the objective of promoting reconciliation and peace-building and institutions for integrating diverse ethnic communities (Devine, Nikolic and Stokke 2008). This is a case of foreign policy by proxy in that the Norwegian government pursues foreign policy objectives by sponsoring NGOs. The Network is also active in Palestine and Somalia, which happen to be among the new focus countries.

Having described so far the various means of promoting human rights through dialogue, we need to get a clearer view of what can be accomplished and how to assess and measure progress along this route.

The role of dialogue as a tool for promoting human rights

In this section I turn to political science literature to see whether bilateral political dialogue is treated as a tool in the promotion of human rights. There has been a significant growth in the literature on human rights in recent years, combining sophisticated quantitative analysis with

careful case studies. Alison Brysk has studied the characteristics of global good Samaritans, states that pursue what one may call an altruistic foreign policy, or alternatively a value-based as distinct from an interest-based foreign policy, but one that also takes liberal positions in matters of domestic policy, as for instance the admission of refugees and asylum seekers. Among the states studied, we find Canada, the Netherlands and Sweden. Norway was not selected for scrutiny, but it is reasonable to assume that it belongs to the aforementioned group of like-minded countries that are coordinating and taking similar positions in multilateral fora.

With regard to dialogue as a tool, Brysk notes that “at a bilateral level, Sweden is known historically as the undiplomatic critic of international injustice. Despite a notable domestic preference for dialogue and international contribution to mediation efforts, Sweden has repeatedly and forcefully criticized chronic violations and pariah states.” (Brysk 2009: 43). Furthermore, Sweden has appointed a special human rights ambassador lodged in the international law section of the Ministry of Foreign Affairs who participate in bilateral development dialogues with politically challenged aid recipients such as Vietnam and Laos, but also with rights violators when they are engaged in direct trade and diplomatic negotiations with Sweden. Among the Samaritans, Sweden sets the gold standard, and it might be added, even among its Northern neighbours.

Canada, billed as the other America, has funded Rights & Democracy which was set up by the Canadian Parliament in 1988 to work as an internationally oriented human rights agency fully funded by the Canadian government, not unlike similar institutions in the Nordics and the Netherlands. However, due to political differences over the funding of Palestinian organisations, it was scrapped by the conservative government in 2012. Canada took part in a number of sanctions in the 1980s, but became more selective in the 1990s. Following the precept of “principled pragmatism”, coined by Foreign Minister Lloyd Axworthy, Canada eschewed trade restrictions in exchange for human rights assistance. A bilateral dialogue was started with China in 1997 and as a *quid pro quo*, Canada abstained from supporting a condemnatory resolution in the UN Commission on Human Rights against China. Canada also funded the National Human Rights Commission in Indonesia concurrently with conducting a human rights dialogue with that country. However, stronger criticisms of China were voiced by the conservative government of Stephen Harper in 2006 and later years, despite objections from Canadian business circles. Together with Sweden and the Netherlands and other mid-level powers, Canada is ardently multilateralist in its posture.

The Netherlands follows the trend of like-minded countries by targeting a select group of countries, such as China, Iran and Indonesia, with mixed results. Some progress has been noted with Iran and Rwanda, although less so with China, not least due to its importance as a trading partner. As a mid-level power, Dutch foreign policy is strongly aligned with that of the EU, including participation in EU dialogues with China and others. But, leverage appears to have declined over the years, particularly with regard to China, but some successes have been registered with Iran and Rwanda (Brysk: 129f.).

Emile Hafner-Burton who has written extensively on the human rights system does not deal specifically with dialogue as a promotional tool except to note that dialogue is a form of persuasion and is liable to work best in systems of democratic accountability. Dialogue as a tool is not discussed with reference to foreign policy, but to the propensity of domestic

governments to accept international treaty-based legal obligations. The alternative to persuasion is coercion or the threat of sanctions in cases of non-compliance with legal obligations. (Hafner-Burton 2013). Goodman and Jenks also link dialogue to persuasion, not as a foreign policy tool, but for diplomatic dialogue in multilateral fora on the condition of unrestricted membership. Open membership may provide the space for open debate and dialogue pushing towards progressive realization of human rights. Their argument is that socialization or acculturation mechanisms have a stronger role in securing compliance than material inducements and persuasion (Goodman and Jenks 2013). Beth Simmons in her magisterial study of human rights or the relationship of international law to domestic politics does not accord any functional role to dialogue, neither as a foreign or domestic policy tool (Simmons 2009).

In sum, dialogue, whether unstructured or structured, does not seem to play a particular role in explaining why states opt to conform or comply with international human rights treaties. It does not mean that it has no role to play, however, only that it carries little weight as an explanatory variable. Even so, a model may enable us to say something about accomplishments or progress towards better human rights compliance. It establishes yardsticks along the route to conformity with legal obligations. This is the so-called 'spiral' model which, as its title indicates, models progress along a path. Whether the assumptions underlying this model fit with the dialogues remain to be seen, but it has been used in evaluating the efficacy of structured human rights dialogues (Risse et al 2013). The model posits five phases. It should be borne in mind that it deals with a small subset of rights, specifically civil liberties. Secondly, it presumes a scenario in which transnational advocacy networks exert a double pressure on states. International or external networks put pressure from above in combination with domestic oppositional groups. From an initial state of (1) repression, pressure from the outside results in (2) denial whereby the target state rejects the validity of human rights norms and insists on the principles of sovereignty and non-intervention. Continued pressure from outside results in (3) tactical concessions and thereby a shift in the position of the target state from outright denial to the granting of some concessions. Further pressure, not least from a stronger domestic opposition, results in policy change or regime change, granting human rights (4) prescriptive status and conceding the validity of human rights norms for domestic law and policy. Finally, (5) rule-consistent behaviour signifies full compliance with human rights in law and practice, and network pressure subsides as a result.

The crucial phase in this process is the move from phase 3 of commitment to phase 4 of prescriptive status. Commitment means that "actors accept international human rights as valid and binding for themselves" (Risse et al 2013: 9). Granting rights prescriptive status (4) is an output of commitment and rule-consistent behaviour is an outcome of commitment. By compliance is meant sustained behaviour and domestic practices that conform to international human rights norms (Risse et al 2013: 10). Commitment and compliance can be seen as opposite ends of a continuum and the objective of a human rights dialogue is nudging the partner along this continuum. If the process stalls at phase 2, then there is not much to talk about and the dialogue will come to an end.

Würth and Seidensticker have specified levels along this continuum from commitment to compliance. On level 1, the outputs are "ratifications, including considerations of reservations to treaties and acceptance of individual complaint mechanism." On level 2, the output is

“legislation of human rights in national constitution and legislation.” These two levels are indications of human rights having been granted prescriptive status. Moving on to level 3, the outcome of levels 1 and 2 is “implementation of human rights treaties by local institutions and policies.” The outcomes of level 4 are “permanent guarantees for human rights: reduction of the number of human rights violations; mandate and functioning of governmental and non-governmental human rights institutions/organisations; functioning of mechanisms for redress” (Würth and Seidensticker 2005: 17).

The further we move along the continuum, the harder it becomes to determine impact. However, we presume that changes in levels 1 and 2 will produce changes in levels 3 and 4, but the time horizon may be impossible to specify in advance. Würth and Seidensticker make the sensible observation that technical cooperation packages should focus on changes on level 3, having to do with implementation of domestic legislation. Another goal of the political human rights dialogue may be to push for progress on levels 1 and 2. In any case, results on different levels represent different goals. In their view, dialogue on promoting a human rights policy combined with a relevant technical cooperation package is in certain situations “the more appropriate and effective instrument than pressure by resolutions”, but that may only apply to states having reached level 3 and thus demonstrating a certain degree of political commitment. (Würth and Seidensticker 2005: 15)

Measurements of results become progressively more difficult the further the process moves along the continuum. For levels 1 and 2, benchmarks can be set for progress on ratification of international treaties and domestic legislation and it is fairly easy to check whether benchmarks have been reached and the time frame for doing so. On the other hand, it is more difficult to measure the implementation of legislation. For level 3, performance benchmarks can be set to check whether legal changes result in changes in actual behaviour, but it helps considerably if the field is narrowed to specific human rights policies. Measuring changes in the overall human rights situation is even more difficult as indices have to be constructed along multi-dimensional parameters and ratings and weights assigned to each. Such indices are available, including the often cited indices of Freedom House, although there is a never-ending debate about the validity of such measures. Measurements are dependent on data collection being part of the dialogue process and partners agreeing on setting benchmarks for performance. This cannot be assumed *a priori*. Neither can it be assumed that the process is fully transparent and that the partners are accountable to those they represent, namely their respective citizenries. That has to do with the confidentiality of the proceedings.

Procedures for human rights dialogues: Confidentiality or openness?

Dialogue came to the fore in the 1990s as a bilateral instrument to promote human rights. This resulted from the changing political landscape emerging after the end of the cold war. As human rights were no longer stuck between the rivalry of the two major superpowers, states were freer to voice human rights concerns in multilateral as well as in bilateral fora. However, bilateral instruments, such as dialogue, were often regarded as an alternative to multilateral initiatives.

To illustrate this point, the Canadian Department of Foreign Affairs, issued a News Release on 14 April 1997 entitled “Canada decides against co-sponsoring human rights resolution on

China at UN meeting and announces bilateral package of human rights initiatives.” This was part of what Foreign Minister Lloyd Axworthy described as ‘principled pragmatism’ in foreign policy, potential contradictions notwithstanding (Webster 2011: 46). This announcement referred to a resolution on China in the UN Commission on Human Rights in Geneva. In the news release, the Canadian government said that “Canada remains very concerned about the state of human rights in China, particularly in the areas of religious freedom and political dissent (...) The government has decided, in light of the significant weakening in consensus on the resolution among its traditional co-sponsors, that it no longer carries the same weight it has in past years. Under the circumstances, we concluded that Canada could have a greater influence on the state of human rights in China by pursuing and intensifying our promising bilateral measures.” (Burton 2006: 5) In the case of the Australian dialogue, Caroline Fleay has found that “the Chinese government indicated that dialogue “talks would be contingent on Australia’s attitude towards the annual UN resolution condemning Chinese human rights abuses” and Australia has not supported any resolutions on China at the UNHCR since” (Fleay 2008: 238), taking Canada’s line in this matter.

Hence, “since 1997, Canada’s human rights policy toward China has been based on the fundamental belief that engagement, rather than isolation, will be more effective in bringing about sustained improvement in China’s human rights record. The dialogue process favours frank private dialogue over public confrontation.” (Burton 2006: 6) This statement of intent contains two claims: (i) engagement is better than isolation; (ii) private dialogue is more effective than public statements. By implication, confidentiality is better and more effective than openness. Due to the agreed confidentiality, “little is known about the substance and outcomes of the (Australian) dialogue meetings other than the officials involved, visits made to agencies with responsibilities for human rights by the visiting delegation, and lists of human rights concerns raised by Australian delegations.” (Fleay 2008: 238). As few details are known about the talks, it is well-nigh impossible to determine whether private discourse is more effective than public statements.

The emphasis on confidentiality by the Australian side has raised concern about the lack of parliamentary oversight. The Australian Parliament through its Human Rights Sub-Committee of the Joint Committee on Foreign Affairs, Defence and Trade recommended that the Chair and Deputy Chair or nominees should be invited to participate in dialogue meetings, provided that it fits with the schedules of the MPs and that it is accepted by the foreign dialogue partner. However, the International Commission of Jurists stated that the participation of Australian MPs might raise the level of participation of MPs on the opposite side, but otherwise doubted the utility of increased parliamentary engagement (Parliament of the Commonwealth of Australia 2012: 39).

The same concern applies to NGOs with an interest in the dialogues which may include diaspora groups from the specific country concerned or religious denominations hailing from that country, but based outside. While there were opportunities for NGOs to attend dialogue meetings in an observer capacity, the Australian Human Rights Commission sounded cautionary notes: “While most NGOs would be acceptable to dialogue partners there would be some that would be considered unacceptable as direct interlocutors; efforts to secure direct involvement could make the dialogues unmanageable and unfruitful; and reaching a point where Australian and overseas NGOs achieve an optimum level of involvement in the

dialogues will inevitably be an incremental process.” (Parliament of the Commonwealth of Australia 2012: 49).

The option for private engagement was justified as a supplement, not a substitute for multilateral pressure, but as Webster argues, “HRDs became an end in their own right, freezing out meaningful civil participation while serving as an excuse to avoid multilateral action – a substitute rather than in addition.” (Webster 2011: 47). The resort to bilateral instruments has not entirely obliterated regional approaches and Canada, China and Norway have sponsored so-called ‘plurilateral’ dialogues with a number of Asian countries starting in 1998, but little is known about what came out of these symposia. A technical cooperation package is attached to the bilateral human rights dialogues, a topic I will return to below. It has, as many analysts have pointed out, weakened the multilateral channel.

These dialogues are supposed to be private (and frank), but occasionally a little information leaks out and generates a bit of public controversy. The Norwegian newspaper *Aftenposten* reported last year on the political dialogue between the governments of Norway and Angola (*Aftenposten* 9 October 2015). The article related to a statement by State Secretary Morten Høglund, as reported by the Portuguese news agency *Luso*. The statement was that the human rights situation in Angola had improved, which contradicted a resolution by the European parliament saying that the situation had actually worsened. This is not the right place to investigate the truth of the matter, except to note that the Norwegian government has not made a critical public statement on the human rights situation, but resorted to a private dialogue. According to the State Secretary, making a condemnatory public statement may have removed the basis for dialogue. Whatever the case may have been, it appears to confirm the above claim that a dialogue is not a supplement to public critical statements, but a substitute. It should be added that Norway has large commercial interests in Angola related to oil drilling and production and would stand to lose from frayed diplomatic relations. This may be another example of principled pragmatism, bringing touchy issues to the table without endangering commercial and trade interests. Having so far talked about the setting of the dialogue, we need to find out what are the contents of the dialogues and in the subsequent section, who the participants are.

The contents of the dialogues

The European Union Guidelines on Human Rights Dialogues contain a large number of subjects that are raised during the structured human rights dialogues. These cover a wide range of topics: The signing, ratification and implementation of international human rights instruments; cooperation with international human rights procedures; combating the death penalty; combating torture; combating all forms of discrimination; children’s rights; women’s rights; freedom of expression; the role of civil society; international cooperation in the field of justice; promotion of the processes of democratisation and good governance; and the prevention of conflict. Under the cooperation with international human rights procedures, implementation of ratified human treaties may be included among other topics. The list shows that the topics are, by and large, pre-defined by the EU and not really the agreed result from negotiations between the parties. This is in supposed contrast to the procedures for development cooperation where topics usually are agreed between the parties in order to secure ownership with the implementing partner and thus raise the chance of success. On the

other hand, as Kinzelbach finds, “(t)he guidelines ... appear to be less inspired by development cooperation; they do not provide for a joint definition of goals.” (Kinzelbach 2009: 11)

An indication of unilateralism is the listing of ‘deliverables’, short-term outcomes that the implementing partner is supposed to deliver within a set time period. In the Afghanistan–EU human rights dialogue, deliverables are set for different civil and political rights – women’s rights, children’s rights, torture and ill-treatment, access to justice and freedom of expression. None of the above includes economic and social rights *per se* which means that the deliverables are probably not linked to any development programme. Some of the deliverables seem very broad. With respect to children’s rights, the deliverables include “AFG (Afghan Government) implementing the concluding observations and recommendations of the Committee on the Rights of the Child in regards to strengthened legal, policy and institutional framework with drafting a comprehensive Child Act and create a NAP (National Action Plan) on the protection of children.” The draft of the Act and the NAP is to be done by 2017 no less. To improve access to justice, the AFG shall “energetically drive towards reform, combat corruption and enhance capacity of the judiciary in all levels of the justice sector with a special emphasis on women and marginalized groups.” Justice reforms were supposed to be launched by September 2015, three months after the listing of deliverables was concluded (Delegation of the European Union to Afghanistan 2015).

The EU has also recently commenced a policy dialogue with ASEAN on human rights. For many years, the attitude of ASEAN countries towards human rights was one of scepticism, seeing human rights as cultural imperialism and pitting rights against the idea of ‘Asian values’, arguing that the economic rate of growth in the region demonstrated the superiority of their values. This view did not withstand the onslaught of the Asian financial crisis in the late 1990s and it was never a view fully shared by the Asian region, including the Philippines and South Korea. Gradually human rights have come to be accepted as a normative framework and with the establishment of an Intergovernmental Commission on Human Rights, ASEAN took a significant step further, though as of yet, there is no Asian regional human rights treaty, the only major region not to have one (Hsien-Li 2011, Menea 2008, Thio 1999).

Due to the long-standing cooperation among the ASEAN countries, it might be easier to design a sub-regional treaty, though the insistence on non-interference in the domestic affairs of each member country remains a hurdle against concluding a joint sub-regional treaty. The gradual opening up to human rights has made it possible to launch a policy dialogue between the EU and ASEAN. The first such dialogue identified some potential areas for bilateral and multilateral cooperation: corporate social responsibility and human rights, strengthening accessibility for persons with disabilities, child protection systems, gender mainstreaming, promoting economic rights of women, violence against women and children, rights of older persons and trafficking in persons. The latter topic, which is often transnational by nature, obviously calls for regional and interregional cooperation.

In the structured human rights dialogue between Canada and China, which commenced in 1997, a wide range of topics was addressed over the years: ICCPR, ICESCR, criminal law and treatment of the accused, minority rights, rights of women and children, CAT, freedom of religion, rule of law and independence of the judiciary, gender equity and situation of women in the workplace, conditions of detention (with focus on special concerns of women

prisoners), police training, international cooperation on human rights, labour practices, the role of the UN in the field of human rights, human rights and terrorism, HIV/AIDS and human rights, multiculturalism and non-discrimination, police violence and accountability (Burton 2006: 6f.). The topics raised were in many ways quite similar to the topics brought up in the Norway-China human rights dialogue (Kemul 2008: 10).

There was a lot of repetition of topics from one Canada-China dialogue to the next and as each session covered a wide range of topics, there was not much room to go into depth on each of them. Many of the topics raised concern about international treaties and procedures and not directly the domestic concerns of Chinese ministries and public associations. There was a shared view that the dialogues were too micro-managed by the Chinese Ministry of Foreign Affairs. The presentations were too shallow to be of substantive benefit to the Chinese Ministries and that the agenda was too wide to be of interest to each individual ministry or association that was more concerned with their practical benefit: “The problem of lack of depth and limited dissemination of the dialogue content could be resolved if the dialogues were more closely tied to follow-up technical assistance projects. This would allow the dialogues to sustain beyond the one-day meeting. The topics should be set up in consultation with the agencies of the Chinese government with mandate for domestic programming in human right-related areas. These topics should be followed up year-by-year to focus the dialogue on more practical impact that will make a difference in the actual work of the Chinese agencies involved.” (Burton 2006: 9). Examples of practical benefit to the ministries and agencies include: The promotion of the concepts of family violence and of sexual harassment in China and associated legislation; the presumption of innocence in criminal procedure law; improved management of prisons; improved policing procedures including arrest protocols; and the promotion of rule of law through foreign-funded programs for training of legal professionals including judges.

According to the Chinese MFA, however, “(t)he dialogue is “first and foremost a political/diplomatic dialogue, closely linked to the UN resolution”. These Ministries and agencies “lack comprehensive understanding of the political importance” of the bilateral human rights dialogues. It is primarily an activity of the Chinese MFA for diplomatic purposes.” (Burton 2006: 10f.). If that was the real purpose, then the question about the practical benefit for the participating agencies was obviously misplaced. On the other hand, if high-level diplomacy was the propelling factor, then some success could be noted with China signing the ICCPR and ratifying the ICESCR. But, to take a more sceptical view, these ratifications could be viewed as no more than tactical concessions.

Who participates?

If the dialogues are primarily political-diplomatic exercises, then the counterparts are foreign affairs officials, ambassadors and officials from the respective Ministries of Foreign Affairs. That seems to be the case with respect to the so-called political dialogues, usually annual meetings at the ambassadorial level. In authoritarian regimes, civil society associations are only likely to be involved if they have the approval of the government. With regard to the Australian dialogue with Vietnam, the Vietnam Committee on Human Rights, an Australian NGO, stated that “(t)here are no independent associations, trade unions, human rights NGOs or civil society organisations in Vietnam. All associative activity is controlled by the

Communist Party and the Vietnam Fatherland Front, a para-governmental umbrella body of ‘mass organisations’”. The Australian Council for International Development stated likewise that “sometimes they (China or Vietnam) would say that they have got NGOs on their delegation but we might query whether they are civil society organisations in the way we would understand civil society organisations. They are heavily linked to the government.” (Parliament of the Commonwealth of Australia 2012: 50)

In the Canadian dialogue with Indonesia (and presumably in the dialogue conducted by Norway), the situation is a bit different. As found by Webster, the Norwegian HRD appears to be at a higher level than the Canadian and to include a stronger civil society component. For instance, past participants include Amnesty International, the Norwegian Helsinki Committee, and the Rainforest Foundation, the latter owing to the official Norwegian engagement in preserving the rain forest in Indonesia. Forest burning is a huge environmental problem and air pollution extends far beyond its borders. For Canada (and others), “the test will be the degree to which NGO voices are heard, as expressed through such networks as the Canadian Advocacy Group on Indonesia and its member groups’ Indonesian partners. In principle, the Indonesian democratic governments of the past decade are not hostile to Indonesian NGO voices, so there is at least the possibility of meaningful inclusion.” (Webster: 52f.).

NGOs do not usually participate in dialogues as direct interlocutors. They may supply important parts of the information used by delegates in the official dialogues and be debriefed on the substantive issues after the conclusion of the dialogue. The Australian Human Rights Commission suggested “inviting NGOs to attend the Dialogue in an observer capacity, holding informal seminars with NGOs in conjunction with the formal Dialogue, and conducting ‘parallel Dialogues’ involving NGOs, academics and legal experts at the same time as, but separate from, the government meeting.” (Parliament of the Commonwealth of Australia 2012: 49). Such inclusionary suggestions would still fall short of full participation which the Commission was hesitant to endorse. Better engagement with NGOs was supported by the Australian Department of Foreign Affairs and Trade both prior to and after the dialogue, responding to the Parliamentary Committee’s observation that their engagement was rather *ad hoc*. Parliamentary and NGO participation was also raised as issues to be rectified in the EU-China dialogue by the European Parliament as well monitoring and benchmarking and setting time limits and emphasizing trends (European Parliament 2007: 11f.).

The Norwegian dialogue with China had two concurrently running sessions, one given to bilateral consultations at the ministerial level and thematic working groups with participation from experts within the selected topics, including Norwegian NGOs, but also workers’ and employers’ associations (Wedul 2008). In addition, there was the technical cooperation programme, usually linked to the thematic working groups.

As NGOs and civil society in general play a key role in mobilizing for human rights, transnationally and domestically, they have a role to play in the dialogues, too, but how far is subject to differing perceptions, not least those of the dialogue partner. However, NGOs have an acknowledged expertise that can be exploited in the technical assistance packages that come with the dialogues.

Technical assistance as part of the dialogues

As noted above, dialogues are of greater practical benefit to partners when they are accompanied by technical cooperation packages. The term ‘technical’ indicates non-political expert knowledge about these types of exchanges removed from the high-level political dialogues usually favoured by diplomats and politicians. However, the dialogues may not necessarily be linked to large-scale development aid programmes. Technical assistance is fairly inexpensive within this field, usually consisting of expert advice, training, symposia and seminars, conferences and informal working groups. Compared to the average aid project, projects in the human rights field are usually modest in magnitude. Moreover, human rights dialogues may not be linked to the main recipient countries of development aid, but rather to countries with which the dialogue partner has important trade and business contacts. Looking at the case of Norway, China, Indonesia and Vietnam are marginal in terms of the volume of development aid, but not so in terms of commercial and trade engagement. The focus countries and other main recipients of Norwegian development aid do not have a dedicated human rights dialogue whereas those who have such dialogues are not focus countries. The selection is clearly not based on development potential or volume of aid, but on other foreign policy concerns, including trade and public and private sector investments.

Human rights dialogues are often accompanied by technical cooperation packages. In the case of the Australian dialogues, technical assistance has been entrusted to the Australian Commission on Human Rights, which is the national human rights institution (NHRI) in Australia. NHRIs have an important domestic remit as they occupy an intermediate role between the state and civil society, yet may also be tasked with functions beyond national borders, within and outside the region. The Human Rights Technical Cooperation (HRTC) programme commenced in 1998, following the inaugural dialogue, and was intended as an avenue for providing practical capacity for key Chinese agencies in areas relevant to human rights protection. The initial focus was on legal reform, women’s and children’s rights and ethnic minority rights. Later the scope was considerably widened and new topics added, such as domestic violence prevention, reproductive health rights, criminal justice procedures, humane treatment of detainees in correctional facilities, as well as alternatives to detention. AusAID funding for the HRTC programme has increased considerably over the years from an initial AUD 400,000 to in 1997-98 to AUD 2.5 million in 2011-12, comprising roughly 10 per cent of total AusAID allocations at AUD 22.5 million.

In Vietnam, the HRTC programme includes skills for conducting community education on legal rights and responsibilities, human rights training for lawyers, raising awareness of women’s rights, access to the court system and administration of the criminal system. AusAID funding was AUD 1.2 million for 2011-12 out of an estimated total of AUD 137.9 million. Earmarked funding for human rights is considerably less for Vietnam than for China in both absolute and relative terms.

From the viewpoint of the Australian Human Commission: “One of the strengths of the human rights technical cooperation programs is that they are fairly low-key programs and, as a result of that, we find that the Chinese and Vietnamese participants feel comfortable, knowing that they can open up and have fairly candid conversations about issues” (Parliament of the Commonwealth of Australia 2012: 27). Being low-key can also be disadvantageous. The International Commission of Jurists noted that the Technical Cooperation programmes were not at all widely recognised by the Australian community and the Commission

commented that there is little media interest in the HRTC programmes. One of the findings of an independent review of the two programmes was that there was a potential to improve the quality of information flow to the human rights dialogue participants about the HRTC programme. However, while recognizing the merits of the programmes, the Australian Tibet Council commented that the Chinese programme failed to address the structural systemic problems, in particular the non-independence of the judiciary, only addressed the formal legal processes and not the arbitrary and extra-legal processes and failed to consult with independent NGOs on the design, implementation and monitoring and evaluation of the programme.

Selecting safe and non-controversial topics for a TC programme would certainly contribute to its low-key nature. However, as noted above, we do not know how integrated the Technical Cooperation programme is with political dialogues in the main recipient countries of development aid. In countries with a large TC programme, we do not know how this programme is integrated with the political and diplomatic functions of an embassy or whether they proceed along parallel tracks. For countries with formalized human rights dialogues, trade and commercial investments may count for more in monetary terms than technical cooperation.

In the case of Norway, all three human rights dialogues are accompanied by technical cooperation packages. Similar to that of Australia, the HRTC programme was entrusted to the Norwegian Centre for Human Rights, which for a number of years was the National Human Rights Institution in Norway. The China Programme goes back to the initiation of the China dialogue in 1997. Its main objective is to promote the development, understanding and application of international human rights standards in China and activities include the organization of human rights training courses and seminars, development of human rights teaching material, translation of key human rights literature, a visiting scholars programme and support to researchers and students both in China and Norway. Substantive areas of engagement comprise freedom of information, non-discrimination in employment, rural development in Western China, and women's rights. The direction of the programme is decided on the basis of dialogue between the partners which on the Chinese side are universities and other academic institutions.

Another programme, also related to China, is the China Autonomy Programme, specifically focusing on minority rights in different parts of China, principally Inner Mongolia, Yunnan and Szechuan provinces. The programme contributed to the official dialogue through the establishment of a working group on minority rights, which was one of the subjects of the dialogue (Stokke and Huang 2009: 15-17). Programme partners include, apart from academic institutions, the Chinese Ethnic Affairs Commission of State Council, the main government agency for ethnic minority affairs. Even though relations with China are strained after the Nobel Peace Prize was awarded to the Chinese dissident Liu Xiaobo in 2010, activities under these two programmes have continued to date. One notable recent achievement was the adoption of a law on domestic violence against women. Cooperation with and advocacy and campaigning on the part of Anti Domestic Violence Network (ADV N) has been crowned with success, though implementation of the law has yet to be done. The law does not extend protection to gays and lesbians.

The Indonesia Programme is an adjunct element to the ongoing dialogue with Indonesia, which started in 2002. It has concentrated its activities on human rights teaching in cooperation with the Indonesian Islamic University in Yogyakarta; administration of justice in cooperation with the Indonesian Judicial Commission; training provided on human rights and the law of armed conflict to the Indonesian army; freedom of religion and belief in cooperation with two universities in Indonesia; and the interrelationship of business and human rights with a special focus on rights to access to land and natural resources. Although the official dialogue has been inactive since its tenth anniversary in 2012, programme activities have continued up to date. This is an indication that the programme can stand on its own feet (Norwegian Centre for Human Rights 2011).

The Vietnam Programme is the latest addition to the dialogue-related programmes at the Norwegian Centre for Human Rights, following on from the official dialogue with Vietnam that started in 2003. Activities include education, particularly in law in cooperation with Vietnam National University, research through a visiting scholar programme and training and advice on the criminal justice system as well on the provision of legal aid. There has not been a full dialogue meeting since 2013, but a five-member Ministry of Foreign Affairs visited Vietnam in 2015 in order to discuss how to reform the dialogue and what direction to take in the future. The outcome of these deliberations is not known. However, activities under the programme have continued to date independently of the official dialogue, indicating that the programmes run their course without the annual dialogue meeting. At the last meeting in 2013, representation from the Norwegian side included representatives of the police with regard to interrogation methods, media on freedom of information and individuals working on gender issues and the criminal justice system, in particular capital punishment. However, the association with the dialogue lends extra legitimacy to the programme, but does not depend on it.

As such, these programmes do not differ substantially from the Australian HRTC programme except that the programmes of the Centre are more oriented towards advanced education and academic exchange. The Australian programmes in China and Vietnam are broadly targeting legal reform and access to justice, the rights of women and children, including domestic violence and ethnic minority rights. As noted above, these are, in terms of standard development projects, small-scale, inexpensive activities.

Do these programmes contribute towards better human rights protection? The Australian Human Rights Commission is cautiously optimistic. With regard to the China programme, “it is reasonable to conclude that HRTC has played a part in helping to make human rights more prominent in public discourse and debate. It has assisted in bringing human rights further into the ‘comfort zone’ of senior officials as well as in raising awareness in the broader public arena”. This may have to do with programme alignment with official human rights priorities: “The alignment helps give HRTC activities momentum and sustainability, and increases the likelihood that activities will contribute to concrete outcomes, by ‘riding the wave’ of existing Government reform initiatives” (Australian Human Rights Commission 2011: 26f.). These observations apply as well to the Norwegian programme. As to the Vietnam programme, the observations of the Commission is cautiously optimistic as well; “As the Vietnam HRTC is still young, having commenced in 2006, the outcomes ... are encouraging, but not yet in the form of concrete improvements in human rights protection attributable to the HRTC programme” (Australian Human Rights Commission 2011: 31). Above all, according to the

Commission, capacity needs to be built to produce change, but only longer-term studies can ascertain whether such change is indeed realized.

Open-ended or time-limited dialogue? Implications for effectiveness

Does the longevity of dialogues depend on progress and results? With development projects, certain objectives are to be achieved with a stipulated time period. Once the achievements have been made the project comes to an end or, alternatively, is extended if the results have not been achieved fully. Political dialogues may operate according to a different logic and require a longer time horizon to produce results owing to the politically charged nature of human rights. If there is no progress, the dialogue may be terminated, or prolonged if there is some grounds for believing that progress can be made in the future. Nonetheless, there comes a time when the participants realize that they have come to a *cul de sac*, fatigue sets in and the dialogue fizzles out. Within long-term development partnerships, the logic may be different again. The partnership is less dependent on the outcomes of the political dialogue, which is just one agenda item among others and not a decisive one. Progress on human rights may be overshadowed by other political concerns of higher importance or greater urgency. As Hollander et al argues, “a successful integration of human rights into policy dialogues largely depends on the openness of the partner government (Hollander 2013: 24, Axyanova 2011).

One answer is that in some cases we simply do not know whether the dialogues are effective or not. The Australian parliamentary inquiry noted that “the overall perception from NGOs, ethnic community groups and individuals is that Australia’s human rights dialogues lack transparency primarily due to a distinct lack of reporting,” hence that “the general community view is that reporting on the human rights dialogues needs to be enhanced.” (Parliament of the Commonwealth of Australia 2012: 67). If reporting is inadequate, then there is no way to gauge progress (or the lack of it). Even if reporting were adequate, there is no easy way to determine what effects the dialogue has had on human rights enforcement: “The process of change on human rights issues is incremental and is the result of a range of contributing factors including internal developments in the country concerned. Where positive changes in dialogue partners’ approach to human rights, these changes are almost always the result of a combination of factors,” according to the Australian Department for Foreign Affairs and Trade (Parliament of the Commonwealth of Australia 2012: 69). In other words, there is an intractable attribution problem. Nonetheless, taking up cases of individuals suffering human rights violations may result in prisoners getting better treatment and having their sentences reduced, but the Department of Foreign Affairs and Trade is cautious in claiming a causal link. Such cases are usually discussed behind closed doors.

In general, the opinion among the invited NGOs can be neatly summarised by this statement from the Australian Council for International Development: “Without clear objectives, timelines for desired outcomes and benchmarks for evaluation, countries may participate in a bilateral dialogue as a means to avoid public condemnation of their human rights record” (Parliament of the Commonwealth of Australia 2012: 72). Dialogues are not entirely open-ended, though. The dialogue with Iran was terminated after one meeting and a second one never materialized. The DFAT drew the following conclusion, “(t)he judgement we made was that Iran was not genuinely willing to engage in substantive discussions on human rights.” (Parliament of the Commonwealth of Australia 012: 11).

In the case of Canada, the dialogue with China was terminated in 2006, although trade and commercial relations have continued to the present day. This was partly due to the change in government from the liberal to the conservative party and partly due to misgivings in the House of Commons. According to an article in the 7 July 2007 edition of the magazine *Maclean's*, an all-party sub-committee in the Commons had reached the conclusion that the existing bilateral human rights dialogue had not met its objectives. The time for a fundamental rethinking of the purpose of government-to-government meetings and of their role in a broader Canadian policy of engaging China on human rights (*Maclean's* 2007). This conclusion was inspired by the Burton report and its hints at corruption in that Chinese foreign policy officials sought 'goodwill' payments in exchange for broaching sensitive subjects, including obtaining MA degrees at Canadian universities.

As for the EU dialogue, it may be poignant to cite an EU dialogue participant who for obvious reasons chose to speak on condition of anonymity: "I am not aware that the EU has demanded results. Our Human Rights Dialogue with China is not about results, it is just a venue for us to voice concerns. Nobody in the EU expects concrete results from this process. If public statements on the Dialogue mention results anywhere, then that's just public-relations speak (Kinzelbach 2014: 195). The US human rights dialogue with China is not assigned to a separate sphere of activity, but integrated with the high-level Strategic and Economic Dialogue at a summit level. A full debriefing and a Q&A session is provided by the State Department. That said, it is not at all certain that any headway was in fact made on the latest issues raised, in particular the issues of detained lawyers and a restrictive draft NGO law (US Department of State 2015). The Atlantic Council of Chatham House has come to the same conclusion; the dialogues with China have been ineffective and have become talking shops (Atlantic Council of Chatham House 2011: 2).

Conditions for a more successful dialogue

According to the spiral model introduced above, the critical step along the trajectory was the transition from phase 3 whereby tactical concessions are made towards phase 4 whereby human rights norms are given prescriptive status (Risse 2013). The transition was induced by combined pressure from above and below, from the transnational level and from the domestic level. The transnational level is to some degree present in the dialogue setting, but varies considerably in the composition of the dialogue team. In some dialogues international NGOs and professional associations are present, in others they are not. What is conspicuously absent from many dialogues is broad representation of domestic interests in the targeted dialogue partner. Those may be parliamentarians, NGOs, professional associations, media, and suchlike. What is lacking is pressure from below within the targeted dialogue partner. As reporting, monitoring and evaluation is often lacking, the domestic opposition is unaware of what is taking place and what has been achieved, if anything.

Beth Simmons has pointed to the importance of domestic mobilization in her study of the impact of international law on domestic politics. She finds that in states in a process of transition from authoritarian to democratic rule (or the reverse), "it is important to examine the variety of ways in which local citizens on the ground actively used international legal agreements to hold governments accountable. Local stakeholders have the incentive to demonstrate, lobby and sometimes litigate in these countries" (Simmons 2009: 372).

Furthermore, “(h)uman rights outcomes are highly contingent on the nature of domestic demands, institutions and capacities. In this highly contingent context, local agents have the motive to use whatever tools may be available and potentially effective to further rights from which they think they may benefit” (Simmons 2009: 373).

States do not have strong incentives to ratify international treaties unless it can be proven that they stand to benefit from them, which typically will be true of trade agreements for instance. Hence, it does not make much sense to pressure highly stable repressive regimes to ratify international treaties. Instead, efforts should be centred on making states ratify treaties where they matter most: “resources should be focused on ratification in countries with some history of and prospects for liberalization.” Secondly, a regional approach is more likely to have positive results, “countries are much more likely to ratify human rights agreements when they are surrounded by other countries in the region that have already done so. Being surrounded by and compared to a critical mass of ratifying countries itself encourages ratification, which in turn can provide an opening to domestic groups to demand compliance” (Simmons 2009: 375f.). What matters is domestic ownership and the translation of international norms “into the vernacular”, to make the connection between global principles and life as it is lived and experienced (Merry 2006).

Bård A. Andreassen and Gordon Crawford have broached some ideas about what domestic embeddedness may look like with their concept of spaces. *Closed* spaces are decision-making spaces where civil society has no say or influence whatsoever. *Invited* spaces open up for civil society participation, but with the risk of co-optation and manipulation. *Claimed* spaces result from campaigning and public advocacy to gain influence in spaces previously closed off to civil society. *Created* spaces are autonomous spaces whereby civil society associations can mobilize their constituencies, create alliances and networks and prepare the ground for public activism and thereby to claim spaces (Andreassen and Crawford 2014).

Conclusions

Where to put human rights dialogues within the complexity of all these factors? Judging from the experience of those who have participated and analysed these spaces, they are either closed or invited. If the dialogues are purely inter-governmental exchanges, participation rarely extends beyond political-diplomatic circles. Participants are usually foreign affairs officials, but officials from other relevant ministries may be invited as well, depending on the topics raised. Civil society associations only take part to the extent they have officially been vetted and presumed to have adopted the official line. Invited spaces include civil society groups, but also parliamentarians and professional associations as participants or as observers, but they usually have less influence on agenda-setting and representations. What is left out in the purely domestic terrain is creating and claiming spaces, but such spaces may be highly important in making the dialogues more fruitful and productive. To a large extent, dialogue topics draw on information provided by international or domestic NGOs. However, it is uncertain whether information on the dialogues and potential outcomes is adequately fed back to them, the media and others concerned. In this regard, practices vary across states with some being more open than others. If information is lacking or incomplete, there is little guidance on how to refer the matter through other channels, including as noted, multilateral channels.

Human rights dialogues are justified as more effective instruments for human rights promotion than public naming and shaming or resorting to various forms of sanctions. However, as this review has shown, the evidence to that effect is inconclusive. There is a danger that dialogues become ritualistic, an end in themselves where procedure replaces substance. This seems the conclusion drawn from the EU-China dialogue. That is not to say that diplomacy does not have its rightful place, but in contrast to military, security and intelligence affairs where secrecy is the default option, human rights thrives on publicity. If dialogues are a means to avoid publicity, then human rights observance is bound to suffer as a result. If the situation improves incrementally and slowly, nobody is in a position to credit the dialogue for it because attribution is blurred. Silence may be a necessity, but it can also be misused to silence criticism and gag expressions of doubt.

Nonetheless, there is scope for improvements and some mechanisms have been suggested in the course of this review: Broader participation within the actual dialogue; better briefing and debriefing procedures at home; a more focused agenda at the dialogue meetings; tying a technical cooperation package to the dialogue; introducing time limits and establishing benchmarks in order to measure progress towards agreed objectives; and ultimately, assessing the efficacy of dialogue against other mechanisms of promoting better human rights performance, including taking initiatives and coordinating with like-minded countries in multilateral fora. Some of these mechanisms have been utilised, but not all.

The lack of monitoring and reporting and the absence of objectives and benchmarks make it hard to assess to what extent the dialogues contribute towards better human rights performance. In light of the experience gathered from the dialogues, there is reason to believe that domestic pressures count for more than international pressures, though international support may add leverage to the struggles of domestic civil society associations. The literature cited does not accord much weight to the dialogue as an instrument in itself. But as I have noted, the dialogue operates on a different logic than other types of intervention, for instance development projects. Even though there is not much evidence to support the effectiveness of dialogues, none appears to be principally opposed to them and all is in favour of continuation.

Engagement may be better than no engagement, talk may be better than silence, even though talk may be all there is to it. In the case of the Norwegian dialogues, there has not even been much talk in recent years. The China dialogue is indefinitely suspended and both the Vietnam and Indonesia dialogues appear to be in a state of limbo. This state of affairs signals a fundamental rethink of the purpose and direction of the dialogues, if they were to continue. However, talk continues in the guise of technical cooperation programmes, which more and more operate independently of the state of the official dialogue. While the dialogue provided the programmes with a legitimacy, the programmes do not appear to depend on the dialogues anymore. Here talk may contribute to intangible results, such as the insidious change of mindsets. Talk may exert influence, but in immeasurable ways. If expectations are adjusted accordingly, talk may still result in action, but probably not according to any predefined timeline.

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