



# UYGHUR LEADERSHIP TRAINING SEMINAR

21 – 23 April 2008  
Berlin, Germany

World Uyghur Congress  
Unrepresented Nations and Peoples Organization



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# Introduction

“Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”

Margaret Mead

Uyghurs are native to East Turkestan (also known as the Xinjiang Uyghur Autonomous Region of China), a territory on the fabled Silk Road bounded by the central Asian republics to the West and China to the East. East Turkestan has been a prominent centre of commerce for more than 2000 years, and has at various points in its history been a cradle to a number of great civilizations as well as a centre of scholarship, culture or power.

This culture is however now under threat following a period of marginalisation and oppression that began with the region’s incorporation into the People’s Republic of China (PRC) in 1949. Along with other minorities, such as Tibetans and Inner Mongolians, Uyghur communities have suffered from destructive assimilation policies. Strict controls on their language and Islamic religion have sought to undermine their distinct and unique national identity.

The World Uyghur Congress (WUC) gathers human rights defenders from around the world to promote political and human rights, without which Uyghur communities will be unable to protect and preserve their culture. Working to raise awareness of the challenges faced by the Uyghur people, WUC works through exclusively nonviolent means to promote the principles of democracy, human rights, and the rule of law.

The current WUC President, Mrs. Rebiya Kadeer, is a Rafto Prize laureate and Nobel Peace Prize nominee who has devoted most of her life to the Uyghur cause. Once a successful business woman heralded by PRC authorities as a model of a new entrepreneurial spirit, Mrs. Kadeer fell out of favour with authorities when she began devoting herself to promoting the rights and development of her native Uyghur community. She was eventually arrested and held for six years. Although she has now been released and is able to continue her activism from abroad, Mrs. Kadeer’s family continues to be the target of harassment, with two of her sons currently facing lengthy jail sentences.

As an active and founding member of the Unrepresented Nations and Peoples Organization (UNPO), a democratic international membership organization based in The Hague, Uyghur activists also work to combat human rights violations against other minorities in Asia and beyond. A central challenge to many UNPO Members, including Uyghurs, is their notable absence from the international stage or agenda.

The Uyghur Leadership Training Seminar was designed to address this challenge. It was held in Berlin, Germany from 21 - 23 April 2008. In addition to promoting the Uyghur cause during the event itself, the core objective was to enable present and future Uyghur leaders to become themselves more effective international proponents of their rights.

Organized by WUC in collaboration with UNPO and funded by the National Endowment for Democracy (NED), the seminar offered Uyghur leaders from around the world a forum to exchange ideas, discuss strategies and explore joint initiatives, as well as provided an opportunity to meet experts and practitioners in fields ranging from international law, human rights and nonviolent action. Lectures were complemented by interactive workshops and discussions, as well as a visit to the German Parliament which included a meeting with the Committee on Human Rights and Humanitarian Aid and a demonstration outside the Brandenburg Gate in Berlin, with the aim of providing background knowledge and concrete advice and recommendations for the present and future work and direction of the Uyghur leadership community.

The real test of the Seminar's success in reaching core objective comes only now, as participants return to their respective communities to communicate and implement what was discussed and considered, as well as putting to use new skills and understanding acquired. It is hoped participants will be able to work more effectively as proponents of the spirit of democracy, creating the communities necessary for a society in which the Uyghur people can live and enjoy their rights.



Dolkun Isa  
WUC Secretary General



Marino Busdachin  
UNPO General Secretary

# Notes on Contributors

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Anna Batalla is an associate expert at the Office of the United Nations High Commissioner for Human Rights in Geneva, Human Rights Council and Treaties Division. She is a PhD candidate and lecturer at Universitat Pompeu Fabra in Barcelona, Spain. She is the author of several publications on international human rights law.

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Mr. Heintze is currently a senior researcher at the Institute for the Law of Peace and Armed Conflict at the Ruhr-University Bochum in Bochum, Germany. He is also the President of the International Association for the Study of the World Refugee Problem (AWR) and responsible for the Marie Curie Programme at this university. Mr. Heintze is widely published in the fields of human rights, international law and minority rights and has lectured at a variety of universities and institutions across the globe.

## **Mr. Michael Gibb**

*PhD Candidate and Lecturer, Oxford University, United Kingdom*

Michael Gibb is currently a PhD candidate at Oxford University and an associate of UNPO. He previously served as a programme coordinator at the organization and assistant to UNPO General Secretary Mr. Marino Busdachin. Before working with UNPO, Mr. Gibb studied the philosophical basis of global ethics and human rights, receiving a MA in Philosophy from Queen's University in Canada and a BA in Philosophy, Politics, and Economics from Oxford University.

## **Mr. Pedro Pinto Leite**

*Secretary General, International Platform of Jurists for East Timor, The Netherlands*

November 1991 Pedro Pinto Leite has been the secretary of the International Platform of Jurists for East Timor (IPJET). Pinto Leite is also a member of the International Council of the International Association of Jurists for the Western Sahara (IAJUWS), of which he is a founding member, and coordinator of its Dutch chapter. In August 1999 he led the IPJET observer mission to the referendum in East Timor and has also taken part of observer missions in Eritrea (1993), Mozambique (1994) and East Timor (2001). Pinto Leite is the editor of three collective works, and has written many monographs, chapters and articles on self-determination.

## **Mr. Mohamoud Daar**

*Diplomatic Representative of the Republic of Somaliland in Brussels, Belgium*

Born in Hargeisa, Somaliland Mohamoud Daar obtained a BA in Liberal Arts at Rutgers University in the United States and MA in International Affairs from the School of International Affairs at Columbia University in the United States in 1973. From 1968 to 1979, he worked in Addis Ababa, Ethiopia, for the Organization of African Unity (OAU), the predecessor of the African Union. From 1979 to 1987, he served as the Assistant Executive Secretary of the OAU delegation to Geneva and from 1987 to 1999 as a senior economist of the OAU office in Brussels. In 2000 Mr. Daar worked as a consultant for the EU Centre for the Development of Enterprises in Brussels. In 2002 he was appointed as the official diplomatic Representative of Somaliland in Brussels.

**Mr. Graham Brown**

*Researcher, Centre for Research on Inequality, Human Security and Ethnicity, University of Oxford, United Kingdom*

Dr. Graham Brown is the Southeast Asia Research Officer at the Centre for Research on Inequality, Human Security, and Ethnicity (CRISE) at the University of Oxford, and will be Senior Lecturer in the Politics of Development at the University of Bath from September 2008. His research is primarily concerned with the relationship between inequality, identity politics and conflict and has acted as a consultant for the UNDP in Jakarta and New York, OHCHR, the World Bank, and the UK Department for International Development.

**Senator Marco Perduca**

*Member of Italian Senate; Co-Vice President, Nonviolent Radical Party, Italy*

Mr. Perduca is a Member of the General Council of the Nonviolent Radical Party (NRP) and the UNPO Foundation and was recently elected to the Italian Senate. For 10 years he has represented the TRP at the United Nations in New York, Geneva, and Vienna, covering the UN also for Radio Radicale. Since 2002 he has directed the work of the International Antiprohibitionist League. In 1998 he also coordinated the work of a team of jurists that drafted the indictment of Slobodan Milosovic before the International Criminal Tribunal for the Former Yugoslavia (ICTY). His comments and letters have appeared in several Italian newspapers and political journals, as well the Financial Times, International Herald Tribune, and Christian Science Monitor.

**Mr. Liao Ran**

*Senior Programme Coordinator for East and South Asia, Transparency International, Germany*

Mr. Ran joined Transparency International in 2000 and is Programme Officer for South Asia and China. Mr. Ran has a BA in Law from the College of Foreign Affairs in China and an MA in Politics from the University of Oslo. Before coming to TI he worked in a wide variety of areas, including development agencies, academic think tanks, government institutions, and in the private sector. Mr. Ran was also a journalist writing for various leading newspapers and journals in Norway, Hong Kong and Taiwan.

**Mr. Joshua Cooper**

*Executive Director, Hawaii Institute for Human Rights, United States*

Director of the Hawai'i Institute of Human Rights since 2000, and he founded the Institute in 1998. An activist since his high school days in Germany and continuing as an undergraduate at the University of Hawaii and completed his Ph.D. there. Now teaching political science at Maui Community College and the UH Center on Maui. Lectures in the summer at the International Training Center for Teaching Peace and Human Rights in Geneva, where he also does advocacy work at the United Nations. Mr. Cooper also has traveled to South America, South Africa, Antarctica, and Japan for volunteer work. He conducts extensive UN training programmes.

**Ms. Yu Wen Chen**

*PhD Candidate and Lecturer, University of Konstanz, Germany*

Ms. Yu Wen Chen is currently a PhD Candidate at the University of Konstanz preparing a dissertation entitled *Transnational Cooperation of National Self-Determination Activism: A Survey Analysis of European Ethnopolitical Groups*. She has authored several articles, a book review, and two books. Aside of her academic pursuits, Ms. Chen has been actively involved with UNPO, the Formosan Association for Public Affairs, Taipei Overseas Peace Service, and Taiwan's Consumers' Foundation.

**Ms. Seema Saifee**

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Ms. Saifee is an attorney at Kramer Levin Naftalis & Frankel LLP in New York. As part of her pro bono work, she represents several Uyghurs who are unlawfully imprisoned at the U.S. Naval Station in Guantanamo Bay, Cuba. She also represents three Uyghurs who were released from Guantanamo in May

2006 and sent to Albania. She is the author of the article "Guantanamo's Uyghurs: No Justice in Solitary" (JURIST 2008). Prior to joining Kramer Levin, Ms. Saifee was a law clerk for the Honorable Dan Aaron Polster of the United States District Court for the Northern District of Ohio. She is a graduate of Cornell University and Fordham Law School, where she was the founder and co-chair of the Muslim Law Students Association.

**Mr. Ulrich Delius**

*Asia Expert, Society for Threatened Peoples, Germany*

Dr. Ulrich Delius has worked in a number of positions at the German branch of the Society for Threatened Peoples (STP) / Gesellschaft für bedrohte Völker (GfbV), an international human rights organization dedicated to the promotion of the rights of ethnic and religious minorities. Since joining STP in 1986, he has specialized in ethnic, religious, social and military conflicts, including genocide, and slavery. He has been lobbying for Uyghur human rights since 1993.

**Mr. Albrecht Göring**

*Lawyer, Expert on Uyghur Issues, Germany*

Dr. Albrecht Göring is a barrister-at-law and psychoanalyst based in Munich. He specializes in asylum law, and has successfully pleaded for the rights of deserting Red Army soldiers seeking refuge in Germany. Dr. Göring has also published on topics such as group dynamics, and serves an advisor to the Uyghur Diaspora.

# 1. Concepts of Self-Determination in the International System

Monday 21 April 2008

## 1.1 *Words of Welcome*

### 1.1.1 **Speech by Rebiya Kadeer**

*President, World Uyghur Congress (WUC)*

Today we are gathered for our second leadership training workshop - in Berlin, the capital of Germany. I would like to thank each and every one of you for attending the training workshop today. I would furthermore like to ask all Uyghurs to participate in learning to promote the Uyghur cause in their countries of residence.

We, the Uyghurs, have never truly enjoyed freedom since 1949. We have suffered a lot under Chinese rule. Sometimes when we talk about our suffering people in the West cannot understand the severity we speak of. Our people cannot imagine how much freedom people in the West enjoy. Even in school when they talk about freedom of press, children believe freedom of speech does not exist.

We have not been able to raise effective awareness about our situation. By training our own people in democracy and human rights we are learning about these concepts and at the same time we are letting the world know about our suffering. Today the international community knows the situation of Tibet well. The Uyghurs suffer the same – to some extent we suffer more than the Tibetans – and in the last years we have not been able to raise awareness and educate the West on the situation of the Uyghurs.

We have learned a lot from the West; UNPO, the Society for Threatened Peoples and Amnesty International have been very helpful in our struggle and have been helping us in many ways. We have the opportunity to learn from international experts in order to alleviate our suffering and to preserve our culture and identity. We have a lot to learn in these kinds of workshops. So again I would like to thank the experts that came to teach us many things, thank you very much.

### 1.1.2 **Speech by Marino Busdachin**

*General Secretary, Unrepresented Nations and Peoples Organization (UNPO)*

The topic of self-determination is difficult and semantic. It is a trap. We need to remember to view reality the way it is and not the way we want it to be.

The main problem for Uyghurs around the world is the survival of the Uyghur culture and identity. In order to address the survival of the Uyghur people strategies need to be discussed. Strategies – what does this mean? Self-determination – regional autonomy, federalism and only as the last option to be considered, independence.

It is unquestionable that people in the world are in favour of the rights to self-determination, but what is the context of self-determination that Uyghurs are referring to? A type of decentralized union or complete independence? We are here today to see if there are other options than the separatist one of full independence, to see what different tactics are available options for the survival of the Uyghurs.

In this context it is evident that China is not becoming a democratic country or experiencing a process of democratization. In this situation China is not ready to give anything to anyone. China is not even serious about implementing its own 1984 law on ethnic regional autonomy. If we are in favour of autonomy or independence, China will not give either. Even a democratic China will not grant autonomy. But we should stay positive about the situation of the Uyghurs. We should behave in a way that does not favour separatist independence. This is more or less my point of view in a few words and we will discuss if this makes sense during the seminar. Most Uyghurs have a dream of independence, however it is unrealistic. Maybe it is time to apply other strategies and tactics.

Another question at hand is the Olympic Games. I think the Uyghurs should decide their position to boycott or not boycott the Olympics. It is my opinion that it would not be a good decision to boycott the Games. Maybe a declaration at the end of this training can be produced which announces your decision on a position.

The last question is – what are we? We are activists for human rights. We are in favour of self-determination in its broadest sense. But when people refer to us, they refer to us as separatist, as the little brother of terrorists. We are even quoted in the *Congressional Quarterly* as being separatist; but this is not our position.

There is a problem, not only political but also in semantics, that our friends refer to us as such and manipulate our identity. The situation has changed a lot in the last twenty years in East Turkestan. In the Diaspora it is possible to be radical. In East Turkestan one cannot be radical. It is important to get fundamental unity between people in the Diaspora and people in East Turkestan. The Diaspora should not lose contact with the Uyghurs in East Turkestan.

We are not here to teach, but to help. We can give you the tools for your survival. We can help you to make a movie, but you have to do the acting. And today you have remarkable actors ready to do their job.

### **1.1.3 Recommendations**

- Be cautious of the concept self-determination, as it is challenging both in its semantic meaning and its political aspiration. One should remain realistic about China's unwillingness to implement autonomy measures.
- Various strategies for the survival of Uyghur culture and identity should be intensively discussed by the Uyghur people, which can include, but should not be limited to, analyzing a variety of self-determination models.
- The Uyghurs can use the Olympic Games as an occasion to highlight their cause. A decision of action would help lead this undertaking.
- Strong solidarity between the Uyghur Diaspora and the people in East Turkestan is essential for ensuring unity in the Uyghur cause and for countering any attempts by the international community to manipulate Uyghur identity.

## 1.2 International Law and Self-Determination: Concepts

### 1.2.1 Presentation by Anna Batalla

*UN Official, Office of the UN High Commissioner for Human Rights*

#### **The Approach of the United Nations Treaty Bodies to the Right of Self-Determination: Challenges and Obstacles**

*The recognition of the right to self-determination by international human rights instruments*

The concept of self-determination is a keystone of the international human rights system and a fundamental principle of international law. Article 1 of the UN Charter proclaims that one of the purposes of the United Nations is to “develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.

In 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples recognised self-determination not as a principle but as a right of all peoples. Similarly, other international declarations have subsequently included and developed the right to self-determination in their provisions. But it was not until 1966 that this right was recognized by two international treaties, i.e., legally binding instruments: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have not only proclaimed the right of all peoples to self-determination but they have also placed it apart from and before any other individual human rights of any nature. Indeed, article 1 common to both Covenants clearly and unreservedly bestows the right to self-determination on all peoples, “by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.” But most importantly, both Covenants set out corresponding obligations for States parties to respect and promote the realization of that right.

The recognition of the right to self-determination is all the more remarkable considering the importance<sup>1</sup> and quasi-universal character of the two Covenants. Most United Nations member states having accepted these treaties – 161 States parties to ICCPR and 157 to ICESCR, they have committed before the international community to fulfil the obligations that derive from them.

In determining the nature and scope of the right to self-determination as set out by the Covenants, it can be asserted that article 1 of ICCPR and ICESCR must be construed as containing a *positive right*, as opposed to a mere political principle, of a *collective nature* – the right holders being peoples, i.e., a collectivity, rather than individualised persons. This collective nature of the right to self-determination contrasts with the remaining provisions of both Covenants, which follow an individualistic approach.

*Interpretation of the right to self-determination by United Nations Treaty Bodies*

The bodies or groups of independent experts charged with the task of surveying the implementation of the two Covenants, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR), as well as other United Nations Treaty Bodies such as the Committee on the Elimination of Racial Discrimination (CERD), have had a major role in defining the exact meaning and scope of article 1 common to ICCPR and ICESCR.

#### A. General comments and recommendations

The Human Rights Committee and the Committee Against Racial Discrimination (CERD) have adopted general comments determining the way in which the right to self-determination is to be construed. In its *General Comment No. 12*<sup>2</sup> the Human Rights Committee has noted that the right of self-determination is

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<sup>1</sup> The International Covenant on Civil and Political Rights, together with the International Covenant on Economic, Social and Cultural Rights, the two Optional Protocols to ICCPR and the Universal Declaration on Human Rights, constitutes what is called the International Bill of Human Rights”.

<sup>2</sup> CCPR General Comment No. 12 [21]: *The right to self-determination of peoples (Art. 1)*, adopted on 13 March 1984, para. 2.

of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. Article 1 of the ICCPR can therefore be considered, together with articles 2 to 5 –which constitute part II of the Covenant– as overarching or structural provisions, in light of which individual human rights established in part III of the Covenant should be applied.

However, no precise definition of the concept of “self-determination” has been provided by the Human Rights Committee. By contrast, CERD has shed some light on this issue by identifying and defining, in its *General Recommendation No XXI*, two aspects of the right to self-determination: “The internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level (...) The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.”<sup>3</sup>

According to this definition, the internal aspect of the right of self-determination would be guaranteed by other articles of the ICCPR, in particular by article 25 which enshrines *inter alia* the right to participate in public affairs and article 27 which recognises minority rights. The protection of the external aspect of that right, however, would still be limited to article 1 of the Covenant.

*ICCPR General Comment No. 12* imposes specific obligations on States parties to respect and to promote the realization of the right of self-determination, not only in relation to their own peoples but also vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising that right.<sup>4</sup> This obligation would therefore extend to peoples outside the jurisdiction of the States parties.

#### *B. Reporting procedure*

By becoming parties to both ICCPR and ICESCR, States undertake to submit periodic reports on the measures they have adopted which give effect to the rights recognized in each treaty and on the progress made in the enjoyment of those rights. The Human Rights Committee has stressed the importance that States parties include in their reports measures adopted to give effect to the right of self-determination. However, the reporting practice shows that States parties have often failed to include any reference to article 1, provided inadequate information in regard to it or confined themselves to a reference to election laws.<sup>5</sup>

For example, as an expression of the internal aspect of the right to self-determination, the Human Rights Committee, in its Concluding Observations on both Australia’s third and fourth and Sweden’s fifth periodic reports, called on States parties to give a stronger role to indigenous peoples in decision-making over their traditional lands and natural resources.<sup>6</sup> As to the external aspect of the right to self-determination, the Human Rights Committee called on Morocco to “seek solution, in cooperation with United Nations, to problems impeding realization of referendum on issue of self-determination in Western Sahara “, when considering its fourth periodic report.<sup>7</sup>

#### *C. Individual communications: The jurisprudence of the Human Rights Committee on the right to self-determination*

Under the individual complaints procedure established by the Optional Protocol to the ICCPR, the Human Rights Committee may receive and consider complaints brought by individuals subject to the jurisdiction of States parties to the OP who claim to be victims of a violation by that State Party of any of the rights

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<sup>3</sup> CERD General Recommendation No. 21: Right to self-determination, adopted on 23 August 1996, para. 4.

<sup>4</sup> CCPR General Comment No. 12, *op.cit.*, para. 6.

<sup>5</sup> CCPR General Comment No. 12, *op.cit.*, para. 3.

<sup>6</sup> Concluding Observations of the Human Rights Committee on Australia, adopted on 24 July 2000, A/55/40, paras.498-528; Concluding Observations of the Human Rights Committee on Sweden, adopted on 24 April 2002, CCPR/CO/74/SWE.

<sup>7</sup> Concluding Observations of the Human Rights Committee on Morocco, adopted on 1 November 1999, CCPR/C/79/Add.113

set forth in the Covenant. While the Human Rights Committee has insisted on the extension of States parties' reporting duties to article 1, it has been far more reticent in accepting individual complaints invoking violations of the right to self-determination.

Indeed, the Human Rights Committee has systematically refused to examine individual complaints based solely on article 1 of ICCPR, arguing that the OP procedure is reserved to individuals and that, consequently, only individual –and not collective– rights can be invoked. This reaction may hardly be surprising in light of the strong political implications that the right of self-determination has entailed from the outset.

In an exceptional case, *Gillot et al v France*<sup>8</sup>, the Committee examined whether the criteria established for the determination of the electorates for the 1998 referendum held in New Caledonia and future referendums from 2014 onwards, which would determine the status of New Caledonia as an exercise of its peoples' right to self-determination, violated the authors' rights under articles 25 and 26 of the Covenant. The Committee considered that, in the present case, the articles invoked –the right to suffrage and prohibition of discrimination–, had to be considered in conjunction with article 1. It therefore considered that these criteria were reasonable to the extent that they were applied strictly and solely to ballots held in the framework of a self-determination process and could be justified only in relation to article 1 of the Covenant.

Without expressing any view on the definition of the concept of “peoples” as referred to in article 1, the Committee further considered that, in the present case, it would not be unreasonable to limit participation in local referendums to persons “concerned” by the future of New Caledonia who had proven sufficiently strong ties to that territory. It noted that, in every self-determination process, limitations of the electorate were legitimized by the need to ensure a sufficient definition of identity. The Committee concluded that the challenged criteria, mainly based on birth and period of residence, were not discriminatory but responded to objective grounds for differentiation that were reasonable and compatible with the provisions of the Covenant.

The Committee's restrictive approach with regard to individual complaints directly based on article 1 of the Covenant has been partly compensated by a broad interpretation of article 27, which recognises the rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, or to use their language. This provision has increasingly been invoked by members of indigenous communities claiming violations of their community rights. Although the Committee has neither assimilated nor defined the concepts of “peoples” or “minorities” used by articles 1 and 27 respectively, indigenous peoples are in most cases bound to fit under the concept of “ethnic, religious or linguistic minorities”. The Committee's jurisprudence has shown that, in practice, article 27 can be a suitable way of addressing some of the problems affecting indigenous communities, namely those related to the internal aspect of their right to self-determination.

Indeed, minorities' right to “enjoy their own culture” has been widely interpreted so as to include “a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The Committee's jurisprudence on article 27 has consistently confirmed that economic activities may come within the scope of article 27, if they are an essential element of a minority community. However, it is clear that article 27 was not conceived to solve all problems affecting these communities, some of which would require special measures going beyond the protection afforded by article 27.

It is also clear that the Human Rights Committee should endeavour to provide a more clear interpretation to the leading and most important article of the Covenant. It should consider, in particular, the possibility of transmitting a clearer message through its jurisprudence of how the right of self-determination is to be ensured by States parties. *Gillot v France* leaves some room for an indirect application of article 1 and could be the starting point of a more fruitful jurisprudence on the right of self-determination.

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<sup>8</sup> *Gillot et al. v France*, Communication No. 932/2000, Views adopted on 26 July 2002.

## 1.2.2 Recommendations

- It is typically difficult to convince the Human Rights Committee to accept individual complaints invoking violations of the right to self-determination.
- Alternatively, individuals have been more successful, and therefore could be encouraged to, bring their complaints under other treaty articles, for example article 27 of the ICCPR which addresses the rights of minorities.

## 1.2.3 Question & Answer Session

**Q:** How can the Uyghurs use these international treaties to bring a claim against China? Which non-state actors can submit reports against states?

**A:** Any international organization, NGO or individual can submit an individual complaint. You can only submit a complaint against a state which is party to the Covenant in question. China has ratified, and is thus party to, most major international treaties. It has not, however, ratified the ICCPR.

It is also important to remain aware of the UN's official language and definitions. The official name of East Turkestan according to the UN is Xinjiang, so Xinjiang should be used in all documents. If not, your case will not be accepted.

**Q:** Regarding the terminology 'minority' and 'indigenous people', where do the Uyghurs, as well as the Han Chinese living in East Turkestan, fit in now according to the UN?

**A:** It is a difficult question. The definition of indigenous people is open. The UN does not identify minorities and indigenous peoples to be the same thing, however some indigenous people can fit under the category of minorities. It is unlikely the Han Chinese would be considered indigenous; perhaps as a minority in East Turkestan.

## 1.2.4 Presentation by Hans-Joachim Heintze

*Executive Director, Institute of International Law of Peace and Armed Conflict, Ruhr University Bochum*

### **The Risk of Self Determination Trap in the Context of International Law**

Self-determination is a basic norm of the international legal order and involves two aspects. On the one hand it confirms the right of peoples to freely determine their political status and freely pursue their economic, social and cultural development. On the other hand it represents a goal for the international community or a basic principle of legitimacy. In any case the holder of the right to self-determination is the people. Due to the lack of a legally binding definition of the term 'people' it is up to states to decide which groups form a people. At the end there is only one recognized holder of that right - all the citizens of a state. Ethnic groups are in principle not recognized as peoples but as national or ethnic minorities. Practice proves that states are reluctant to recognize peoples out of the fear that such peoples can claim independence on the basis of self-determination. Therefore neither the international community of states nor the United Nations was ever mentioning the right of self-determination in connection with Kosovo. The only reason for accepting the statehood of the Kosovars, which was recognized by the USA and its allies, was the massive violations of human rights by Serbian authorities.

However, self-determination is only one element of the international order and therefore it is not an absolute right. The UN Charter considers self-determination in the context of international security and

stability (Article 1) and of human rights (Article 55 and 56). It has to be interpreted and applied in connection with the other principles which form the international legal order. This contextual approach is of particular importance against the background of the function of all these norms, which is the promotion of world peace. State practices after the process of decolonization reflects that the focus is on the principle of state sovereignty, including the territorial integrity of states. Self-determination has been relativized especially after the eruptions of 'ethno-nationalism' in post-soviet states. This approach of the establishment of ethnically 'pure' states is not compatible with the prohibition of any kind of discrimination. It also violates the principles of human dignity and democratic decision making by the whole of the citizens of a state. Ethno-nationalism can escalate towards genocide and can produce force and violence as well as the potential break-up of a state. It can represent one of the most serious threats to international peace.

From the conceptual side one can observe a shift from the external self-determination to the internal aspect, namely within the internal framework of state constitutions. Nowadays we can consider the development of a legal principle of democratic governance according to which state power is only considered legitimate if it is rooted in the free will of the people. This will must have been freely articulated and recognized according to Article 25 of the Covenant on Civil and Political Rights. This obligation has led to a tendency of increasing efforts of the international community to monitor elections and plebiscites and generally to promote democracy within states. Because the right to self-determination was linked to the notion of representative government, it applied not only to non-self-governing territories but also to sovereign states. It is a right of universal application; thus when India declared that Article 1 of the CCPR did not apply to sovereign states, Germany had vigorous objections. Self-determination means an ongoing right of all citizens to participate in elections which result in a representative government.

Another consequence of the modern understanding of self-determination is its federalist potential in heterogeneous states. In these societies in which groups are characterized by a strong sense of identity, such groups can claim certain measures of cultural and even political autonomy. The philosophical and legal basis for granting such autonomies is the principle of subsidiarity, which allows a high degree of self-governance and participation in the decision making on the central state level. As yet, however, there is no legal obligation for any state to grant autonomy to minority groups within the state. This rule is still *de lege lata*. But there is no doubt that one can observe a worldwide tendency to solve minority conflicts by accepting models of self-governance.

### **1.2.5 Recommendations**

- External self-determination is often not supported by the international community and international institutions such as the UN.
- Models of internal self-determination are more accepted by the international community, however there remains no legal obligations for states to grant autonomy to groups within a state.

### **1.2.6 Question & Answer Session**

**Q:** According to the presentation self-determination is a trap, but many Uyghurs are calling for independence. What is the best way to achieve that goal?

**A:** Many people strive for their own statehood, but the question to be considered is whether or not statehood would lead to more stability. For example, the legal status of Kosovo may today be different, however its many problems have not been solved. The establishment of statehood does not necessarily solve your problems with your neighbors. Another approach could be achieving real autonomy, as already laid out on paper in Chinese law but lacking in practice.

## **1.3 Different Possibilities of Autonomy and Case Studies**

### **1.3.1 Presentation by Michael Gibb**

*PhD Candidate and Lecturer, University of Oxford*

#### **Alternatives to Autonomy: Different Taxonomy for Multicultural Countries – Federalism, Cultural Autonomy, Confederalism**

“Alternatives to autonomy” seemed to me interestingly ambiguous. The first point is that there is no real alternative to personal autonomy. In addition to personal autonomy, it is important to give autonomy to groups for their survival. When we start thinking about group autonomy it is easier to think about alternatives.

Groups differ in many respects, as you all know. They differ in terms of their characteristics, religion, linguistics, etc, etc. And they differ in their circumstances. Some live in democratic systems, others in authoritarian. Some are rich, while others are poor. It is fair to say that there is no single way for all of these different groups to flourish, as they differ so greatly. I take this as a starting point to explain why there are so many different autonomy models.

I also want to say something about the main topic self-determination. As we think of autonomy as a way to flourish, this will also explain why the concept of self-determination is so difficult. When thinking about self-determination we should think about what of the available models works best for East Turkestan.

Each model represents a way to achieve goals in a different context. The most basic version is regional autonomy, in which there is a decentralization of governance to outlying regions. This can be seen in the Catalonian and Basque regions of Spain. Federalism is a system of governance in which sovereignty is constitutionally divided between a central governing authority and constituent political units (like states or provinces). Federalism is the system in which the power to govern is shared between the national and state governments, creating what is often called a federation. Germany, Austria, Brazil and the United States are examples of federal states. One of the risks in a regional autonomy system is that the central government can withdraw certain powers delegates to regions. In a federal system that is less likely to happen. There are also confederal systems in which a group of empowered states or communities join together, usually by a treaty, and deal with specific thematic issues (defense, foreign trade, etc). In the modern day international system confederations are usually a union of states. Some people consider the European Union to be a de facto confederation. To add to the possibilities further, there can be asymmetric versions to all of these models as well, where different units receive different treatment and are allowed different levels of power. In the end there is also the option of full statehood, which gives you a lot of responsibilities, including a lot of responsibilities in areas you might not be so interested in.

Why would we consider giving power to regions instead of centralizing it anyway? The first reason could be because of multi-ethnic and multi-religious divisions. Decentralizing systems can often more effectively protect minorities groups. Second, some advocate that it is more efficient to make decisions at the regional level, rather than at the central level. Lastly, decentralization is a good method to increase general political participation.

The models in the title of this presentation are administrative models, and there is no guaranteed relation between these models and the rights we are interested in. As Mrs. Kadeer pointed out earlier, East Turkestan is a good example of this. The regional autonomy enshrined in China’s constitution does allow Uyghurs to have the some of the rights you are interested in. These rights that exist on paper do not go very far in real life however. I think it is tempting, as a result, to push for more rights and more regional autonomy, but that is not the full story and they are very difficult to bring about. It is good that we are asking ourselves if there are other causes than the right to self-determination which could be pursued.

Allow me to make some suggestions on alternative areas to direct your cause. First, I suggest the Uyghurs focus on democratization. Some problems you have are related to the fact that there are not many democratic institutions that can help you. This does not only count for Uyghurs but for more people in China. Second there is a general lack of rule of law and accountability in China. This is a concern to, for example, HIV/AIDS patients, activists, and journalists alike in China. It might be interesting to work with them; to work with these people to strive for better implementation of the rights available to them. Third I encourage you to work with international institutions to push for the implementation of human rights laws in China. Pressure your allies and work with other rights groups to pressure China to ratify international laws it has not yet ratified.

### **1.3.2 Recommendations**

- Recommends against pushing for independence.
- Uyghurs should focus their campaigns democratization, better implementation of the rule of law, and the implementation of human rights law in China.

### **1.3.3 Question & Answer Session**

**Q:** You talk about regional autonomy, but how is it ever possible anyway?

**A:** On paper there is regional autonomy. The challenge is simply to translate that into actual rights and practice. Now of course we may want more rights than outlined in the regional autonomy law, but it's a start.

### **1.3.4 Presentation by Pedro Pinto Leite**

*Secretary General, International Platform of Jurists for East Timor*

#### **Western Sahara, East Timor and West Papua: Three Cases of Self-Determination and Their New Developments**

The cases of Western Sahara, East Timor and West Papua have this in common: the right to self-determination of the peoples of these territories was blatantly denied. For many years Western Sahara and East Timor were side by side on the UN list of Non-Self-Governing Territories, waiting for the moment to exercise their right to self-determination. In August 1999 the East Timorese were finally allowed to choose their future status through a referendum. They chose independence and East Timor has since 2002 been a member of the United Nations. The Saharawis, who at an earlier stage had been promised a similar referendum by the international community, are still waiting. They hope that the similarities with the question of East Timor will inevitably lead to the same solution, but when looking at the way the problem of West Papua was handled by the United Nations they have also good reasons to be apprehensive.

#### *West Papua*

Following the capitulation of Japan in 1945, Indonesia declared her independence. The Dutch were able to regain control of most of the territory, but not for long. After a fierce struggle, they were obliged to acknowledge the sovereignty of Indonesia at the Round Table Conference of 1949. Because the West Papuans were Melanesian, thus ethnical and culturally different of the Indonesians, the Dutch at first resisted the pressure to surrender West Papua to Jakarta and started a self-determination process there. However the Indonesian leaders did not give up their claim to West Papua and under strong pressure from the United States – afraid of a communist take over in Indonesia – the Netherlands was obliged to sign the 1962 New York Agreement, by which the administration of West Papua would be taken over by the UN and later by Indonesia. The Papuans were not a party to the Agreement. They were not even consulted.

The act of self-determination “according to international practice” envisaged by the Agreement never took place. Instead, in 1969 a so-called Act of Free Choice was orchestrated by Indonesia: only 1,025 selected Papuans (out of a population of 700,000) were allowed to vote. United Nations observers were turned away from the voting sites. No wonder that the Papuans dubbed the Act of Free Choice Act of NO Choice. In November 1969 the UN General Assembly considered the Secretary General's report on the matter. It did not endorse the report, but merely “took cognizance” of it. Lamentably, the General Assembly also regarded the question settled and removed West Papua from the UN agenda. In fact since 1962 it is only through military might that Indonesia maintains control over West Papua. The Papuans are victims of gross human rights violations: the Indonesian armed forces and their militias have killed an estimated 100,000 Papuans, roughly 15% of the population.

After much criticism of the Act of Free Choice an independent scholar was charged in 2000 by the Dutch government to conduct an inquiry into the facts surrounding the Act. The scholar's findings concluded that the Act of Free Choice in fact did not involve free choice for the people of West Papua, labeling it a “sham”. This report was promptly rejected by Dutch authorities, who clearly preferred to maintain stable political and trade relations with Indonesia than admit a botched process of self-determination.

Six years after the Act of No Choice, history repeated itself in the questions of East Timor and Western Sahara. With an important difference: while West Papua was improperly removed by the UN from its list of Non-Self-Governing Territories, Western Sahara is still there and East Timor was also kept in the list until it acceded to independence in 2002.

#### *Western Sahara and East Timor*

Both Western Sahara and East Timor are the former colonies of Western nations (Spain and Portugal respectively) and, in the mid-1970s following the withdrawal of the colonizing powers, they were occupied and annexed by neighboring countries: Indonesia in the case of East Timor and Morocco in respect of the former Spanish Sahara. Significantly, both aggressors are Third World countries and themselves former Western colonies that have received support (diplomatic, material, financial and military) from Western nations (particularly the USA) to maintain their illegal occupations. Both East Timor and Western Sahara have suffered various forms of human rights abuses, including torture, disappearances, detention without legal redress, and extrajudicial killings – the vast majority of perpetrators of which continue to enjoy impunity. Indonesia and Morocco have repeatedly been condemned by international human rights bodies and have acted in breach of UN Resolutions 1514 (XV) and 1541 (XV), which make freely expressed self-determination an inalienable right.

In 1974 Spain opted to hold a referendum on self-determination in Western Sahara, to be monitored by the UN. The International Court of Justice (ICJ) supported this process in their 1975 decision calling for the application of decolonization of Western Sahara, including the principle of self-determination through free and genuine expression of the will of the people of Western Sahara. In November 1975, a month after the ICJ published its advisory opinion, which upheld the Saharawis' right to self-determination, King Hassan mobilized 350,000 Moroccans across the border into Sahara in the so-called 'Green March'. Hassan intended this mass mobilization southward as a show of defiance against the ICJ's decision and evidence of Moroccan popular support for the annexation of Spanish Sahara. The UN Security Council, convened at the request of Spain, urged Morocco to withdraw from Sahara, but no effective action was sanctioned when its resolutions were ignored. As Spain was determining a new political course in 1975, following 36 years of fascism, it was in no position to challenge militarily the territorial ambitions of Morocco. The territory was ceded to both Morocco and Mauritania with the signing of a partition agreement in Madrid on 14 November 1975 (several years later Mauritania renounced its territorial claims and Morocco moved to occupy that part of the territory as well). Neither the UN nor the Organization of African Unity challenged the legality of the tripartite agreement.

The independence movement in East Timor evolved at a later stage than those organized in other Portuguese colonies. In the mid-1970s, however, a clandestine liberation movement opposed to colonial rule attracted widespread support within Timorese society and attempted to seize the opportunity for independence presented by the Carnation Revolution of April 1974. The collapse of the colonial regime in Lisbon transformed the political scene in Timor, and within a month of the revolution two main political groups had emerged – one supporting self-determination (ASDT-Fretilin) and the other favoring continued association with Portugal (UDT). A smaller third party defended integration with Indonesia.

The new Portuguese government promised independence for East Timor, but in the chaotic course of events, which followed the revolution, the small overseas province of Timor was not one of Lisbon's political priorities. When some of the UDT leaders organized a coup in August 1974, at the prompting of the Indonesian military, the Portuguese authorities left Dili, the capital, for the island of Atauro, and a resulting civil war claimed some 1500 lives. By November 1975, Fretilin had won the civil war and also secured the administration of the territory as the Portuguese refused to return to the main island. On 7 December Indonesia invaded East Timor and officially annexed it some months later.

The invasion, occupation and annexation of Western Sahara and East Timor not only formed an obvious violation of the Charter of the United Nations, but also an international crime against peace. Moreover, they formed an equally clear violation of the right of the Saharawis and East Timorese to self-determination and independence. In addition, the Moroccan and Indonesian governments committed an act of disobedience against the United Nations by maintaining the occupation of the territory even after being repeatedly summoned by the Security Council to withdraw their troops.

While both Western Sahara and East Timor experienced invasion, occupation and annexation, they have been interpreted, at times, as established entities. In February 1976 the Polisario Front of Western Sahara proclaimed a government-in-exile of the Saharawi Arab Democratic Republic (SADR), which eventually established formal diplomatic ties with several African nations in 2005 and conducts a significant level of international relations with more than 70 states. The UN still considers Western Sahara a non-self-governing territory, yet the SADR was admitted as a full member of the Organization of African Unity and the African Union. Shortly before the Indonesian invasion of East Timor, Fretilin established the Democratic Republic of East Timor (DRET) which was recognized by many independent observers.

#### *Referendum in East Timor, but not Western Sahara*

In both cases the occupying power tried to appease the subjugated peoples by offering them a certain degree of autonomy. King Hassan II of Morocco had already proposed that in the eighties, President Habibie of Indonesia came up in 1998 with a similar proposal, included in a package deal: autonomy status for the territory and the liberation of Xanana Gusmão and other Timorese prisoners if Portugal and the United Nations did accept the Indonesian integration of East Timor. Finally, under growing international pressure Morocco and Indonesia irrevocably undertook to accept the holding of a referendum in the occupied territories. Morocco, by signing the UN-OAU Peace Plan for Western Sahara on June 1990, Indonesia, by signing the New York tripartite agreement with Portugal and the UN on 5 May 1999. The UN established the instruments for the implementation of both agreements: the United Nations Mission for the Referendum in Western Sahara (MINURSO) and the United Nations Mission in East Timor (UNAMET). In both cases a date was fixed for the popular consultations, and in both cases the date was postponed.

In East Timor the referendum did take place, however under the control of the Indonesian military. Instead of guaranteeing security, the Indonesian forces and their militias killed hundreds of people and destroyed much of the infrastructure of East Timor. The international community was obliged to rectify the mistakes of the New York agreements by sending military to the territory, the INTERFET forces. But in the end the Indonesian withdrew, a UN Administration (UNTAET) took their place, free and fair elections for a Constitutive Assembly were held and on the 20<sup>th</sup> of May of 2002 East Timor became the first new State of this Millennium.

In Western Sahara the referendum envisaged by the Peace Plan did not take place, due to the consistent obstruction of Morocco. After persistent obstruction of a referendum, the UN has since 2000 been attempting to instead broker an autonomy agreement between the two parties, with several proposals having been tabled over the years. All attempts have thus far failed and while negotiations continue to this day, agreement is not in sight.

#### *Conclusion*

Whatever the political maneuvers of Morocco, Indonesia and some states may be, one thing they have to recognize: there is no alternative to self-determination. The Saharawis and the West Papuans must decide freely on their future status, as the East Timorese did already.

Respect for international law is a precondition for world peace. The international community ought to strengthen, not to undermine it. The UN should not measure with two different yardsticks, as that is contrary to the most elementary notions of justice and would thus weaken the basic fundamentals of modern international law. In other words, the UN has to ensure that also in the cases of Western Sahara and West Papua *realpolitik* does not prevail.

### **1.3.5 Recommendations**

- Claims of independence are difficult to pursue, as the pursuit can be long, arduous, violent and not consistently supported by the international community and other international mechanisms such as the UN.

### **1.3.6 Presentation by Mohamoud Daar**

*Diplomatic Representative of the Republic of Somaliland in Brussels*

#### **The Case of Somaliland: Opportunities and Challenges**

##### *Historical Background*

Historically, Somaliland existed as a separate country. She obtained her independence from Great Britain on 26 June 1960 and was recognized as an independent and sovereign state by many member states of the United Nations, including the five permanent members of the Security Council. On 1 July 1960, Somaliland voluntarily merged with Somalia, after Somalia's independence from Italy in July 1960. Afterwards two separate states entered into a Union and founded the now defunct Republic of Somalia.

In the aftermath of the collapse of the Somali Republic at the beginning of 1991 and the subsequent spread of civil war across the country, Somaliland's political and traditional community leaders decided, with popular support, to abrogate the Union with Somalia and declared to restore Somaliland's political independence within its old and pre-existing boundaries.

The government based in Hargeisa, the capital, and the people of Somaliland started to reconstruct the country, laid the foundations for reconciliation, peace and stability and the setting-up of modern good governance institutions in the country. Since the declaration of her independence in 1991, she has existed as a de facto independent country during which time, the government and the people made extraordinary achievements in the areas of social, economic and political development.

##### *Somaliland Fulfils Conditions for Statehood*

Under the traditional definition of a state in international law, international law specifies four qualifications that a state must have: permanent population, defined territory, stable government, and the capacity to enter into relations with other states in the international community.

Somaliland fulfils all of these conditions. She has a permanent population estimated at 3.5 million people, more than half a million of whom reside in Hargeisa, the capital. The government enjoys support of the people. The country covers an area of almost 138,000 square kilometres with a coastline of almost 900 kilometres across the Aden Gulf, a strategically important location. Her borders are demarcated by the former British Somaliland Protectorate and are defined by the following international agreements: Anglo-French Treaty of 1888, Anglo-Italian Protocol of 1894, and Anglo-Ethiopian Treaty of 1897.

Somaliland has also a functioning government which is firmly in control of the entire territory of the state. Its constitution was approved in a referendum organized in 2001 by the government in cooperation with the Initiative and Referendum Institute based in Washington, D.C. The government has independent external relations with other states. It has agreements of cooperation with some of the European Union and the African Union countries, as well as multilateral agreements with UN agencies and other

organizations. Over the last few years many UN agencies and international NGOs have set up their offices in Hargeisa. The government has also business agreements and investment contracts with foreign corporations that operate in the country. Somaliland maintains representation in a number of foreign countries to liaise with other governments and organizations.

#### *Development of State Institutions*

The constitution provides for a multiparty democracy, a bicameral legislature and an independent judiciary. Periodic elections are held every five years to select a president, parliamentarians for the House of Representatives and local governments for each region. Other government institutions including civil service, customs, telecommunications and postal services, banks, and security operate efficiently in the country. Somaliland also has its own currency and passports.

Since 1991, the country has had peaceful changes of governments in 1993, 1997, 2002 and 2003. Now preparations are being made to hold presidential and local government elections at the end of 2008 and the beginning of 2009. As mentioned earlier, a great deal of work has been done by the government and people in the areas of peace, stability, good governance and human rights. Democratic structures are firmly established in the country's constitution. The constitution supports democratic principles of participation in the decision making process of the country, active competition among political parties and protection of civil and political liberties.

#### *Economic Viability*

In addition to the above requirements for statehood, Somaliland is economically viable. The backbone of the economy is livestock on which more than 60 % of the population depend for their livelihood. As the most important export commodity, livestock is the main foreign exchange earner. The country earns generally about US\$ 200 million a year from exports to Saudi Arabia and to other Gulf countries. Livestock exports exceeded three million heads in 1997. Fish, quality frankincense, gemstones, minerals, natural gas and oil are other products for exploitation. The country does not depend on foreign aid like many other African countries. Its social and economic development has largely been achieved on self-reliance, local initiative and investments made by Somaliland Diaspora. In the last few years, hundreds of thousands of Somaliland refugees and displaced persons voluntarily returned to the country on account of her stability and improving economic conditions. Somaliland hosts also migrant workers from the region.

#### *The Right of Self-Determination*

Self-determination is an important principle in international affairs and is regarded as strongly established in international law. Self-determination allows peoples and nations to have a role in international affairs and calls for respect for their choices and aspirations, contrary to the out of date state-sovereignty approach in international dealings.

The legal basis for the right to self-determination is expressed in Article 1(2) of the Charter of the United Nations which states that one of the most important aims of the Organization is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". This principle has been restated again and again in different international conventions, including the Universal Declaration of Human Rights, the African Charter of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966. Article 1 of both Covenants confirms that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and cultural development.

These principles of self-determination were successfully carried out recently in many countries including Bangladesh, Eritrea, East Timor and in the former Soviet Union and Yugoslavia. These precedents of international law must be applied to Somaliland in her legitimate claim to independence from Somalia which is in a state of anarchy.

The country's entitlement to exercise its right of self-determination is all the more enhanced by the democratic choice of its people as expressed in the 2001 referendum in which 97% of Somalilanders approved the new constitution, which affirms the country's independence and sovereignty. Somalilanders' right to self-determination was eloquently expressed also in peace conferences held in the towns of Burao from April to May 1991 and in Borama from January to May 1993 in which Somaliland communities participated and supported the country's independence.

Furthermore, Somaliland's claim to self-determination and independence is strengthened by the application of the principle of *Uti Possedetis*, a general principle in international law that requires the maintenance of colonially inherited boundaries. Somaliland accepts this principle and the sanctity of the boundaries in Africa. In African experience, this principle was applied in the abrogation and dissolution of a number of voluntary post-independence Unions including, among others, Senegal-Gambia (1982-1989), Mali Federation (Mali-Senegal, 1960), and United Arab Republic (Egypt- Syria, 1958-1961).

Somaliland declaration of independence is based on the country's earlier existence as a recognized state with demarcated borders and is in conformity with the Constitutive Act of the African Union (Article 4.b.), that affirms the Union's "respect of borders existing on the achievement of independence." Hence, Somaliland's independent status represents the dissolution of a voluntary Union between sovereign states, not an act of secession.

#### *Increasing International Support for Somaliland's Independence*

There is increasing international support for Somaliland's recognition as an independent state. In 2005, the African Union sent a Fact-Finding Mission to Somaliland which held wide-ranging consultations with the government, the political parties and institutions of the society. In its report, the Mission made favourable recommendations and concluded that "Somaliland's search for recognition is historically unique and self-justified in African political history." At the end of 2007, the Congress of the European Liberal Democrat Reform Party, the third largest party in the European Parliament, adopted a resolution in which it called on the EU member states as well as other states to accord recognition to Somaliland. In addition a number of international non-governmental organizations including the Brussels-based Crisis Group, scholars and other prominent persons support Somaliland's case for diplomatic recognition.

#### *Challenges Facing Somaliland as a de facto state*

Security needs are basic needs of Somaliland. Defence against terrorism and destabilization are priorities. Somaliland, an oasis of peace, is situated in one of the most beleaguered regions in the world. Diplomatic recognition of Somaliland would strengthen her security, as well as peace and stability in the Horn of Africa.

Economic and development needs are vital in order to alleviate poverty in Somaliland. Furthermore, recognition would strengthen the rights and obligations of Somaliland and bring about a full catalogue of benefits related to membership in the international community, including access to bilateral and multilateral development assistance.

#### *Conclusions*

For more than a decade now, Somaliland has re-established peace, acquired stability and has put in place democratic and good governance institutions. It is a model of democracy in Africa. As the country fulfils all the objective criteria under international law for the recognition of states, including her ability to fulfil international obligations, the hardworking people of Somaliland look forward that the international community will give recognition to their country to restore her earlier independent status. This will support the democratic choice of the people and will promote peace, development and stability in the Horn of Africa.

### **1.3.7 Recommendations**

- The independence of a nation cannot be a unilateral decision; vast support from the international community is needed.

## 2. International Representation and Advocacy

Tuesday 22 April 2008

### 2.1 *Identity and Responses in the Globalized World*

#### 2.1.1 Presentation by Senator Marco Perduca

*Member of Italian Senate; Co-Vice President, Nonviolent Radical Party*

#### **Identity in the World: The EU's Responses and Procedures to Ethno-Regionalism in the World**

I would like to draw your attention to one of the documents that articulated the reasons why a certain type of Europe could have become the most powerful deterrent to conflicts and the best equipped tool to promote liberty and ascertain individual rights.

At the beginning of last century, Europe was going through unprecedented violence that was the result of an ideology that used race, its purity and superiority, as the main justification for wars of aggression. Nazism was defeated with an alliance between the oldest democracies, the US, UK, Canada and Australia and another totalitarian regime, the Soviet Union. A few years after the end of WWII, it was clear which of the two sides of that anti-Nazi alliance was able to ensure a progressive enjoyment of human rights and why.

From the early 1940s, three Italian thinkers, Altiero Spinelli, Ernesto Rossi and Eugenio Colorni, from their confinement on the isle of Ventotene, off the coast of Naples in southern Italy, started to ruminate on the root causes of wars, and on the possible political and institutional scenarios that would have defused future conflicts and secured a future of peace for all Europeans. Their ideas and proposals were articulated in a document known as the Manifesto of Ventotene, which marked the way for a new Europe. The Manifesto begins with a radical critique of the notion of absolute national sovereignty:

Now the nation is no longer regarded as the historical product of communities of men that, as the result of a lengthy process, have increased similarities of customs and aspirations and consider their State as the most effective organisation of collective life within the framework of the whole human society. It has, on the contrary, become a divine entity, an organism that has to consider only its own existence, its own development, without the least regard for the damage this might cause to others.

The absolute sovereignty of national States has given each of them the desire to dominate, since each one feels threatened by the strength of the others, and considers, as its living space, an increasingly vast territory wherein it will have the right to free movement and can rely on itself without any other help. This desire to dominate cannot be placated except by the predominance of the strongest State over all the others<sup>9</sup>.

In the minds of the three Italians, but also in those of Konrad Adenauer, Alcide De Gasperi and Jean Monnet, three other prominent founding fathers of the European community, Europe was supposed to become a common motherland for all those that lived in it, and especially for those that, as a result of the end of WWII, had been sacrificed on the altar of the realpolitik of Yalta and forced to live under Soviet Communism on European soil. From 1950s onwards, Europeans created a series of organizations that from coal and steel - two resources which control was believed to be crucial to avoid future conflicts - were able to create a common economic space that eventually became a political union capable of making peoples that had killed each other live together in peace and prosperity ever since.

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<sup>9</sup> [http://www.altierospinelli.org/manifesto/en/manifesto1944en\\_it.html](http://www.altierospinelli.org/manifesto/en/manifesto1944en_it.html)

The Manifesto of Ventotene was a real cultural revolution, based on ideas-force that, if implemented to the fullest, could have brought durable peace overcoming the concept of national absolute sovereignty, a totem to which too many lives have been sacrificed without bringing any good to anybody anywhere. The vision of the Manifesto of Ventotene runs the risk of being forgotten by those in charge of turning its spirit into the law of the land in Europe. Despite these daily difficulties, that text remains valid for today's Europe, and can be a source of inspiration for contexts where there are "victims" of their own identity or its desire to affirm it through self-determination.

In the main essay published in the March/April issue of Foreign Affairs, Jerry Z. Muller sums up what he calls a familiar and influential narrative of twentieth-century European history, arguing that “nationalism twice led to war, in 1914 and then again in 1939. Thereafter, the story goes, Europeans concluded that nationalism was a danger and gradually abandoned it. In the postwar decades, western Europeans enmeshed themselves in a web of transnational institutions, culminating in the European Union. After the fall of the Soviet empire, that transnational framework spread eastward to encompass most of the continent. Europeans entered a postnational era, which was not only a good thing in itself but also a model for other regions. Nationalism, in this view, had been a tragic detour on the road to a peaceful liberal democratic order”. Muller addresses also the thorny issue of Israel, which, according to the prominent historian Tony Judt, “ought to give up its claim to be a Jewish state and dissolve itself into some sort of binational entity with the Palestinians.” Dr. Judt believes that the problem with Israel is that “it has imported a characteristically late-nineteenth-century separatist project into a world that has moved on, a world of individual rights, open frontiers, and international law. The very idea of a 'Jewish state' ... is an anachronism<sup>10</sup>”. I would say that the very idea of an independent state is anachronistic.

Despite the establishment of a quasi-legislative assembly directly elected by the citizens of all Member States in what at that time was known as Western Europe, the general response of European leaders to the process of globalization and its challenges, became increasingly bureaucratic eroding little by little the original spirit of Ventotene and diluting the concept of a European motherland into a Europe of fatherlands in meaningless and selfish competition with one another.

The history of the creation of the European Union is founded on the idea that international law should be at the basis of civil, social and economical relationships. At 20 years of the foundation of the European Community, the founding members ratified the Convention on the Protection of Human Rights and Fundamental Freedoms.

Taking as their starting point the 1948 Universal Declaration of Human Rights, the framers of the Convention sought to pursue the aims of the Council of Europe through the maintenance and further realisation of human rights and fundamental freedoms. The Convention was to represent the first steps for the collective enforcement of certain of the rights set out in the Universal Declaration. In addition to laying down a catalogue of civil and political rights and freedoms, the Convention set up a mechanism for the enforcement of the obligations entered into by Contracting States. Three institutions were entrusted with this responsibility: the European Commission of Human Rights (set up in 1954), the European Court of Human Rights (set up in 1959) and the Committee of Ministers of the Council of Europe, the latter organ being composed of the Ministers of Foreign Affairs of the member States or their representatives, which entered into force in 1970. That document was also equipped with the European Court of Human Rights.

Despite the adoption of a series of complex treaties, Europe has not been able to adopt the Treaty of the Treaties, e.g. a common Constitution, after having spent months in trying to codify the “Judeo-Christian” roots of the continent. Despite the firm commitment of all major parties in France and the Netherlands, the citizens of those two countries rejected the so-called constitutional treaty because they felt that European Union was not becoming neither an entity capable to defend them from the invasion of non-citizens, nor something radically different to the market-driven US Model. The new EU fell victim of the lack of politicization of her *raison d'être*.

I have tried to shed some light to what made today's European Union possible, despite its less encouraging latest developments, because I believe that a “federalistic” perspective not only remains valid

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<sup>10</sup> <http://www.foreignaffairs.org/20080301faessay87203/jerry-z-muller/us-and-them.html>

for Europe, but, and perhaps even more, could foster radically new approaches in other contexts where apparently the adversary, or the enemy, seems to be unbeatable, like today's People's Republic of China.

East Turkestan was twice, and for a few years, a full-fledged and independent republic until it was finally occupied by Communist China. We also know that despite the suffering of those that still live there, the Uyghur community that has found refuge in Europe and the United States has been able to keep alive the Uyghur language, their culture and customs as well as religious traditions, and develop a series of institutions designed along democratic participatory lines. Within these institutions everyone is granted the possibility to speak and play leadership roles and non-Uyghurs have been welcomed to share ideas and coordinate common efforts to foster the Uyghur cause. It is right for these reasons that, bearing in mind the efforts that the Uyghurs have been able to put together over the years in managing their anger at the Chinese oppression and repression, I believe that the time has come to challenge the Chinese authorities, engaging them in a dialogue on what the possible solutions are, which means partial but at the same time reasonably reachable, to allow some form of genuine self-determination. That challenge can only happen if we engage the Chinese authorities calling for the application and respect of the laws that they have adopted over the years and that, if implemented, could bring new hope for all those that live in China today.

For example, Article 4 of the Chinese constitution states that all nationalities in the People's Republic of China are equal and the state is obligated to protect the lawful rights and interests of the minority nationalities. The Article supports the practice of regional autonomy in areas where minority groups live and recognized the establishment of organs of self-government as an exercise of the right to autonomy. The constitution calls for the freedom to develop a group's own language and the protection and preservation of their customs and traditions.

We need to take advantage of the momentum generated by the debate over the Beijing Olympic Games, and build on the great international attention raised by the nonviolent struggle of the Tibetan people. It is precisely in the light of this struggle, of the nature of its objectives and of its leadership, that I believe it is important for us today, particularly, to reflect on the legacy of the 'federalistic' vision embodied by the Manifesto of Ventotene, and on the lessons that can be learned with regards to the Uyghur's cause.

As you know, the Dalai Lama has been able to open a channel of dialogue with the Chinese regime, requesting a form of full autonomy for Tibet. Such a dialogue, to prove successful needs to be known by the entire world that can, in that way, be not only a supervisor of the process, but become an active player at critical times exerting pressure in different ways whenever words are not kept or agreements are violated. Thanks to this, we will be able to work toward the promotion of a new China, a country that could become a federation of different autonomous and self-governing entities. As I hope my intervention today has made it clear, our 'federalistic' proposal is not just the result of a realistic approach; but rather of a vision that sees the overcoming of the totem of national absolute sovereignty as a necessary condition for the real respect of civil liberties all around the world.

As you know, the Nonviolent Radical Party is currently engaged in a Satyagraha, a nonviolent action that wants to raise the issue of the trans-national respect of international norms and pacts as the necessary prerequisite to the promotion of democratic and democratized institutions at the national, regional and international level. Developing a comprehensive proposal for a full autonomy for the Uyghurs in China, also as a complement to what the Tibetans are asking and to what the Mongols may request tomorrow, could reinforce the Satyagraha enriching it with the historic strength of the Uyghur people, which may end up making the necessary difference to reach the ultimate objective of the agreements that must be kept. Whilst waiting for the debate to develop on this topic, I would like to conclude by inviting you to adopt a new slogan: "Free Tibet, Free East Turkestan, Free Inner Mongolia, for a Free China!"

## 2.1.2 Recommendations

- Use the momentum of the 2008 Beijing Olympic Games and the international attention to the nonviolent struggle in Tibet to foster support for the Uyghur cause.
- Develop a comprehensive proposal for autonomy.
- Work in solidarity with Tibet and Inner Mongolia.

## 2.1.3 Presentation by Graham Brown

*Researcher, Centre for Research on Inequality, Human Security and Ethnicity (CRISE) at University of Oxford*

### Rise of Identity Conflict in Asia

A story about Napoleon tells us that at the height of his power, as he was moving east, he was asked if he would stop at Moscow or keep moving until China. He answered – “let China sleep, when China wakes, that world will tremble at its feet.” Now China is waking and the world is trembling.

My main points of discussion here today are self-determination and violence. It should be noted that the establishment of new states is very rare after the Second World War. The only countries which have gained independence are those that arose from collapsed states. In some cases this has been a complete collapse, for example Kosovo. In other cases it has resulted not from a complete collapse but from instead severe instability and often where military intervention is necessitated; for example the creation of East Timor from Indonesia, Eritrea from Ethiopia in the early 1990s, and East Pakistan (Bangladesh) from Pakistan in 1971 which was only possible because of the military intervention of India. East Timor was also helped greatly with the support of Australia.

The point to realize here is that international law and international treaties are fairly irrelevant to the progress of self-determination movements. The success or failure of self-determination movements is often based on their possibility to gain foreign military support and legitimacy. Legitimacy is a very broad term, which can be looked at in three ways: your own legitimacy (how a movement sees itself), the legitimacy in the state in which the movement is located, and the legitimacy of the movement in the eyes of the international community. Gaining international legitimacy is an important step, however you will come face to face with *realpolitik* when countries whose support you are trying to gain are in a relationship with China.

For the international community the issue of East Turkestan is low on their agenda. I say this not in a way to defend China, but to recognize the reality of the issue that we face. The question turns then to the legitimacy of the East Turkestan cause within China. I think important lessons can be learned from the struggle going on in Burma. In Burma there have been many long standing calls for democracy led by Aung San Suu Kyi's movement and other self-determination movements. Dr. Maung Zarni is a prominent figure in activism for Burmese democracy. He was living in the US in the 1980s and 1990s while the Burmese government was killing tens of thousands of people. Working out of the US he served as the US representative of Aung San Suu Kyi. He was instrumental in creating international legitimacy to the democracy cause in Burma. He led the Pepsi boycott from 1995 and 1997, during which huge support for their cause was gained. Several years after the boycott he changed his strategy, because he felt the economic sanctions and political pressure did not ultimately further their cause. Instead, he felt, it pushed business opportunities into the hands of others, for example China, who would continue to do business with and provide political support for the regime. Now he engages in dialogue with the Burmese government to try to improve the situation. For this he has earned the hatred of many Burmese people and has been ousted by Aung San Suu Kyi, but we should consider the strategy he is proposing. It seems to me he is trying to generate legitimacy for democracy from inside Burma, rather than from the outside. It is important to recognize that you should not alienate your adversary, you should not to stop dialogue with them, and you should try to create internal legitimacy to create change from within, in your case, China. I am aware this is not a very popular option, but this must be taken seriously.

Now I want to talk a bit about violence and to discuss if it's a viable strategy. I think that we can be very clear that violence for secession in Asia has created a stalemate on the continent. When we look at Philippines and Aceh, secessionist movements have never won a military victory. The only times when they were successful was when a foreign power intervened – and it will be highly unlikely that anyone will invade China. Violence has only resulted in pain and suffering and led to nothing.

I would like to end by summarizing that the struggle for self-determination must be one that looks at different audiences and the different messages that you send, so you really must think about what message you want to send out.

## **2.1.4 Recommendations**

- Gaining international legitimacy for the Uyghur cause will be difficult, so alternatively you should consider the strategy of gaining legitimacy for your cause within China.
- To gain legitimacy within China you should maintain dialogue with them and not alienate them.
- Violence is not a strategy to be pursued, as it has historically been ineffective for secessionist movements in Asia.
- You should evaluate what message it is that the Uyghurs want to send out to the world.

## **2.1.5 Question & Answer Session**

**Q:** What should we do to raise our issue more?

**A:** Seeking dialogue is important, but you must always be aware that seeking pressure from one direction might result in getting pressure from another direction. A language that generally works well is money. Finding ways to build on that approach, for example through increased tourism, might be effective. We should insist on educating the public and decision-makers on what East Turkestan is, what its history is and what its present situation is. A suggestion would be to organize a seminar, perhaps at the European Parliament, to address all the other similar situations within China like in Inner Mongolia, Tibet and Taiwan. Then you can educate decision-makers and give these groups an opportunity to create strategy or even form an alliance.

## **2.1.6 Presentation by Liao Ran**

*Senior Programme Coordinator for East and South Asia, Transparency International*

### **Corruption in China and Ways to Circumvent the Challenges**

This presentation will cover several aspects surrounding corruption, including some types of corruption, their effects, causes and cures. Corruption is the abuse of entrusted power for private gain, including the abuse of power entrusted to public offices. The abuse of that power can take the form of transactional or non-transactional corruption. In transactional corruption there is a transaction between a public actor and a private actor, for example in the form of bribery, extortion, influence, or fraud. In non-transactional corruption only public actors are involved and public resources are raided, whether it be through embezzlement, nepotism or fraud.

Bribery and extortion are two interesting examples to learn from here. In the act of bribery, the corruptor acts as a supplier. The corruptor supplies a bribe to gain favoured treatment of some form. In the act of extortion the corruptor acts as a demander. A treatment is demanded through coercion or intimidation under the threat of negative repercussions if the treatment is not provided.

The impacts of corruptions are vast. It subverts formal processes, for example of the state, and provides preferential treatment for some at the cost of others. These costs are borne by the society at large. Furthermore, economic distortion and inefficiency, as well as the undermining of good governance are typical. Governance elements generally affected by corruption include the erosion and weakening of the rule of law, equal provision of services, your sense of ownership, democratic values and economic development.

Important to this discussion are practical ways to circumvent the challenges surrounding corruption. Institutional reforms target monopoly power, accountability, transparency, perverse incentives and salaries. They are generally most effective in combating demand driven transactional corruption and non-transactional corruption. Methods of monitoring the public sector include through personnel management, auditing and disclosure, detection mechanisms and general oversight. Personnel management can be accomplished through tightening job requirements, increasing salaries so as to reduce financial needs, activating incentives, promoting ethical behaviour, implementing anti-nepotism measures, doing performance auditing, training programmes, and downsizing and/or outsourcing. Open access to information is also important in challenging corruption. Having an accessible budget, financial disclosure and general transparency are all key elements. There are a variety of detection mechanisms available, including surveys, report cards, diagnostic studies and direct monitoring by public works and citizen advocacy groups. Promoting and lobbying for oversight is yet another element to be considered. Here the auditing of public accounts, creating a corruption hot line, ensuring whistle blower protection, appointing an ombudsman and creating anti-corruption agencies are all key tools.

All of the actions mentioned above are elements of institutional reform. Civil society can and should also get involved through societal reforms. These reforms target anti-system attitudes, sinking ship syndrome, sense of ownership, democratic values, public perception and feelings of helplessness and apathy. They are most effective against supply side transaction corruption and cronyism. Civil society can conduct surveys, create public information campaigns, pursue investigative journalism, for advocacy groups, organize workshops and seminars, develop school and college programmes, and pursue a general education of the public. Awareness raising campaigns should realize the use of mass media, community activities, reform advocacy and, of course, demand action.

### **2.1.7 Recommendations**

- As actors of the civil society you can be involved in challenging China's corruption and bringing about change.
- You can lobby institutions to implement reforms within their bodies which address corruption.
- You can also mobilize to develop campaigns which monitor and report on corruption.

## **2.2 Effective Participation and the Role of Diaspora**

### **2.2.1 Workshop by Joshua Cooper**

*Executive Director, Hawaii Institute for Human Rights*

#### **Effective Participation in International Fora such as the EU and UN Bodies**

2008 is a significant year for human rights for several reasons. 2008 marks the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights, which combines 30 articles of civil, political and economic rights. The UN is also doing many reforms this year. The Human Rights Council has replaced the Human Rights Commission and a very important review mechanism – the UPR, Universal Periodic Review, has been developed.

When we look at human rights instruments, we have a lot of supporting documents: the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination against Women (CEDAW), Committee Against Torture (CAT), Convention of the Rights of the Child (CRC), Committee on Migrant Workers (CMW), Convention on the Rights of Persons with Disabilities (CRPD), Convention for the Protection of All Persons from Enforced Disappearance, and the Declaration on the Rights of Indigenous Peoples (DRIP). The last 3 of these instruments are looked at in the Human Rights Council. We'll talk about these bodies and how the Uyghurs can bring their cases there, as well as about how you can use these instruments and tools.

The Human Rights Council meets three times a year, so you have to be in Geneva a lot, but there's more opportunity to do human rights work. Under the new calendar the Council meets for four weeks in March, two weeks in June and three weeks in September. This is significant, because before China would do lobbying in March/April and then they wouldn't do anything for a year. Now there are three opportunities to bring things forward at the Council. This is a sign that there's even more opposition towards the human rights records of countries like China.

Again, an important development is the UPR, which is a country assessment mechanism and was established with a Council resolution on 18 June 2007. This is an entirely new process where every country will have their human rights record reviewed. China will be in the Fourth Session in 2009. We have less than a year to create a solid UPR report. The UPR was created because people said only some governments were getting focused on, so they now want every government to be reviewed. Every four years every country will be reviewed. The good news is that there's a firm date for the review of every country, as opposed to having to wait for a country to prepare a report. It's a process that just started in the beginning of April 2008. There will be another meeting in May. I would suggest we start studying the meeting which took place in April to understand the process better, so when China comes up for review you can present your case as effectively as possible. There are several steps in the UPR mechanism and it's up to you to choose which ones you want to follow. I think it's best to follow all of them so as to increase China's accountability.

The first step which takes place is China has to write a report which is the basis of the discussion in the Council. While China is writing their report, Uyghurs can invite UN Special Rapporteurs to visit China and also request the release of political prisoners. The reason I suggest this is because Special Rapporteurs are not loved by powers because they need to get access everywhere. In the spirit of the UPR there is a window of opportunity for open invitations to Rapporteurs and the release of political prisoners.

What's also special about this mechanism is that all people, stakeholders and civil society can participate in the process. This is a new thing. You used to have to really fight to get inside. So this element – the open participation, is really important. The UPR also calls for national consultation and dialogue. These are also crucial steps and while there are some details laid out in the resolution creating the UPR, it's still

brand new and we need to understand it in order to put together a proper report. One year from now you will see China having to report to the Human Rights Council. They will be looking at three documents. The first is a twenty page report from the Chinese government, in which there should be some mention of the Uyghur case. If not, then it will only enhance your case. The second is a ten page report from the Office of the High Commissioner on Human Rights (OHCHR) and the third is a ten page stakeholders report. The stakeholders report is where civil society participation comes in. You can actually submit a document from the World Uyghur Congress that highlights the main human rights violations and make suggestions for what actions should be carried out.

So you can write your own five page document or you can create a coalition of organizations and submit a common paper on shared points and then also submit your own organization's five page paper highlighting your cause. The important part is that we are looking at firm deadlines and we can sit down and get something going. We can lay the foundation to make sure these mechanisms work effectively. The documents need to be submitted by mid-October 2008 and then they will be made available about six weeks before the April review meeting of China. We should review the government's document, the OHCHR's pages and the final stakeholders papers. Afterwards the excitement begins.

The Human Rights Council has 47 countries. The Commission used to have 53, so they have tried to make it smaller – an idea of UN reform. The 47 members work as a working group during the UPR. The 47 governments don't always do the best job representing human rights. The working group will have a three hour debate and will ask questions to China. We can suggest questions for the working group to ask. It's an important venue to finally be able to present these questions. Before the three hour session you can have a breakfast meeting or a lunch parallel to the session where you can provide a briefing to the 47 members. You should also plan a briefing the day before. You can say what documents are missing and your important points. This is an opportunity for you to be really effective in the face of China.

From there it's a couple of weeks before the Human Rights Council meets again. They create a troika of members who will write the final report. Members of the troika are chosen at random. Once we know who's in we can lobby further to those countries for your cause. Afterwards the Council looks at his document. They take time during their meeting in June to discuss it. It would be good to have a Uyghur delegation in Geneva then as well. You can discuss your cause further under agenda item 6. Important under this agenda item are recommendations. You can make recommendations for what China has to do. It's best for you to write these recommendations yourself and then lobby to make sure they get in there.

At the Council meeting in June 2009 an outcome document will be created and there will be a one hour debate to decide what will be in the statement. You can lobby to states to make sure you get in the document what China wants to take out. It is absolutely essential to be involved in this document and the debate. The most important element to focus on is follow-up work. You can ask for follow-up work, for certain visits, reforms, etc. These are things we can work on.

There are two more new opportunities for the Uyghurs to utilize UN mechanisms, namely at the Advisory Committee to the Human Rights Council and via the Expert Mechanism of the Rights of Indigenous Peoples. As you may be aware the former Sub-Committee to the HRC has been replaced by an Advisory Committee. This committee is made up of 18 independent experts from around the world and is to function as a think tank. It will meet for the first time in August 2008. It will write reports and advise the HRC on a variety of topics such as right to food, water scarcity and climate change. There should be a lot of creative thought in this committee. To find out how it can be used as an effective tool for you I suggest you send a delegation or you send UNPO and have them write a report on how best to utilize the committee. A new Expert Mechanism on the Rights of Indigenous Peoples was created in December 2007 to replace the former Working Group on Indigenous Populations (WGIP). The new expert mechanism will meet for the first time from 1 – 3 October 2008. You can truly participate in creating the new policies of these 2 new mechanisms. You can mold them into a tool that can help you and not just watch. Governments will try to mold them to their interests. In August and October there are great opportunities to push the Uyghur cause further.

Another body for the Uyghur to use has already been in existence for several years now and that is the UN Permanent Forum on Indigenous Issues (UNPFII). Taking place in New York the UNPFII gathers thousands of delegates each year for indigenous people to bring their issues forward. At this body there is

a two week meeting and then it can present a report that goes straight to the Economic and Social Council (ECOSOC), which is also easily accessible for Uyghurs now. The Permanent Forum usually meets in May and ECOSOC meets in July where they review the Forum's report. So what used to take two years now only takes two months. The UNPFII has 16 members, composed of eight governments and eight indigenous peoples. It is the first time that governments and indigenous peoples are equal. Indigenous peoples can select their own people for the Forum and an indigenous people are always the chair. It's a good place to network and get involved in the Asia caucus. Each year there is a theme, with this year's theme being climate change. You can propose the themes yourself and lobby for them. There are six areas the Forum addresses: economic and social development, environment, health, education, culture, and human rights. It is an important arena to bring to the fore the issues you are faced with.

So in summary, there are three main areas for the Uyghurs to move forward their causes: treaty bodies, charter bodies and ECOSOC/UNPFII. You can present your case of self-determination to these bodies. It is important to discuss what is going on in international human rights law to see where it is best to present the Uyghur case. From now until the Olympics and even after then you should evaluate how you want to use these tools to keep the Uyghur cause in the headlines.

### **2.2.2 Question & Answer Session**

**Q:** The Chinese government has been using its political muscles to get the Western democracies into its circle of influence so the UN laws don't have to be implemented in China. We can't force international bodies to enforce these laws. We have been trying at the UN for decades now, but we haven't been getting anywhere. What is the place of human rights in a state's interests? Is it really important or just a side issue?

**A:** Human rights are at the core and it's the job of civil society to make sure human rights stay in the center of a state's dialogue if it starts to stray. Admittedly however, governments do usually put economic interests above political freedoms.

**Q:** Regarding the 16 members of the UNPFII, do you suggest that Ms. Kadeer become one of the indigenous members of that group? If so, how do you go about doing that?

**A:** These indigenous experts come from the regional caucuses of indigenous peoples. So one example of a method of getting Ms. Kadeer's name on the roster would be for an NGO who participates in the Forum to nominate her. The nomination gets pushed forward to the Asia regional caucus (each indigenous member must represent a different region), who then pushes it forward to ECOSOC. The President of ECOSOC then appoints the members based on these nominations.

**Q:** The HRC each year publishes a report about human rights in China, but the Chinese government does not care about these criticisms. Is there another tool to pressure China for more respect for human rights?

**A:** Interestingly there has not yet been a report by the Human Rights Council on China, as the Human Rights Commission used to issue. In the past the Commission used to have to wait for a report to be issued by China in order to react. At the new Council the UPR mechanism makes sure this doesn't happen, as there's a strict schedule for the review of each state. It will make it more difficult for China to dodge the human rights abuses made public through the UPR.

### **2.2.3 Workshop by Yu-Wen Julie Chen**

*University of Konstanz*

#### **Taiwan and the Anti-2008 Olympics Campaign**

Since the Chinese Communists won the battle against the nationalist Chinese on the Chinese Mainland, and drove them to relocate to Taiwan in 1949, both regimes across the Taiwan Strait have experienced different phases and forms of tensions until today. Beijing's successful bid to host the 2008 Olympics in 2001, undoubtedly, has given some Taiwan-related actors new momentum and an opportunity to advance their interests and sound their voices.

This crux of this presentation lies in exploring the political activism of those who are related to Taiwan and at the same time oppose the 2008 Olympic Games. Practically speaking, the International Olympic Committee's (IOC) decision to let China stage the Olympics has been set and it is fairly unlikely to change. The point of my discussion is hence not too much on how these actors can actually boycott the Beijing Olympics, but rather about how these actors perceive and capitalize on such symbolic event to advance their respective political interests. I examine the macro-structural factors that have prompted their coming into being as well as analyze their campaign strategies.

As many observers in China-Taiwan relations could have expected, Taiwan's role in such kind of campaign is trivial and the impact of such campaign is minimal. Its limits or failure, nevertheless, makes it interesting and worthy of study. This is because social movement scholars have tended to study the causes of "successful campaigns" by solely looking at successful cases. This case study on the anti-Olympics campaign reveals the stumbling blocks for an effective mobilization, and for a successful international coalition of campaign. It provides lessons for practitioners for their future contemplation for mobilization strategies.

#### *Background and Actors*

The dealing of the Beijing Olympics issue occurred mostly during the time when the Democratic Progressive Party (DPP) was in power, and the DPP administration had held an ambivalent and somewhat neutral stance towards the Beijing Olympics. The Chinese Taipei Olympic Committee (TPENOC), an international non-governmental organization (INGO) stationed in Taipei, is a member of the worldwide Olympic Movement, seeking to facilitate and promote Taiwan's participation in Olympic events. In 2007, representatives of TPENOC negotiated with representatives of the Beijing Organizing Committee for the Olympic Games (BOCOG) on whether the Olympic torch should pass through Taiwan and how. Information exchange between TPENOC and the Taiwan government exist, but TPENOC, not the Taiwan government acts as the chief contact point for discussing Olympic matters.

While TPENOC seeks to advance the Olympic Movement, three types of actors have tried to boycott or at least have expressed their skepticism towards the Beijing Olympics. The first type includes Taiwan-based non-governmental organizations (NGOs), political parties and individuals. Regarding NGOs, Taiwan Friends of Tibet and the Taiwan branch of the aforementioned CIPFG have salient positions against the Beijing Olympics and have mobilized to sound their voices (e.g. organize protests, conferences). Taiwan Friends of Tibet has a clear political stance on supporting both Taiwan and Tibet's independent sovereignty. CIPFG-Taiwan calls upon supporters from different political backgrounds to attend to the suppression on Falun Gong members in China. Other human rights NGOs, such as Taiwan Association for Human Rights (TAHR), Deng Liberty Foundation, Taiwan AIDS Foundation (TAF) also support the anti-Beijing Olympics cause, but do not play leading roles.

Regarding political parties, the pro-independence Taiwan Solidarity Union (TSU) is the only party explicitly expresses its anti-Beijing Olympics opposition. The current spokesperson of the TSU Chou Mei-Li is simultaneously the President of Taiwan Friends of Tibet.

At the individual levels, few legislators and well-known lawyers have also used their influences to express concerns on the Beijing Olympics. DPP Legislator Lai Ching-Te, for instance, is the President of the Asia Chapter of CIPFG. Kenneth Chiu, a senior human rights advocate and lawyer has also been speaking up for CIPFG's cause.

The second type of actors is generally run by overseas Taiwanese and their second generations, with salient pro-Taiwan self-determination positions, such as the Formosa Association for Public Affairs (FAPA) in the United States (US) and in Europe.

The third type includes other general international non-governmental organizations (INGOs) with a much broader political agenda in addition to their interests in the Taiwan issue. Olympic Watch (also called “the Committee for the 2008 Olympic Games in a Free and Democratic Country”) is a Prague-based NGO that advocates the improvement of China’s human rights situation before its hosting of the 2008 Olympics. Cross-strait relations and the Tibet issue are also on Olympic Watch’s agenda.

Albeit different, these actors share certain interests, in general more critical of the Chinese regime. Such common interests create a basis for potential cooperation. The task of the following analysis therefore lies in exploring three questions: firstly, under what circumstances do these actors come to pick up the anti-Olympic stance, and in certain cases even cooperate to advance their causes? Secondly, how do these actors “frame” their agenda individually and cooperatively? Thirdly, what are the strategies used in their individual and cooperative operations? As these actors are located in different corners of the globe, it is also interesting to observe the pattern and degree of international cooperation/or exchange that they have fostered. These three questions are linked to three analytical frameworks that are of interests to social movement scholars, namely the frameworks of *political opportunities*, *framing processes* and *mobilizing structures*. These frameworks serve as the backbone of my analysis.

### *Political Opportunities*

#### *1. Domestic Opportunity Structures*

In Taiwan, recent democratization has given different societal actors relatively open domestic opportunity structure to operate. Societal actors have the space to take “protest-oriented” actions (e.g. demonstrations, rallies), “pro-positive” actions (e.g. conferences, conventions, forums) and even further approach decision-makers for policy changes in favor of their demands.

My interviews with Taiwan-based NGOs indicate that most activists actually only resort to the first two types of actions to allow for open discussions among interested parties and to raise societal awareness. There is virtually no lobbying activity going on for NGO activists to seek the current government’s support of their positions. One reason why there is no further progressive action is that the issue of the Beijing Olympics and its implications are not salient and popularly debated in Taiwan. The society is never really torn between the pro-and-anti Olympics stances. This is evidenced in a simple web-based survey result that the author garnered from January to February 2008, six months before the Beijing Olympics. Around 28% (21 out of 74) respondents express that they look forward to the Olympics, while the rest 72% (53 out of 74) either do not look forward to or simply have no feelings for the event. In addition, 92 % (69 out of 75) respondents do not take part in any activities to oppose the Olympics. Only 3 % (2 out of 75) have participated in anti-Olympics activities.

Furthermore, those in the broadly-conceived pro-and-anti Beijing Olympic camps usually do not confront each other in a direct manner, but only “do their own things” with their own capacity and within their own established networks. Activists or politicians who have picked up this Olympic issue mostly do it out of personal beliefs and interests, and contribute only on voluntary basis to advance their positions. There is no consistent, established institution to carry out the agenda. The anti-camp has not fully developed and framed their concerns. Some talk about human rights and others express political antagonism towards the PRC regime. Their demands are not well articulated and linked to a diversity of side-issues (e.g. environment, housing rights, Burma, and Sudan) that other international actors have been able to create.

For these small groups of Taiwan-based activists, they never acquire solid domestic supports. Their domestic actions are mainly initiated reactively in support of the wider international anti-Olympics campaign. Their international linkages constitute an important part of their continued identities and loyalty to the international anti-Olympics campaign. This thus makes it interesting to examine the opportunity structures at the international level.

## *2. International Opportunity Structures*

Beyond the domestic arena of Taiwan, the activism is carried out by various China-related or pro-Taiwan “seeds” in different countries. Most of these countries are democracies with relatively open domestic opportunity structures for the operation of interest groups. They focus on domestic activism to garner domestic supports. Take the Formosan Association for Public Affairs (FAPA), the first Taiwanese-American congressional lobbying force in the US, for example. FAPA has long hold a stance on promoting Taiwan’s right to an independent statehood. Using its long-time experience of lobbying the Congress, FAPA was able to mobilize individual American legislators to support FAPA’s cause. For instance, working with FAPA, Congressman Tom Tancredo (R-CO) issued a letter to the IOC, condemning it for not living up to the “fair play” spirit of the Olympic Movement because Taiwan could only use the name of “Chinese Taipei” when participating in the Olympics. FAPA’s influence on the Olympics issue, nevertheless, does not move beyond garnering such kind of non-binding expressive support.

Other INGOs, such as the Czech Olympic Watch do not lobby, but mostly disseminate press releases, a conventional play of “information politics”, to express their concerns on the human rights conditions in China. The issue of Taiwan is not obvious in their articulation of demands. And it is not a surprise that such strategies only serve to embolden their causes, but do not have further impacts on their desired outcome.

## *3. Symbolic Events*

Apart from examining the rather fixed status of political opportunity structures at the domestic and international levels, one can also observe a number of “events” which have served as catalysts for further actions. Not many of them, however, were able to stimulated wide-scale debates and mobilize sustaining actions. The PRC’s management of the recent unrest in Tibet in March, 2008 is probably the most notable example that has been able to at least stir debates among the pro-and-anti camps in many parts of the world. Although the Tibet issue is by origin a matter of territorial conflict, the Tibetan issue has widely been projected and conceived of as a human rights matter in the eyes of many international actors, and thus gathers sympathy and creates some kind of international leverage over China’s handling of the Tibetan issue. I do not trace the causes of this event here because it is the not focus of my study. What is important is that this event came at the time when the summer Olympic is imminent. It gives those anti-Olympics activists a chance to link the issue to the upcoming Olympics, push those in the pro-camp to stand up for their positions, as well as stimulates by-standers to attend to the issue and take sides.

Similarly in Taiwan, some NGOs (e.g. Taiwan Friends of Tibet) have mobilized to protest against the Chinese handling of the Tibet unrest in March. Other Taiwan relevant actors in Europe and the US have also used the “low-budget” tactic of issuing press releases and statements to express their dismay over China. Their actions, again, only echo the wider boycott efforts in the international arena, and as the issue is focused on Tibet, there is no direct linkage to the Taiwan issue.

## *Framing Processes*

While the Olympic Movement promotes the universal Olympic spirits of friendship, solidarity and fair play, those in the anti camp expose the Chinese regime’s failure to live up to such spirits when it repeatedly violates human rights. Apart from such “master frames”, there are also “special frames” that link the Olympics issue further to China’s dealing with the Tibetan question, problems in Sudan and Burma as well as forced eviction generated by the Beijing Municipality, etc. By exposing the discrepancy between China’s promises to the Olympic spirit (and to ameliorate human rights practices) and its actual performance, NGO activists seek to shame the Chinese government, and hope that such external pressures would push it to improve.

Taiwan relevant activists (either at the international or domestic level), however, do not make use of all the “special frames” generated by other international actors. Taiwan Friends of Tibet has a Tibet focus; CIPFG-TW attends to the Falun Gong issue. FAPA stresses that the fair play spirit of Olympics has been violated since Taiwan cannot take part in the Games as a fully recognized sovereign state.

In reaction to the anti-Olympic voices, those supporting the Olympic movement establish a counter discourse, arguing that politics and sports are distinct domains which should be separated. In the history

of the Olympic movement and its opposition movement, the call for separating politics and sports is nothing new. Although it is obvious to observers that politics is in fact part of the Olympic Games, the Olympic Movement has so far been successful to champion its “sports only, no politics” slogan. This is not just an international phenomenon, but is also evidenced in Taiwan. In an online polling conducted by Yahoo Taiwan from the 20<sup>th</sup> to the 28<sup>th</sup> of March in the wake of the Tibet unrest, the majority of the respondents side with the Olympic movement’s general discourse that “politics should not influence sports and hence believe Taiwan should not boycott the Beijing Olympics”. Only a minority of respondents believe that “there should be international justices and hence support the boycott”.

### *Mobilizing Structures*

Now, I turn to mobilizing structures, the question of how formal organizations and informal networks function as “vehicles” and provide “resources” for collective actions.

Although there is a pro-claimed international campaign to boycott the Beijing Olympics, most national campaigns operate independently from one another. Activists basically make use of their pre-existing resources (e.g. personal, expertise, capital, facility) and networks to oppose the Beijing Olympics in their respective countries.

In terms of resources, most Taiwan relevant actors rely on volunteers’ efforts and donations. They are able to initiate “protest-oriented” actions (e.g. demonstrations, rallies) and “pro-positive” actions (e.g. conferences, conventions, forums), but they do not have the capacity to have established personnel to undergo further lobbying activities towards the Taiwan administration or other governments.

Regarding domestic networks, CIPFG-TW, Taiwan Friends of Tibet and other like-minded human rights NGOs are in contact with each other. These NGOs share some overlapping members and supporters. Internationally, although CIPFG-TW has contacts with other Falun Gong focused actors and Taiwan Friends of Tibet has contacts with the International Tibet Support Network (ITSN), their resources do not permit them to have international scale of collective actions.

### *Conclusions*

Were it not for the fact that the Olympics is slated to take place in Beijing, there would never have been the anti-Olympic debate within the Taiwan society. Some Taiwan-based or Taiwan relevant actors seize upon the potential linkage with the China issue and intend to make use of the event to evoke commitment and draw supports for their initial pro-Taiwan stance. However, none of the Taiwan relevant actors fully capitalize this event to their own purposes. This is because the nature of this event has been defined as a side-show to advance and legitimize their other pro-Taiwan causes. There are no brand new resources or personnel created for this particular campaign in Taiwan. There are information exchanges among between like-minded activists in Taiwan and at the international level, but again, their *ad hoc* engagement and cooperation remains event-based and sporadic. The overall effect of such kind of activism might serve the purpose of “expressive politics”, but it fails to bring forth changes that would ultimately boycott the 2008 Olympic Games.

The example of Taiwan also showcases other parallel endeavors in other countries. The anti-Olympic movement is a loose international coalition of a diversity of actors who oppose the Olympic Games for various reasons. Their “seeds” are in many parts of the work. But these seeds mostly operate quite independently within their own established networks and arena. There are a number of discourses developed along the widely known norms such as the respect for human rights or environment. But there is no effectively unified opposition to confront the much more institutionalized Olympic movement. Although it is still testable whether the Olympic cause has established itself as a universal norm, at least the cause for a universal sports event does have its lure to draw widespread enthusiasm and supports in the history of the Olympic Games. This is without exception in the Beijing Olympics.

The effectiveness of the anti-Olympic movement therefore cannot be evaluated based on whether it achieves the ultimate goal to boycott the Olympics or not. Instead, the fact that various activists have capitalized this event, using the tactics of information politics, symbolic politics and moral leverage to evoke debates and to gather supporters for their respective purposes, are part of their achievement. The roles of Taiwan relevant actors, albeit minimal, constitute a part of this international collective ambition.

## 2.2.4 Recommendations

- When developing effective mobilization, elements to take into consideration include:
  - Determine the most effective opportunities (protest oriented, conferences/conventions, political lobbying);
  - Frame your argument - for example you could focus on the Olympic spirit, “there should be a boycott of the Olympic Games because China does not live up to the spirit of the Olympics”, or you could focus on the issues of human rights violations in East Turkestan, “there should be a boycott of the opening games of the Olympics because of China’s consistent violation of human rights in East Turkestan”.
  - Build networks – Do you want just a national movement? International movement? Who are your allies? Recommend involving as many allies as possible from within China.

## 2.2.5 Question & Answer Session

**Q:** With regards to the Olympics, we have not seen any protests from the Falun Gong or other pro-democracy movements. Why is that?

**A:** The Falun Gong have not been protesting, but instead meeting directly with officials of the International Olympic Committee and government, where they try to advocate support for their cause from within. This why their movement might not be very tangible, but there is definitely a strong lobby going on.

**Q:** The Uyghur have a strong campaign in Europe and North America, but what are the possibilities in Taiwan?

**A:** I don’t know of any groups in Taiwan that are working very closely on the Uyghur cause. Some groups may deal with some of your issues in general terms, but not the self-determination cause of the Uyghurs. General awareness of the situation in East Turkestan has increased since event in Tibet last year. Taiwan prefers to separate the Uyghur self-determination issue from Taiwan and Tibet, because the three types of self-determination requests have different background and history. There are some common issues however to highlight between these groups, like the poor human rights record of the Chinese regime.

**Q:** What is the relationship between the IOC and the UN and other states? Is the IOC an NGO or another type of organization?

**A:** The IOC is a NGO. The people who sit on the board are not member of governments. While the Olympics is an international event, it has to take place in a host country. Determining the host country is often where politics comes in. Governments of course want to have the games in the country, as it’s a prestigious event. While it shouldn’t be expected that the Committee take human rights into absolute consideration, they do mention human dignity in their charter so this could be a point of lobbying. Lobbying to the IOC is a great opportunity.

**Q:** Do you have any suggestions for the Uyghur movement? At this point the Uyghurs are losing hope in dialogue, since it takes a long time to resolve an issue and the Uyghur culture may not be able to survive until we see those results.

**A:** There is no timetable pre-determined for self-determination movements. You need to organize yourselves and get involved with international affairs. In the case of East Timor, for example, Ramos-Horta was at the UN for 25 years lobbying. He lobbied everywhere, working on the diplomatic global front. It takes a long time to get things on the international agenda. At this point not many people know about East Turkestan. It took 50 years for Tibet to be in the news. If you are capable of enduring, then day

after day you will create a better movement and find better ways to pursue your objectives. When people have no hope, sometimes they resort to violence, but this is always be avoided. The element of nonviolence was important in launching Tibet into the news.

## 3. Pave the Way Forward

Wednesday 23 April 2008

### 3.1 *Future Outlooks*

#### 3.1.1 **Presentation by Seema Saifee**

*Pro Bono Attorney for Uyghurs in Guantanamo*

#### **International Humanitarian Law: The Future of Uyghur Prisoners in Guantanamo**

In the fall of 2001, after the United States began military operations in Afghanistan, twenty-two Uyghurs were picked up in Pakistan and Afghanistan, turned over to the U.S. military, and transported to the U.S. Naval Station at Guantanamo Bay, Cuba. The Uyghurs were not found with any weapons. They were not picked up near any battlefield. They were not even captured by the U.S. They were captured by local bounty hunters in exchange for thousands of dollars from the U.S. military. Soon after arriving at Guantanamo, the Uyghurs were told they were mistakenly captured and would soon be released. This was over six years ago.

My firm represents seven Uyghurs who are, or at one point were, imprisoned at Guantanamo. Three of our clients were released to Albania in 2006. Our remaining clients – along with 13 other Uyghurs – recently embarked on their seventh year of indefinite imprisonment at Guantanamo. The Uyghurs have different reasons for leaving China, from escaping religious persecution to seeking greater economic opportunity, but none of which involve joining al-Qaeda or engaging in any terrorist movements.

The U.S. Congress has repealed the statutory right of Guantanamo prisoners to contest the legality of their incarceration through a petition for a writ of habeas corpus – the cardinal means by which persons have obtained swift judicial review of executive restraints on personal liberty– and in its place provided a circumscribed administrative remedy which allows the prisoners only limited rights in U.S. courts. These court cases have been moving at a snail's pace for the past few years with constant disputes with the government stalling a court remedy. Now the legality of repealing habeas corpus as a remedy for Guantanamo prisoners is before the U.S. Supreme Court. The Court will decide whether Congress's decision to strip the prisoners of habeas rights violates the U.S. Constitution.

In the meantime, the U.S. has reportedly lobbied more than one hundred countries to grant asylum to the Uyghurs. However, diplomatic efforts have stalled. The Uyghurs cannot be returned to their homeland where they would face arbitrary imprisonment, torture, and even execution at the hands of the Chinese. Moreover, the Chinese government has made it politically and economically difficult for third countries to grant asylum to the Uyghurs. Further compounding this injustice, the Uyghurs – who have all been cleared for release – were transferred several months ago to a maximum security facility within Guantanamo known as “Camp VI” where they are held in solitary confinement for over 22 hours a day. A complete standstill in diplomatic efforts is not a justification for prolonged arbitrary imprisonment, let alone imprisonment in the worst conditions available at Guantanamo.

The Uyghurs in Guantanamo are among the victims of a breakdown in the application of international law and universal human rights principles to the war on terror. The Geneva Conventions, a treaty governing the treatment of persons captured during armed conflict, contain numerous provisions that afford persons held in military custody individual rights. The U.S. ratified and signed the Geneva Conventions, and indeed helped draft them, in 1949. The Geneva Conventions that apply directly to the Uyghurs in Guantanamo include the Third Geneva Convention Relative to the Treatment of Prisoners of War (guaranteeing basic individual rights, including the right to humane treatment, the right to protection from torture and other coercive interrogation tactics, the right to proper medical attention, due process rights if

the detainee is subject to disciplinary or punitive sanctions, and the right to practice one's religion); and the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War. Also particularly important is Common Article 3 of the Third Geneva Convention which prohibits, among other things, outrages upon personal dignity, in particular, humiliating and degrading treatment. Common Article 3 is widely regarded as establishing the most fundamental guarantees of humane treatment for all persons in all conflicts.

One of the central protections provided by the Third Geneva Convention is a detainee's right to be treated as a prisoner of war unless and until his status or innocence can be determined by a "competent tribunal." The Uyghurs have not received such a hearing. Lawyers for the Uyghurs recently filed a petition in the U.S. Court of Appeals for the Armed Forces seeking a court order directing the government to treat the Uyghurs in accordance with the Geneva Conventions. The petition is now fully briefed and is ripe for review.

In 2006, the U.S. Supreme Court held that the Geneva Conventions are binding on all prison sites in the war on terror. There is no corner of the globe where individuals are unprotected. The U.S. government, however, is attempting to prevent the detainees from going into court and enforcing their rights under the Geneva Conventions. Our courts have never allowed this. No country has ever allowed this. No detainee – even if suspected of war crimes such as the murder of civilians – may be subjected to torture, corporal punishment or humiliating or degrading treatment.

International law is part of our law and must be administered by the courts of the United States. Our Constitution states that the treaties we sign share the same status as domestic law. Both are considered the Supreme law of the land. Persons detained by enemy forces during an armed conflict may seek to vindicate the rights guaranteed by the Geneva Conventions by means of judicial enforcement. Indeed, the U.S. military has consistently recognized that the Geneva Conventions constitute binding U.S. law on the entire military and are judicially enforceable by prisoners in U.S. military custody. Under the Geneva Conventions, every person seized in the zone of military hostilities must have some status under international law. Either the person is a prisoner of war covered by the Third Geneva Convention or a civilian covered by the Fourth Geneva Convention. There is no intermediate status. Nobody in enemy hands can be outside the law.

The Uyghur cases, though legal in theory, are more aptly described as political cases. The prisoners who are being released from Guantanamo are not those with the strongest claims for innocence, but those whose governments are pressing for their release. The Uyghurs, however, have no country to advocate for their release. One of our clients told me that the Uyghurs – more than anybody – need the assistance of pro bono attorneys because they have no country fighting for their release. The only reason the Uyghurs remain in military custody is because no country is willing to grant them asylum. Though lawyers and activists must place increased pressure on the U.S. government – through media, political and diplomatic advocacy – to swiftly release the Uyghurs from Guantanamo, we cannot achieve this objective without the indispensable and vigorous efforts of the European Union and its member states to collectively offer resettlement to the Uyghurs who are all cleared for release but have nowhere to go.

### **3.1.2 Recommendations**

- Lobby EU member states to offer resettlement to those Uyghurs awaiting release from Guantanamo.

### **3.1.3 Presentation by Ulrich Delius**

*Asia Expert, Society for Threatened Peoples*

#### **Future Prospects for East Turkestan and Effect of International Advocacy: German Institutions and Their Policies**

There is a growing awareness among German politicians and media that not only the Tibetans, but Uyghurs too are suffering from massive human rights violations. In October 2007, only two weeks after the meeting between the Dalai Lama and Chancellor Ms. Merkel, we arranged in cooperation with Uyghur World Congress meetings with the most prominent human rights experts in the German government and Federal Parliament. The Human Rights Committee of the Parliament even organized a special session to give President Rebiya Kadeer the floor to present an overview on the current human rights situation in Eastern Turkestan. All the meetings were encouraging.

The latest brutal repression in Tibet and East Turkestan has made the headlines in all German media. The awareness of Chinese disastrous human rights record has been dramatically growing in recent time. That's certainly a positive and encouraging perspective.

On the other hand we should bear in mind that the Tibetans made the experience that public support had no direct effect on the bilateral relationship between Western governments and China. We had to be realistic: There is still no support for the independence of Tibet despite numerous public declarations of Western politicians on human rights violations in Tibet. No country might imagine to abandon the One-China-Principle. For East Turkestan the situation is even more complicated due to China's interest in resources in East Turkestan. The fact that East Turkestan became China's most important producer of oil and gas in 2007 has been widely noticed. Everybody is aware that China will take its hold on this resource-rich region.

We have to keep in mind that 10 millions Uyghurs are facing 1.2 billions Chinese. Regarding this imbalance the Uyghurs will never have the means to effectively impose an independence of East Turkestan against the will of China. The prospect of a massive breakdown of China seems to be not very realistic. An armed struggle of Uyghurs would perhaps make some headlines but would have disastrous consequences for the people of East Turkestan because it would be used by China as a pretext to strengthen the repression and it would severely hurt all your contacts with European politicians. Because be assured that no Western politician today can afford to support armed resistance in China. Such a decision would have extremely negative consequences for your political standing in the Western world. It would close all doors of western governments which reluctantly are starting to open now.

For the past 40 years the Society for Threatened Peoples has been lobbying for the right to self-determination of nationalities all over the world. There are many different ways to exercise this right. It must not necessarily be exercised by the call for national sovereignty and an independent nation. Recent examples of difficult new creations of states (Eritrea, East Timor, Kosova) have shown that building a new independent country is highly sensitive and complicated. And it might not always lead to more political independence, as the frustrating experience made in Kazakhstan and several other former Soviet republics.

From that experience we are calling on many nationalities, not to focus too much on the sovereignty issue but on human rights and other forms to implement the right to self-determination. Regarding the Uyghurs we would like to encourage you to address the human rights situation. Especially in the next months before the Olympic Games in Beijing such an approach would facilitate many contacts to politicians and open doors to search for a solution for the Uyghurs in Guantanamo and the imprisoned sons of Rebiya Kadeer.

### **3.1.4 Recommendations**

- Need to remain realistic that China will not support the Uyghur self-determination movement, nor is it likely that any country would change their one China policy.
- Do not engage in an armed struggle, as it will both give China a reason to strengthen their repression in East Turkestan as well as severely hurt your European contacts and allies.
- Address the human rights situation in China, as opposed to the sovereignty issue, in your self-determination movement.
- Use the Olympic Games as an occasion to make many contacts and advance your cause further.

### **3.1.5 Presentation by Albrecht Göring**

*Lawyer, Expert on Uyghur Issues*

#### **China and the Olympics: The Momentum for Ethnic Minorities and a Realistic Assessment for the Situation of the Uyghurs**

We have gone a long way. In 1995/1996 my collaboration with the Uyghurs and their various organizations began. These organisations were characterized by their internal splitting. This also was reflected on their asylum proceedings. At first they turned out to be positive and then they ended negative. But I can say that in the meantime 95% of the Uyghurs are protected by their right of residence in Germany. Now I ask all Uyghurs in Germany still being involved in the asylum proceedings to contact their lawyers, because right now we have a pretty good chance to be successful in finding a positive solution.

When we began to publish on the political level in Germany the violation of human rights of the Uyghurs in China nobody had ever heard about the Uyghurs. Like I mentioned before, the situation of the Uyghurs in Germany was characterized by severe power struggles. This was blocking in a large degree any constructive way of working. Today of course one can say that there are still strong influences from the outside contaminating their political work. Nevertheless, today I like to speak about heterogeneity in the Diaspora organisations of the Uyghurs. We have to be grateful for the outstanding leadership of Erkin Alptekin and now by the lucky chance in the person of Rebiya Kadeer who joined the Uyghurs in exile. Mrs. Kadeer is not only a lucky chance for the Uyghurs but for the entire Muslim world and actually for the whole world. Mrs. Kadeer is a woman who has experienced and suffered more than the most of us. At the present time two of her children are inmates of Chinese prisons, but nevertheless she still is full of optimistic energy and she is leading the Uyghur movement without any conditions under full investment of her ability. And I like to mention as well and thank her wonderful husband who is supporting her.

The World Uyghur Congress (WUC) and the East Turkistan Union in Europe today are under the leadership of highly professional collaborators and executives. So here in Berlin, executives of the Uyghurs from all over the world have met at this seminar, which each of their abilities and their competence bringing something else to the table. Especially, I would like to emphasize one great ability of the Uyghurs which is to use humour, music and dance to integrate subconscious questions, conflicts and potentials into the political and human process. This, I would like to say is an example to all societies.

So here I would like to name two, for me, of the most important basic conditions for a democratic society. First is the integration of each of the weakest members into society. This also characterizes the humanity of the society. Second a democratic society has to make their view of man transparent. There is no value-free legal order. The identity of a single person and therefore of a country's population means freedom and the right to decide who one wants to be and which relationships one will attend to; self-determination with respect for the others. So, here I can only agree with Mrs. Kadeer's standpoint. On the occasion of her press conference in Bonn on Friday 18 April 2008 she emphasized that first there have to be

conditions in East Turkistan under which the Uyghur people can decide freely how to live – to decide freely on practicing religion, culture, and education, as well on questions of self-determination.

I would like to point out that one of the fundamental principles of the olympism is “any form of discrimination with regard to a country or a person on grounds of race, religion, politics, and gender or otherwise is incompatible with belonging to the Olympic movement.” China has the highest rate of executions, both legal and extrajudicial, in the world. It is the country where within one week any kind of organ can be purchased for transplantations. The Olympic spirit is focused on China and it is tearing down the masks of China’s government. We know that in reality the Uyghurs have been repressed for decades.

The Chinese leadership is not treating their people as human beings. At China’s whim a person can be arrested or even executed. This attitude does not only relate to non-Chinese people in China, but it also concerns their own Han Chinese people. So one must say that from the view of the Chinese leadership, human value actually does not exist in China. In this sense a human being is like any possession, like a commercial value or like an object. If we look at East Turkistan the Uyghurs are not able to practice their own religion. At schools and universities it is prohibited to teach and study the Uyghur language. On the streets or in private parties it is not allowed to play their own songs. Children can not be educated in their Uyghur tradition. Meshreps are forbidden. People in East Turkistan are living in constant fear and horror.

I would like to note the two main strategies on how to possibly escape from such repression. The first is to espouse non-compliance. No one can possibly overcome such misfortune and suffering unharmed. Children are especially affected, as they grow up in a hostile climate which becomes internalized. In the non-compliance strategy people are reflecting and reacting to avoid any damage of their Uyghur personality. Sometimes they react with aggression and frustration against China. The second survival strategy is to deny one’s hostility and try to conform, become to say a ‘better Chinese’.

The various lectures given here in Berlin reflect these different strategy options. One advice given was to open dialogue with the Chinese government. In my opinion this corresponds to the strategy of assimilation. A dialogue demands that the parties involved are interested in each other or at least interested in coming to a final result. In the case of East Turkestan we are missing a fundamental requirement – the Chinese leadership is not interested at all in speaking with the Uyghurs. In the Tibetan example, dialogue was held over several years in the form of subjugated meetings held in China. In my opinion a real dialogue can only take place under the protection of a third person in a neutral area. For example, the discussions of peace between Israel and Egypt were held under the protection of former US President Jimmy Carter and an agreement of peace was made at Camp David in the US. This agreement was prepared largely by a woman named Rita Rodgers. At first she visited the Egyptian president for one week to become acquainted with him, particularly to see how he lives, what kinds of books he was reading, which music he was listening to and what other interests he had. Then she travelled and did the same with the Israeli president, and began to report to him the lifestyle of the Egyptian president. Then she reported back to the Egyptian president on the lifestyle of the Israeli leader. This created a level of sympathy and interest between the two men. This served as a basis for the agreement in Camp David.

I like to emphasize that everything can change, especially on the political level. However at the moment regarding the Chinese leadership, they have a complete lack of interest in dialogue with the Uyghurs. Therefore if dialogue was started immediately it would likely result in a gesture of subjugation (as happened with the Tibetans) and could lead to a collective depression amongst Uyghurs.

Other lectures during this week summarized the awareness of the rights of one’s self and one’s own nation. I would like to say that I’m a full supporter of the right to self-determination of the Uyghurs. The Uyghurs have to decide how and with whom they would like to live with free decision. There cannot be a suppression of those decisions from the dictation of the ‘world parents’. The Uyghurs are free in their ability to create a model of how society could be and they can invite the world to take part in that creation. So let us start developing a state where it is worthwhile to live in freedom, where the sun is shining and where our children can grow.

### **3.1.6 Recommendations**

- Do not become frustrated if initial dialogue with China does not reflect a genuine willingness from Chinese authorities to reach an agreement.
- Self-determination is a fundamental right which should be embraced as all other fundamental rights.

## **3.2 Concluding Remarks**

### **3.2.1 Conclusions by Rebiya Kadeer**

*President, World Uyghur Congress*

This workshop has evoked new ideas and new discussions, we have talked about what self-determination means and how you obtain it, as well as its advantages and disadvantages. We have heard about the cases that through pressure some states have become independent and about others who didn't have much international support didn't receive it, even though the international community knew some states deserved it. We talked about the contradictions, including territorial integrity.

If East Turkestan seeks independence or uses violence we certainly won't get any international support for our cause. When Uyghur people accept self-determination as a solution, it would be a better path for us, one through which we should be able to reach our objectives. If we seek outright independence, then we will not be able to reach our objectives and we might face mass extermination and even genocide. People in our homeland and in the Diaspora like to shout and scream for independence, but they never do anything for the struggle. They use empty words and they don't do what they propose. If they continue, the Chinese government will consider us separatist, secessionist and terrorists. By the time we reach our goals we would have suffered terribly.

We need to befriend groups of people who although we might not share the same opinions we can work together with them and educate them on the injustices of the Chinese government. Regardless of the allegations of the Chinese government we will continue to struggle peacefully. We ask for peace, love and friendship. No one will reject our approach of peace, love and friendship – even our enemies can become our friends. When we look at Afghanistan, Iraq and Palestine we see daily struggles and they don't stop fighting. We have a proverb in Uyghur – patience in gold. Patience will be the pioneer.

We only have two Uyghurs who have been educated in the western legal system. I urge youth to study law, politics and international relations and for all to educate their children well. Our nation will be saved by those who do this. We will one day be free. The Soviet Union collapsed, so can China. It is under the threat of its own people. The more dictators become harsh, the stronger the weak get. We can stand united in the face of Chinese oppression.

### **3.2.2 Conclusions by Marino Busdachin**

*General Secretary, Unrepresented Nations and Peoples Organization*

Regarding the overall awareness of the Uyghur case, I agree completely with Ms. Kadeer. As it was evident at the German Parliament, there is very little knowledge of the Uyghurs. It tells us how much work is still needed, especially here in Germany, a leading country in Europe where Uyghurs have their largest European community. So even if these friends have little knowledge, can you imagine what the knowledge of the situation of the Uyghurs is around the world?

Desperation in young people can sometimes lead them to consider using violence. Such radicalization always leads to people killing each other. Just look at the examples of the Kurds or the Palestinians. It is completely not true that violent fighting for independence will allow you to achieve independence. Some people might cite the example of Yugoslavia where there was large-scale violence before its dissolution into independent entities. Yugoslavia collapsed not because of this violence but because of the fall of the Soviet Union.

I appeal to the Uyghur community for you to build other options, to make opportunities and proposals and to gather a network of friends to work with you. If you ask for independence today, your efforts will go into the trash. It will be very difficult to find allies for this cause. The struggle for your cultural identity is

the most important element – the key point to any society. If you can advance this cause and grow as a people in the Diaspora, then you can save yourselves.

## 4. Berlin Declaration

*Adopted by Participants at the Uyghur Leadership Training Seminar,  
in Berlin, Germany, on 23 April 2008*

*Concerned* deeply of the human rights violations committed against Uyghurs and the increased suppression they are facing by Chinese authorities;

*Convinced* that freedom for the Uyghur people would contribute and strengthen also the freedom of Tibetans, Inner Mongolians, and all those living within China;

*Reject* all allegations made by the government of China labelling the Uyghur people and their legitimate and just cause as “separatist” or “terrorist,” underlining in this context the continued commitment of the World Uyghur Congress to principles of democracy, human rights and nonviolence;

*Reaffirm* the entitlement of all peoples’ basic right to self-determination, as enshrined in many of the central documents of international law, including the Universal Declaration of Human Rights;

*Call* upon the government of China to respect the right of all Uyghurs to freedom of religion;

*Urge* the European Union, and its 27 Members States, to develop a new China policy, which focuses on the respect of human rights and the promotion of democratic reforms of the Chinese political system;

*Call* upon the authorities of the People’s Republic of China to respect the Uyghur people’s fundamental right to internal self-determination and so to implement in its entirety, including cultural, linguistic, and religious freedoms guaranteed to the Uyghur people by the Constitution of the People’s Republic of China and the Regional Ethnic Autonomy Law;

*Urge* European Union Member States to put pressure on China to initiate a meaningful dialogue for the peaceful and permanent settlement of the East Turkestan problem, and do their utmost to facilitate such a process;

*Calls* upon the European Union for the resettlement on humanitarian grounds of Uyghur detainees in Guantanamo Bay;

*Urge* the European Union to pressure the Chinese government to immediately release the imprisoned sons of Ms. Rebyia Kadeer;

*Urge* all international actors to pressure China to fulfil its commitment to improve human rights conditions, as promised before the 2008 Beijing Olympic Games were granted;

*Call* upon all people to express their denunciation of China’s human rights violations through the practice of nonviolence across the world.

## 5. Photo Album



**Lecture on EU Responses to Ethno-Regionalism. From Left to Right Mr. Alim Seytoff, Mr. Graham Brown, Mr. Michael Gibb, Mr. Marco Perduca.**



**Mrs. Rebiya Kadeer takes time for an interview with reporters.**



**Participants at German Parliament.**



**Lecture on Corruption in China, Mr. Liao Ran.**

**Participants with Mrs. Rebiya Kadeer.**





**Participants demonstrate at the Brandenburg Gate on their way to the German Parliament.**



**Participants attend a workshop.**