

# **The Projected Hong Kong Special Administrative**

## **Region Human Rights**

### **Record In The Post-British Era**

**by**

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#### **PRELIMINARY OBSERVATIONS**

On July 1, 1997, Hong Kong ceased to be a British Dependent Territory, and the People's Republic of China (PRC) resumed sovereignty over Hong Kong pursuant to the 1984 Sino-British Joint Declaration on the Question of Hong Kong (Joint Declaration).<sup>1</sup> The Joint Declaration, in accordance with Article 31<sup>2</sup> of the PRC's Constitution, declares that Hong Kong is now a Special Administrative Region (HKSAR).<sup>3</sup>

The HKSAR is under the authority of the PRC's Central Government but is expected to enjoy "a high degree of autonomy, except in respect of foreign and defense affairs," which are the responsibilities of the Central Government. Purportedly, Hong Kong's "capitalist system and life-style [will] remain unchanged for 50 years."<sup>4</sup>

Inherent in Article 31 of the PRC's Constitution is the concept of "one country, two systems," an idea that would encompass both the PRC's socialist, as well as, Hong Kong's capitalist systems.<sup>5</sup> Moreover, HKSAR law will preserve "rights and freedoms" that would be promulgated by the National People's Congress of the PRC and recognized "in a Basic Law of the HKSAR."<sup>6</sup> After an arduous process,<sup>7</sup> the Basic Law of the HKSAR was adopted by the Seventh National People's Congress of the PRC at its third session on April 4, 1990,<sup>8</sup> and became effective on July 1, 1997.

#### **THE BASIC LAW OF THE HKSAR**

The Basic Law is a statute enacted under the authority of Article 31 of the PRC's Constitution, and its interpretation will be carried out in accordance with Chinese Communist Party policy. Hence, while the Basic Law is sometimes referred to as Hong Kong's "miniconstitution," the National People's Congress has the power to amend the Basic Law unilaterally. Article 5 of the PRC's Constitution provides that "no law or administrative rules and regulations shall contravene the constitution," and there is no provision for exempting or suspending Article 5.<sup>9</sup>

The Joint Declaration served as the starting point for the necessary process of reform in developing constitutional and legal institutions required to maintain the rule of law, human rights and democracy in Hong Kong.<sup>10</sup> However, a number of troubling issues are

present as it appears that provisions of the Basic Law either contravene the spirit or the black letter of the Joint Declaration.<sup>11</sup>

For example, under article 39 of the Basic Law, the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights, as well as, international labor conventions which already apply to Hong Kong, are to continue in force, and are to be implemented through the laws of the HKSAR. Although the rights and freedoms of Hong Kong residents may be restricted by law, the restrictions may not contravene their rights as set out in the aforementioned international treaties and enumerated in Chapter III of the Basic Law. Ultimate protection is dependent upon adequate implementation of the rights referred to specifically in Article 39 and those in the Basic Law under a system of constitutional judicial review.

Further, under Article 67 of the PRC's Constitution, the Standing Committee of the National People's Congress is empowered to interpret the constitutionality of the PRC's laws and HKSAR legislation. Consequently, Hong Kong legislation may be deemed unconstitutional under the PRC's Constitution even though it may be consistent with the Basic Law.<sup>12</sup> While the Basic Law is intended as the "mini-constitution" of the HKSAR, from the PRC's perspective, it must fit within the PRC's overall legal framework as any other domestic legislation.<sup>13</sup> Although the Court of Final Appeal of the HKSAR is vested with the power of final adjudication,<sup>14</sup> the common law applied by this court will be in direct conflict with the PRC's Constitution.<sup>15</sup>

Therefore, the National People's Congress of the PRC can seemingly enact and apply its laws freely to the HKSAR under the authority of Article 18 of the Basic Law.<sup>16</sup> Since the Standing Committee of the National People's Congress has the vested power of ultimate interpretation,<sup>17</sup> the independence of the judiciary can be compromised in perpetuating the rule of law and the common law system of the HKSAR. The Joint Declaration expressly provides that the HKSAR "courts shall exercise judicial power independently and free from any interference," and that the Court of Final Appeal "may as required invite judges from other common law jurisdictions to sit" on the court.<sup>18</sup> However, the Joint Declaration appears to be once again undermined as, after years of dispute,<sup>19</sup> the British Government gave way to the PRC's position that only one foreign judge could serve on the Court of Final Appeal.<sup>20</sup>

#### THE HONG KONG BILL OF RIGHTS ORDINANCE OF 1991<sup>21</sup>

The United Kingdom ratified the International Covenant on Civil and Political Rights (hereinafter International Covenant) on May 20, 1976. At the time, the British Government accepted certain obligations in respect to all individuals, both within its territory and others subject to its jurisdiction, including the inhabitants of Hong Kong. The International Covenant was not officially incorporated into Hong Kong's domestic law at that time, although the United Kingdom took the position "that its provisions were effectively implemented through various laws in Hong Kong, including the common law."<sup>22</sup> The rights afforded under the International Covenant were eventually officially recognized by the Hong Kong government in 1991 when the Bill of Rights Ordinance

was passed which incorporated the Covenant's Provisions. Again, Article 8 of the Basic Law now governing the HKSAR states that the laws previously in force in Hong Kong will remain in force. However, since the PRC opposed & objected to the passage of the Bill of Rights Ordinance, the law's viability and continuing constitutional judicial review of its protections is doubtful.<sup>23</sup>

While the PRC is not a signatory to the International Covenant, the Joint Declaration provides that the International Covenant "as applied to Hong Kong" shall remain in force.<sup>24</sup> Thus, pursuant to Article 40 of the International Covenant the PRC, as the HKSAR's governing body, will be responsible for filing human rights reports with respect to Hong Kong, with the United Nations Human Rights Committee. The PRC has already indicated that it will cease to file these reports after July 1, 1997.<sup>25</sup> The world, and more importantly the people of Hong Kong must wait and see exactly what human rights they will be afforded under the PRC's new Basic Law governing the HKSAR. The one aspect which is certain, is that compared to the PRC's record on human rights, Hong Kong's Bill of Rights Ordinance has provided a more positive human rights tradition.<sup>26</sup>

#### THE PRC'S HUMAN RIGHTS RECORD<sup>27</sup>

The PRC claims that universal human rights are representative of the "Western" liberal approach. A reading of the PRC's Constitution shows that Chinese citizens enjoy the full range of rights found in most western democracies.<sup>28</sup> Human rights, on the other hand, are accepted in a slightly different light. During November 1991, the PRC's Information Office of the State Council issued a White Paper entitled "Human Rights in China," that begins with the following affirmation of the concept of human rights:

As a developing country, China has suffered from setbacks while safeguarding and developing human rights. Although much has been achieved in this regard, there is still much room for improvement. It remains a long-term historical task for the Chinese people and government to continue to promote human rights and strive for the noble goal of full implementation of human rights as required by China's socialism.<sup>29</sup>

The Chinese government is not alone in its goal of implementing human rights according to its ideology and political persuasion. Many governments support the notion of a version of human rights reflecting their own cultural, philosophical, political, ethical and economic traditions.<sup>30</sup> Anne Bayefsky, a commentator on recent international conferences that have adopted declarations or action plans, notes that the role of cultural sovereignty and cultural relativism in the international human rights sphere can establish that the real interest of the state protagonists is not protection of cultural identity but non-interference, supremacy, and control.<sup>31</sup>

Bayefsky goes on to conclude:

[u]ltimately the divergent strands of consent, contingency, positivity, efficacy, might, on the one hand, and justice, rationality, normativity, validity, right, on the other, must be mediated. It is the failure of contemporary legal philosophy to confront adequately these

deep fissures at the heart of the international human rights regime which is responsible for the crisis that relativism has wrought.<sup>32</sup>

Despite the PRC's professed commitment to the advancement of what it perceives as human rights, history reveals a tradition of human rights which the people of Hong Kong may find unwelcoming at best when compared to the protections afforded under British rule. This is best illustrated by examining how the PRC has responded to its dissidents, its political prisoners, and the media.

### The Voice of Dissent in the PRC

Criticism of the PRC has come with a high cost, including banishment, imprisonment, and even torture. Regarding its views on banishment of its dissidents, the Chinese government's attitude is that this is basically, "a matter of China's internal affair."<sup>33</sup> Thus, it was not surprising to discover as recently as the beginning of January 1995, a secret blacklist of forty-nine dissidents & former political prisoners who resided abroad and who were banned from re-entering the PRC.<sup>34</sup> While other political activists were fortunate to avoid being banished from their country, they still faced the threat of indiscriminate imprisonment and punishment.

For example, during May 1995, Amnesty International issued a report that exposed the Chinese government's practice of violent suppression of Tibetan pro-independence protesters over the past two years.<sup>35</sup> The report described the practice of using torture in interrogations and punishment in labor camps for adults as well as children.<sup>36</sup> Interestingly, on May 15, 1995, forty-five prominent Chinese scientists and intellectuals, including Wang Ganchang, one of the leading scientists responsible for the development of China's nuclear weapons, petitioned President Jiang Zemin and Qiao Shi, Chairman of the National People's Congress, for the PRC's government to treat all "political thought and religious belief with the spirit of tolerance and never again regard individuals of independent thought and independent views as 'hostile elements' and submit them to repressive attacks, surveillance, house arrest and even detention."<sup>37</sup>

A few days later, Liu Xiaobo, a literary scholar and critic, was taken into custody by officers of the Beijing Public Security Bureau as he was preparing to deliver a copy of the petition to a western news organization. The petition, signed by fifty-six writers, scholars and former pro-democracy student leaders, called upon the Communist Party leadership to bring new substantive political reforms,<sup>38</sup> and release all those persons still in prison for their part in the 1989 demonstrations in Tiananmen Square.

As the sixth anniversary of the 1989 demonstrations for democracy in Beijing approached, various other arrests took place to curtail political activism. In fact, Chinese authorities took precautions throughout the country to prevent such dissent.<sup>39</sup> At the same time, incarcerated political prisoners petitioned the National People's Congress for the release of other political prisoners.<sup>40</sup>

One prominent Chinese activist, Chen Ziming, who was confined to house arrest, wrote an open letter in which he called for the release of political prisoners.<sup>41</sup> During June 1995, Mr. Chen along with Harry Wu (Wu Hongda), a naturalized American who had spent nineteen years in Chinese gulags and entered China from Kazakhstan, were detained by Chinese authorities.<sup>42</sup> On August 24, Mr. Wu was convicted in a Wuhan court of spying; he allegedly obtained state secrets, (among other allegations) and was sentenced to fifteen years imprisonment, but he was subsequently expelled from the PRC as punishment for his crimes.<sup>43</sup>

In November 1995, fifteen dissidents chanced arrest and detention by writing an open letter to the National People's Congress asking for the release of Wei Jingsheng, who was still under arrest for sedition.<sup>44</sup> A few weeks later, Mr. Wei was tried, convicted and given a 14-year sentence.<sup>45</sup> Two days after Mr. Wei's trial, three of those persons who had signed the open letter were arrested and detained.<sup>46</sup> The PRC was sending a strong warning to its citizenry through the Wei trial and the arrest of the three Wei supporters that it would not tolerate any open dissent.<sup>47</sup>

Moreover, it is the practice in China for dissidents to be held in police custody for long periods of time without charges being brought. Once charges are in fact brought, punishment is swift and severe. There is little room in the process for the "Western" approach of justice. For example, in January 1996, Liu Xiaobo, an activist during the 1989 student demonstrations, was released only after being held in police custody for eight months.<sup>48</sup> Further, at the end of May 1996, it was reported that shortly after sending a petition to the National People's Congress calling for an official re-evaluation of the events surrounding Tiananmen Square in 1989 and the release of political prisoners, several of the petitioners were detained by the police.<sup>49</sup> After being held by the police for months, two of the petitioners and others received administrative punishment of terms extending from one to three years, a process imposed by the police without the detainee's recourse to legal counsel or the courts. The detainees were ultimately sent to re-education labor camps.<sup>50</sup> During July of 1996, it was reported that another dissident, Li Hai, who was arrested on May 31, 1995, waited in detention for a year on a charge of revealing state secrets before his trial, while another dissident, Xiao Biguang, who was arrested on April 12, 1994 and whose whereabouts were unknown to his family, received a sentence of three years through the police administrative process and was sent to a re-education labor camp.<sup>51</sup>

Two dissidents, one who had the audacity to participate in the 1989 Tiananmen Square demonstrations and the other for trying to commemorate the protest, were released during June 1996. In the case of the former after seven years in prison, and with respect to the latter following three years in a labor camp.<sup>52</sup>

Recently, the chairman of the PRC's National Committee of the Chinese People's Political Consultative Conference, Li Ruihuan, explained the PRC's policy on dissidents as follows: "China allows different opinions.... Only when the criminal acts [freedom of expression] to sabotage social stability, national unity and unification are checked in accordance with the constitution and law, can normal social order be maintained and

people's interests be safeguarded."<sup>53</sup> The dissident to whom Ruihuan refers above, Wang Dan was tried, convicted and sentenced to eleven years imprisonment on October 30, 1996, for "plotting to subvert the Government" by criticizing the Chinese government in foreign publications; the Chinese government makes no distinction between political speech or writing and concrete action, and both types of dissent are deemed to endanger state security.<sup>54</sup>

#### Arrest, Detention, Political Prisoners, Prison Conditions and Torture in the PRC

Although the PRC's record on arrest, detention of prisoners (including political prisoners), prison conditions and the use of torture by police and wardens is well documented,<sup>55</sup> there was the hope that the Central People's Government would allow inspections of their prisons by the Red Cross (I.C.R.C.) as was officially announced by Foreign Minister Qian Qichen in November 1993.<sup>56</sup> However, on January 27, 1995, the Chinese government announced that it would not allow the I.C.R.C. officials access to its prisons.<sup>57</sup> For its part, the 11th Meeting of the Standing Committee of the Eighth National People's Congress adopted a Prison Law of the PRC.<sup>58</sup> Nonetheless, concern over China's Laogai or "reform through labor" continued.<sup>59</sup> At the same time, the United States continued its efforts in receiving information from the PRC on named prisoners of conscience, political prisoners, imprisoned religious believers and those eligible for medical parole.<sup>60</sup> Moreover, in April and May of 1995, a shocking prison practice came to light before a United Nations working group on contemporary forms of slavery and before U.S. Senate hearings: the removal of organs of executed criminals to be sold for medical transplants in Chinese state-owned hospitals.<sup>61</sup>

Another report released by Amnesty International in May, indicated that the Chinese authorities continued to employ arbitrary arrests and that administrative detentions were increasing.<sup>62</sup> For example, in preparation for its hosting the Fourth World Conference on Women in Beijing beginning on September 4, and the non-governmental organizations' forum on the same topic to be held outside of Beijing beginning on August 30, the Chinese government detained known dissidents.<sup>63</sup>

Many dissidents were still being held without charges or trial, and if tried, unfair judicial proceedings were the norm. Mr. Wei Jingsheng, one of the most well-known dissidents of the PRC, who had been held incommunicado by the authorities since April 1994, was finally charged on November 1995 with trying to overthrow the Chinese government.<sup>64</sup> Moreover, detainees and prisoners held in police stations, detention centers and prisons or labor camps were subject to torture and ill-treatment.

Persistent criticism of the PRC's human rights violations was slowly opening the door for reform. During October 1995, Harry Wu accused the World Bank of extending loans to the PRC for an irrigation project at Tarim Basin that would benefit several of China's forced labor camps in the vicinity.<sup>65</sup> In response, the World Bank reported in December<sup>66</sup> that it spent six weeks reviewing 159 funding projects in China and refuted Mr. Wu's allegations. Mr. Wu's response to the World Bank report was that it "defies credulity."<sup>67</sup> By the end of 1995, through continued criticism like Mr. Wu's, a draft of amendments to

the PRC's Criminal Procedure Law was submitted to the 17th meeting of the Standing Committee of the Eighth National People's Congress. Proposed amendments included early access by those arrested to defense lawyers, changes involving police custody, trial procedures, and administration of a bail system.<sup>68</sup>

In March 1996, Amnesty International released its report on human rights in China entitled *No One Is Safe* to coincide with a campaign to urge foreign businesses with investments in China to push for human rights reform.<sup>69</sup> Subsequently, the National People's Congress passed two laws that reformed the criminal justice system. One law created the presumption of a defendant's innocence until proven guilty and set limits on how long the police could detain suspects. The second law improved access to defense lawyers for those in custody. Amazingly, the second law confirmed the right of administrative government departments to jail suspects without trial.<sup>70</sup>

In April 1996 another problem was brought to light.<sup>71</sup> It appears that a number of dissidents were rescued from China by Operation Yellowbird, a sort of underground railroad operated by an alliance of human rights advocates, and brought to Hong Kong. Several of these dissidents were waiting in Hong Kong to be offered asylum before the PRC would take control on July 1, 1997.

Over the last several years, attempts were made through the Human Rights Commission of the United Nations to censure the PRC for its appalling human rights record. Despite some early optimism that China would be held internationally accountable,<sup>72</sup> the PRC used a procedural rule to block a vote on the merits of the Commission's motion that expressed concerns about reports of violations of fundamental freedoms, including long-term imprisonment of dissidents for non-violent acts, and the need for legal due process and a fair trial.<sup>73</sup>

On May 27, 1996, Bao Tong, the only Communist Party official who opposed the PRC military assault on the pro-democracy demonstrators in the 1989 Tiananmen Square uprising, was released from prison after serving seven years. He had been convicted of leaking state secrets during the protests and of counter-revolutionary propaganda and incitement. He was also denied political rights for an additional two years and the right to speak on government policy for the same duration.<sup>74</sup>

The PRC ratified the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment seven years ago.<sup>75</sup> Despite this ratification, acts that are prohibited under the Convention still persist. One example should suffice. Soon after Chen Longde was sent to Leshan re-education Labor Camp in Zhejiang Province for three years for "endangering national security," it was reported that he was seriously injured after being forced to jump from a third floor prison walkway to escape a brutal beating. He had already been kicked, punched and beaten with electric truncheons by a senior prison official. Mr. Chen's face was cut and bruised, he had a compound fracture of his upper femur, and had three teeth knocked out from his ordeal. Apparently, the prison officials insisted that Mr. Chen write a self-criticism and Chen replied he would rather "write a letter of appeal to protest his sentence."<sup>76</sup>

On April 28, 1996, the PRC began a nationwide crackdown on crime called "Strike Hard." In the first two months of the crackdown on crime, 1,000 people were executed.<sup>77</sup> China has made 68 crimes punishable by death, more than any other country. Amnesty International reported that during 1995 the PRC executed 2,535 people, and about 2,050 in 1994.<sup>78</sup> If it can be acknowledged that the Universal Declaration of Human Rights<sup>79</sup> of 1948 is regarded as an expression of customary international law, and there is only an implicit recognition of what international human rights law has designated as "the right to life,"<sup>80</sup> the death penalty<sup>81</sup> as carried out by the PRC is an unjustified derogation of the principle. At the very least, China should not impose the death penalty without rigorous procedural safeguards.

#### Free Flow of Information: The Media<sup>82</sup>

In April 1994, Xi Yang, a Hong Kong reporter, was sentenced to twelve years in prison by a PRC court for allegedly "stealing state secrets." Mr. Xi simply reported, as did seven other Hong Kong publications, in Hong Kong's Chinese-language newspaper Ming Pao, information regarding gold sales and interest rate moves by the People's Bank of China. Moreover, Mr. Xi's source of information was the Bank's own deputy director of external affairs.

In January 1996, the Chinese government, citing national security considerations, announced that Chinese customers such as banks and brokerage houses were forbidden from acquiring economic information from foreign news organizations. Henceforth, the foreign news service organizations were required to submit the information to the official Chinese Xinhua news agency for approval.<sup>83</sup>

During September 1996, the PRC's Ministry of Radio, Film, and Television, announced a new policy to strengthen ideological control over mainland electronic media. An annual censorship report covering eighteen criteria was instituted to avoid or remedy "political accidents."<sup>84</sup> At the opening meeting of the Fifth National Council of the All-China Journalists Association in Beijing during October, Ding Guangen, a high ranking Chinese Communist Party official and member of the Central Committee Secretariat, stressed the necessity of maintaining a correct media orientation along Deng Xiaoping's theory of building socialism with Chinese characteristics.<sup>85</sup>

Further, the Chinese government expanded its censorship by blocking domestic access to hundreds of Internet web sites that it considered politically sensitive. Among those blocked were United States newspapers such as The New York Times, The Los Angeles Times, The Washington Post and The Wall Street Journal. The Cable News Network (CNN) web site was also blocked, as were sites of human rights groups such as Amnesty International and Human Rights Watch/Asia and organizations that covered Tibetan, Taiwanese or Hong Kong information.<sup>86</sup>

Moreover, there was already in place a form of Hong Kong's media censoring itself in advance of Hong Kong's return to the PRC.<sup>87</sup> While Hong Kong has no specific rules governing the operation of foreign journalists, the PRC does require foreign

correspondents to obtain PRC accreditation. For example, the PRC exercises restrictions on the movement of journalists, as they need approval from the Ministry of Foreign Affairs to work away from their assigned base. In April 1995, PRC officials made it clear that no change would occur regarding freedom of the press in Hong Kong.<sup>88</sup>

At times, an outright refusal to accredit a particular journalist<sup>89</sup> or journalists from a particular Hong Kong newspaper<sup>90</sup> have been utilized by the Beijing government. During June 1996, Lu Ping, the Chinese official charged with setting up Hong Kong's new government after July 1, 1997, made a number of statements to suggest that freedom of the press in Hong Kong could not remain unbridled.<sup>91</sup> Anxiety by those in the Hong Kong media was expressed at the end of June in a joint report issued by the Hong Kong Journalists' Association and the London-based rights group, Article 19.<sup>92</sup> The new Chinese News Agency, Xinhua, makes certain that Hong Kong's chief newspaper editors and reporters are aware of the difference between "advocacy and reporting."<sup>93</sup> Hong Kong reporters have had first hand experiences with restrictions on carrying out their assignments in the PRC.<sup>94</sup> Only time will tell if such restrictions will only increase under the new law of the HKSAR.

## CONCLUSIONS

Although the PRC is not a party to the International Covenant on Civil and Political Rights, the Beijing government agreed to send observers to the October 23, 1996, meeting of the Human Rights Committee of the United Nations at Geneva to hear the report on Hong Kong's human rights record.<sup>95</sup>

The PRC has shown itself to be intolerant of dissent. What implications are there for the people of Hong Kong as the PRC resumes its sovereign control? Recently, Qian Qichen, the PRC Foreign Minister, in an interview with the Asian Wall Street Journal, suggested that Hong Kong media would be banned from putting forward personal attacks on the Chinese leaders. He indicated that dissidents would not be able to engage in political activities which interfered in the affairs of mainland China. Hong Kong would no longer be able to mark the anniversary of Tiananmen's pro-democracy demonstrations of 1989.<sup>96</sup> Subsequently, the PRC Foreign Ministry, reiterated that Hong Kong residents would have freedom of the press and freedom of speech, but that such liberties would have to operate within the law. Obviously, the Foreign Minister was not contemplating the laws protecting these freedoms set out in Article 3(5)<sup>97</sup> of the Joint Declaration and Article 27<sup>98</sup> of the Basic Law.

The "leaking of state secrets" regarded by the PRC as subversion or counterevolutionary activity has been used in China to arrest or detain and/or bring dissidents to trial. The Basic Law of the HKSAR contains provisions that can be interpreted to curtail all guarantees of freedom of expression. Will the passing of information on detainees or political prisoners in Hong Kong by Hong Kong residents, to foreign human rights groups such as Human Rights Watch/Asia be permitted? What will be a state secret in Hong Kong?<sup>99</sup>

The world will be watching to see whether the two systems are functioning in the one country, and whether the Hong Kong courts continue to operate without interference so that the rule of law remains a benchmark of the HKSAR.<sup>100</sup>

1 The Joint Declaration, a treaty, has been reprinted in: A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Peoples Republic of China on the Future of Hong Kong 23 INT'L. LEG. MAT., 1366 (1984). [hereinafter Draft Agreement]. This international agreement comprises The Joint Declaration, Annex I "Elaboration by The People's Republic of China of its Basic Policies regarding Hong Kong," Annex II "Sino-British Liaison Group," and Annex III "Land Leases." Id. Ratifications were exchanged on May 27, 1985, and the treaty was registered with the United Nations (UN) on June 13, 1985, pursuant to article 102 of the UN Charter. There was also an Exchange of Memoranda between the two governments in Peking on the day of signing the Joint Declaration, Id. at 1381. The Joint Declaration entered into force on May 27, 1985.

2 Article 31 provides: "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in light of the specific conditions." LAW IN THE PEOPLE'S REPUBLIC OF CHINA 945, 950 (Ralph H. Folsom & John H. Minan, eds. 1989).

3 Draft Agreement, supra note 1, at 1371, para. 3(1).

4 Id. at 1373, Annex I, para.I.

5 For a discussion of the origin of "one country, two systems" and China's defined policy toward Hong Kong in this regard see ENBAO WANG, HONG KONG, 1977: THE POLITICS OF TRANSITION, 42-50 (1995). It is anticipated by the PRC that the Hong Kong model would be used for the reunification of Macao and Taiwan with the Chinese mainland. Id. at 51-60; see also Denis Chang, Towards a Jurisprudence of a Third Kind - "One Country, Two Systems," 20 CASE W. RES. J. INT'L L. 99 (1988).

6 Draft Agreement, supra note 1, at 1372-73 para. 3(12) & Annex 1.

7 For highlights of the drafting process of the Hong Kong Basic Law, see MING K. CHAN, DEMOCRACY DERAILED: REALPOLITIK IN THE MAKING OF THE HONG KONG BASIC LAW, 1985-1990, reprinted in THE HONG KONG READER PASSAGE TO CHINESE SOVEREIGNTY, 8 - 40 (Ming K. Chan & Gerard A. Postiglione, eds. 1995). For a review on how the drafting process undermined the confidence of the people of Hong Kong, see MING K. CHAN, DEMOCRACY DERAILED: REALPOLITIK IN THE MAKING OF THE HONG KONG BASIC LAW, 1985-90, in THE HONG KONG BASIC LAW: BLUEPRINT FOR "STABILITY AND PROSPERITY" UNDER CHINESE SOVEREIGNTY 3 (Ming K. Chan & David J. Clark, eds., 1991).

8 The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (1990), is found in PUBLIC LAW AND HUMAN RIGHTS 81 (Andrew Byrnes & Johannes Chan, eds. 1993); see also Patricia Homan Palumbo, Comment, Analysis of the Sino-British Joint Declaration and the Basic Law of Hong

Kong: What Do They Guarantee the People of Hong Kong After 1997?, 6 CONN. J. INT'L L. 667 (1991).

9 Article 5 of the PRC Constitution provides inter alia "[a]ll acts in violation of the constitution and the law must be looked into." LAW IN THE PEOPLE'S REPUBLIC, supra note 2, at 947. Thus, there would be a constitutional duty to investigate any possible violation. Moreover, Article 62(2) and Article 67(1) provide constitutional power to enforce the constitution. Id. at 955-57.

10 See generally MICHAEL C. DAVIS, CONSTITUTIONAL CONFRONTATION IN HONG KONG, ISSUES AND IMPLICATIONS OF THE BASIC LAW (1990).

11 See WANG, supra note 5, at 117-23; DAVIS, supra note 10, at 313-17; Peter Wesley - Smith, Law in Hong Kong and China: The Meshing of Systems, 547 ANNALS 111-15 (1996); Anna M. Han, Hong Kong's Basic Law: The Path to 1997, Paved with Pitfalls, 16 HASTINGS INT'L. & COMP. L.REV. 321, 325-35 (1993).

12 Article 17 of the Basic Law states in part:

[I]f the Standing Committee of the National People's Congress . . . considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the Law in question but shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated....

PUBLIC LAW, supra note 8, at 87.

13 See Zhang YouYu, The Reasons for and Basic Principles on Formulating the Hong Kong Special Administrative Region's Basic Law, and Its Essential Contents and Mode of Expression, 2 J. CHINESE L. 7 (1988); see also Han, supra note 11, at 326-28.

14 PUBLIC LAW, supra note 8, at 84-99 (arts. 2, 11, 18, 19, 82, 85); Draft Agreement, supra note 1, at 1371-73 para. 3(3) & Annex I para. I & III.

15 Basic law, Article 158 reads in part:

[I]f the courts ... need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress . . . . [W]hen the Standing Committee makes an interpretation ... the courts of the Region ... shall follow the interpretation of the Standing Committee . . . .

PUBLIC LAW, *supra* note 8, at 112-13.

As to the application of the common law in the HKSAR, see PETER WESLEY-SMITH, *THE COMMON LAW OF ENGLAND IN THE SPECIAL ADMINISTRATIVE REGION*, in *HONG KONG, CHINA AND 1997 : ESSAYS IN LEGAL THEORY 5* (Raymond Wacks, ed., 1993).

16 PUBLIC LAW, *supra* note 8, at 87. Article 18 provides: "[T]he Standing Committee of the National People's Congress may add or delete from the list of laws in Annex III." *Id.* If "turmoil" in the HKSAR endangers "national unity or security," the Central People's Government can apply relevant national laws in the Region. *Id.* at 87-88. How broadly will "turmoil and national unity or security" be defined by the Central People's Government?

17 *Id.* at 112. It is also evident that "acts of state such as defence and foreign affairs" are excluded from any Hong Kong court's jurisdiction under the authority of Article 19 of the Basic Law. *Id.* at 88. The PRC government has the power to determine whether a matter involves "foreign affairs" or "defense" as these terms are not defined in the Basic Law. Article 19 reads in part:

[T]he courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defense and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.

*Id.*

For a further insight into the operation of Article 19 see Han, *supra* note 11, at 329-32; see also Britain and China Agree on a Future Court for Hong Kong, *N. Y. TIMES*, June 10, 1995, § 1, at 4.

18 Draft Agreement, *supra* note 1, Annex I & III at 1373-80. On June 9, 1996, the Sino-British Joint Liaison Group (created pursuant to the Joint Declaration) signed an Agreement on the Court of Final Appeal; see Frankie Fook-Lun Leung, *Introductory Note, Hong Kong: The Hong Kong Court of Final Appeal Ordinance*, 35 *INT'L LEG. MAT.* 207 n.1 (1996) for the text of the Agreement. The Ordinance is reproduced at page 210.

19 See Leung, *supra* note 18, at 208-09 (discussing the Sino-British dispute involving the Court of Final Appeal); see also Wang, *supra* note 6, at 164-67; Ming K. Chan, *PRECARIOUS BALANCE : HONG KONG BETWEEN CHINA AND BRITAIN, 1842-92, 189-91* (1994).

20 See Edward A. Gargan, Hong Kong Worries Over Fate of Legal System Under Chinese Rule, N.Y. TIMES, April 21, 1995, at A12. Agreement on various issues concerning the Court of Final Appeal was reached on June 9, 1995; see S. China Morning Post, June 17, 1995, at 1 (for Democrats pledge to fight against 'sell-out' by Britain Court deal a boost to confidence).

21 Hong Kong Bill of Rights Ordinance 1991 entered into force on June 8, 1991. PUBLIC LAW, supra note 8, at 218. For a review of the development of the Bill of Rights and references to discussion of the individual rights contained in the Bill of Rights, see id. at 217.

22 JOHANNES CHAN & YASH GHAI, A COMPARATIVE PERSPECTIVE ON THE BILL OF RIGHTS in THE HONG KONG BILL OF RIGHTS: A COMPARATIVE APPROACH 1 (Johannes Chan & Yash Ghai, eds. 1993). Professor Ghai notes that not the whole of the International Covenant was adopted as the United Kingdom had made several reservations excluding several provisions. Id.; see Geping Rao, The Application of the International Covenant on Civil and Political Rights to Hong Kong, 2 PAC. RIM L. & POL'Y J. 9 (1993).

23 See No Kwai-Yan & Chris Yeung, 'Bill of Rights must go'; China Backs Proposal to Remove Statute's Power to 'Override' Legislation, S. CHINA MORNING POST, Oct. 19, 1995, at 1.; see also Michael Davis, Time to Remember Old Promise, S. CHINA MORNING POST, Nov. 7, 1995 at 18.

24 Draft Agreement, supra note 1, Annex I, & XIII at 1377.

25 See Reports on Rights Must Not Stop: UN, S. CHINA MORNING POST, Nov. 4, 1995, at 1. During October 1996, the UN Human Rights Committee indicated that it would ask the United Kingdom to report again before July 1, 1997, on the progress made with the PRC over future monitoring and reporting required under the International Covenant. See David Wallen, Un Rights Panel to Ask Britain for Progress Report, S. CHINA MORNING POST, Oct. 25, 1996, at 8. Apparently, the U.K. was asked by the Committee to continue to report on the human rights situation in Hong Kong after July 1, 1997. Id. Obviously the British would encounter numerous obstacles from the PRC in complying with such a request. David Wallen, UK Told to Watch Rights after 1997, S. CHINA MORNING POST, Oct. 24, 1996, at 4.

26 See Chan & Ghai, supra note 22, at 16-33; see also Davis, supra, note 11, at 320-21.

27 See generally, Human Rights Watch, HUMAN RIGHTS WATCH WORLD REPORT 1996 140-48 (1995)(events of 1995) (reviewing the PRC's human rights practices over the last several years); see also Human Rights Watch, HUMAN RIGHTS WATCH WORLD REPORT 1995 142-49 (1994)(events of 1994); U.S. Dep't. St., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1995, 104th Cong., 2d Sess. 574-612 (Joint Comm. Print 1996); U.S. Dep't St., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994, 104th Cong., 1st Sess. 555-73 (Joint Comm. Print

1995); Daniel C. Turack, *The Clinton Administration's Response to China's Human Rights Record: At the Half-Way Point*, 3 *TULSA J. COMP. & INT'L L.* 1, 19-30 (1995).

28 The 1982 PRC's Constitution was adopted by the Fifth Session of the Fifth National Peoples Congress on Dec. 4, 1982. XIANFA [Constitution](1982). The PRC's Constitution is translated into English and available in LEXIS, Asiapc Library, ALLASI File; see *LAW IN THE PEOPLE'S REPUBLIC*, supra note 2, at 945. The Constitution as amended on March 31, 1993 is found in *PUBLIC LAW*, supra note 8, at 122.

29 State Council White Paper on Human Rights, XINHUA NEWS AGENCY, Nov. 8, 1991, available in LEXIS, Asiapc Library, ALLASI file. An excellent analysis of the PRC's attitude towards human rights as found in the White Paper is found in ANN KENT, *BETWEEN FREEDOM AND SUBSISTENCE: CHINA AND HUMAN RIGHTS* 222-30 (1993); see Guo Luoji, *A Human Rights Critique of the Chinese Legal System*, 9 *HARVARD HUM. RTS. J.* 1 (1996) (examining the Chinese Communist Party & the Chinese government).

30 See Michael C. Davis, *Chinese Perspectives on Human Rights*, *HUMAN RIGHTS AND CHINESE VALUES* 3 (Michael C. Davis, ed. 1995); see also Melanne Andromedea Civic, *A Comparative Analysis Of International and Chinese Human Rights Law-Universality Versus Cultural Relativism*, 2 *BUFFALO J. INT'L L.* 285 (1995-96); Daniel A. Bell, *The East Asian Challenge to Human Rights: Reflections on an East West Dialogue*, 18 *HUM. RTS. Q.* 641 (1996); Christina M. Cerna, *East Asian Approaches To Human Rights*, 2 *BUFFALO J. INT'L L.* 201 (1995-96) (elaborating on the diverse views and approaches to human rights); Michael C. Davis, *Human Rights In Asia: China And The Bangkok Declaration*, 2 *BUFFALO J. INT'L L.* 215 (1995-96); Bilahari Kim Hee P.S. Kausikan, *An East Asian Approach To Human Rights*, 2 *BUFFALO J. INT'L L.* 263 (1995-96); Adamantia Pollis, *Cultural Relativism Revisited: Through a State Prism*, 18 *HUM. RTS. Q.* 316 (1996).

31 Anne F. Bayefsky, *Cultural Sovereignty, Relativism, and International Human Rights: New Excuses for Old Strategies*, 9 *RATIO JURIS* 42 (1996); see Christina M. Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*, 16 *HUM. RTS. Q.* 740 (1994) (presenting a recent survey of the universalism vs. cultural relativism debate in the context of various international instruments). See also Randall P. Peerenboom, *Rights, Interests, And The Interest In Rights In China*, 31 *STAN. J. INT'L L.* 359 (1995) (for a philosophical discussion that seeks common ground while reserving the differences).

32 Bayefsky, supra note 31, at 59.

33 This was the response by the PRC Foreign Ministry in response to international appeals for release of the political prisoner Wei Jingsheng after almost one year of his detention without being charged. *INT'L. HERALD TRIBUNE*, March 31, 1995, available in LEXIS, News Library, ARCNEWS File.

34 Jane Macartney, Beijing Bans 49 Dissidents from Returning, REUTERS NORTH AMERICA WIRE, Jan. 5, 1995, available in LEXIS News Library, ARCNWS File (specifically mentioned were Bei Dao, Wuer Kaixi, Chai Ling, Fang Lizhi and Li Shuxian). The document called "List of Overseas Members of Reactionary Organizations Currently Subject to Major Control" was issued by the Chinese Public Security Ministry in May 1994. For more information, see Secret Blacklist Against Overseas Chinese Dissidents is Published, AGENCE FRANCE PRESSE, Jan. 5, 1995, available in LEXIS, News Library, ARCNWS File.

35 Ai Accuses China of Human Rights Violations in Tibet, DEUTSCHE PRESSE-AGENTUR, May 30, 1995, available in LEXIS, News Library, ARCNWS File.

36 Id.

37 Patrick E. Tyler, China is Urged By its Scientists to Ease Curbs, N.Y. TIMES, May 16, 1995, at A1; see id. at A6 for excerpts from the petition. The petition was drafted by physicist Xu Liangying; a translation of the petition is found in The May 15 Petition, 94 CURRENT HISTORY 264 (Sept. 1995).

38 Patrick E. Tyler, China Arrests Prodemocracy Petitioner, N. Y. TIMES, May 20, 1995, at 4. Others were arrested or detained as a consequence of this petition; see Police in China Arrest Two More Dissidents, N. Y. TIMES, May 22, 1995, at A5. The petitioner, Wang Ganchang, in offering support, is reminiscent of Andrei Sakharov's open opposition to former Soviet Communism.

39 Chinese Police Broaden Crackdown on Dissidents, N.Y. TIMES, May 28, 1995, at 9; see China Torture, Human Rights Abuse up in Last Year, REUTERS WORLD SERVICE, May 31, 1995, available in LEXIS, News Library, ARCNWS File. Human Rights Watch/Asia released a report to outline among other abuses, that dissidents were beaten, mutilated, and submitted to shocks while in police custody. Id.

40 See, e.g., More Chinese Political Prisoners Petition Parliament for Freedom, AGENCE FRANCE PRESSE, May 31, 1995, available in LEXIS, News Library, ARCNWS File.

41 Patrick E. Tyler, Beijing Quiet, but Dissidents' Agenda Gathers Strength, INT'L. HERALD TRIBUNE, June 5, 1995, available in LEXIS, News Library, ARCNWS file.

42 Elaine Sciolino, In Warning to U.S., China Cracks Down on 2 Dissidents, N.Y. TIMES, June 29, 1995, at A8. Mr. Wu was accused of illegally obtaining China's state secrets and conducting criminal activities. Id. By July 17th, U.S. officials had not been given access to Mr. Wu. See Carroll Bogert and Karen Breslau, Human Rights: Trouble for an Abrasive Angel, NEWSWEEK, July 17, 1995, at 31; see also Elaine Sciolino, China's Prisons Forged Zeal of U.S. Crusader, N.Y. TIMES, July 10, 1995, at A1 (describing Mr. Wu's background); Seth Faison, China Says Detained American Rights Advocate Admits Falsifying TV Documentaries, N. Y. TIMES, July 28, 1995, at A6

(describing China's attempt to discredit Mr. Wu); Jane Macartney, China Frees Wife of Jailed Dissident, Bans Visit, REUTERS NORTH AMERICAN WIRE, Oct. 27, 1995, available in LEXIS, News Library, CURNWS File (with respect to Mr. Chen).

43 See Seth Faison, Chinese Convict Harry Wu as Spy and Order Him Out, N.Y. TIMES, Aug. 24, 1995, at A1; see also Daniel Southerland, Man on a Mission: Ouster May Force Activist to Change Style, WASHINGTON POST, Aug. 25, 1995, at A1. Following his return to the United States, Mr. Wu testified before the Subcommittee on International Operations and Human Rights, Committee on International Relations of the U.S. House of Representatives. See Hearing of the Int'l Operations and Human Rights Subcommittee of the House International Relations Committee, FEDERAL NEWS SERVICE, Sept. 9, 1995, available in LEXIS, News Library, ARCNWS File.

44 Dissidents Demand Wei's Release; 15 Risk Detention by Signing Appeal, WASHINGTON POST, Nov. 29, 1995, at A33.

45 Liu Qing, China's Show Trial, N.Y. TIMES, Dec. 14, 1995, at A31. Mr. Wei was arrested on April 1, 1994 a short time after meeting with Assistant Secretary of State John Shattuck. He was held in detention until his trial on Dec. 13, 1995; see also Beijing's Account of Trial and Sentence in Wei Case, N.Y. TIMES, Dec. 14, 1995, at A20. A profile on Mr. Wei is found in Patrick E. Tyler, Red Guard Who Chose Democracy, N.Y. TIMES, Dec. 14, 1995, at A20. Some of Mr. Wei's letters from his earlier period of incarceration, written to family members and to China's national leaders were smuggled out of the PRC and came to light in February 1996. See Nicholas D. Kristof, Letters of Chinese Dissident are Defiant, N.Y. TIMES, Feb. 18, 1996, at 9. Portions of these letters appear in Wei Jingsheng, Letters to Deng, from the Pit of Repression, N.Y. TIMES, Feb. 18, 1996, at 7.

46 China Arrests Three More Dissidents, U.P.I., Dec. 20, 1995, available in LEXIS, News Library, ARCNWS File. Those arrested were Wang Donghai, Chen Longde and Fu Guoyong. Id.

47 Patrick E. Tyler, Beijing Sends a Strong Warning With Long Sentence for Dissenter, N.Y. TIMES, Dec. 14, 1995, at A1.

48 Dissident Detained 8 Months is Freed, L.A. TIMES, Jan. 20, 1996, at A10. Another activist, Wang Dan, was held in detention at a secret police center for 17 months before charges were filed against him for conspiracy to overthrow the government. Patrick E. Tyler, A Leader of '89 China Protest Held on Subversion Charges, N.Y. TIMES, Oct. 13, 1996, at 1. His activities that led to the charges included publishing anti-government articles abroad, raising money to support needy dissidents and accepting a scholarship from the University of California. Id.

49 See Chinese Police Arrest Two Dissidents, INT'L. HERALD TRIBUNE, May 30, 1996, at 2 (Wang Donghai and Chen Longde); see also Chinese Police Question More Rights Advocates, INT'L. HERALD TRIBUNE, May 31, 1996 at 4 (Wu Gaoxing and

Zhao Wanmin); Chinese Police Detain Veteran Dissident Wang Xizhe, AGENCE FRANCE PRESSE, May 31, 1996, available in LEXIS, News Library, ARCNWS File.

50 Chinese Dissident Gets Three Years in Labor Camp, INT'L. HERALD TRIBUNE, Aug 3-4, 1996 at 4 (Chen Longde, Wang Donghai and Yao Zhenxian); Chinese Dissident Gets Three Years, INT'L. HERALD TRIBUNE, Aug. 5, 1996 at 4 (Yao Zhenxiang). Before the end of August, Mr. Chen was reported to have been beaten and was in the hospital from a fall to avoid a further brutal beating. See Chinese Dissident Tortured, Badly Injured after Fall, AGENCE FRANCE PRESSE, Aug. 27, 1996, available in LEXIS, News Library, ARCNWS File.

51 Chinese Dissident Accused of Revealing State Secrets, AGENCE FRANCE PRESSE, July 10, 1996, available in LEXIS, News Library, ARCNWS File.

52 China Releases Dissident after Seven Years in Prison, N.Y. TIMES, June 10, 1996, at A10 (Ren Wandong and Zhang Xianliang).

53 Chinese Official Li Ruihuan Explains Beijing's Dissident Policy, BBC SUMMARY OF WORLD BROADCASTS, Sept. 20, 1996, available in LEXIS, News Library, ARCNWS File.

54 See Tyler, *supra* note 48, at 1; see also Patrick E. Tyler, Chinese Verdict Points to an Era of Harsh Rule, N.Y. TIMES, Oct. 31, 1996, at A1.

55 See Turack, *supra* note 27, at 24-30; Christine Button, Democracy Behind Bars: Forced Labor In The Chinese Prison System: Past, Present, And Perspectives On The Future, 16 B.C. THIRD WORLD L.J. 181 (1996); see also HARRY WU & CAROLYN WAKEMAN, BITTER WINDS: A MEMOIR OF MY YEARS IN CHINA'S GULAG (1994); Jonathan M. Cowen, One Nation's "Gulag" Is Another Nation's "Factory Within A Fence": Prison-Labor In The People's Republic Of China And The United States Of America, 12 UCLA PAC. BASIN L. J. 190 (1994); Albert Hung-yeek Chen, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA, 153-68, (1992) (respecting the PRC criminal procedure and other procedures for taking persons into custody).

56 Patrick E. Tyler, Red Cross Says the Chinese are Seriously Discussing Prison Visits, N.Y. TIMES, Jan. 22, 1994, at 3.

57 Jeffrey Parker, China Says No to Free Red Cross Prison Visits, REUTERS WORLD SERVICE, Jan. 27, 1995, available in LEXIS, Asiapc Library, ALLASI File. For its part, the I.C.R.C. wanted "unfettered, unaccompanied visits with any prisoner in any prison at any time to ensure that interviews are candid, open and unrehearsed." *Id.* U.S. officials continued to press Chinese officials to allow prison visits by the Red Cross or other humanitarian organizations. See China Defends Human Rights Record, U.P.I., Jan. 19, 1995, available in LEXIS, News Library, ARCNWS File.

58 Law on Prisons and Treatment of Prisoners, BBC SUMMARY OF WORLD BROADCASTS, Dec. 31, 1994, available in LEXIS, Asiapc Library, ALLASI File (for an English translation of the text of the Prison Law of the People's Republic of China); China Scraps Title "Labour Reform for Prisons," REUTERS WORLD SERVICE, Jan. 7, 1995, available in LEXIS, News Library, ARCNWS File. See also China Introduces New Prison Laws, U.P.I., Dec. 31, 1994, available in LEXIS, Asiapc Library, ALLASI File (providing a brief summary of the changes).

59 See A.M. Rosenthal, Laogai Thrives, Its Products Sell, Its Slaves Suffer On, INT'L. HERALD TRIBUNE, Feb. 8, 1995, available in LEXIS, News Library, ARCNWS File.

During March 1995, a Tibetan monk, Palden Gyatso, testified before the UN Commission on Human Rights about Chinese prison conditions, treatment of prisoners and the use of torture. On April 3, 1995, Mr. Gyatso testified before the Subcommittee on International Operations and Human Rights, International Relations Committee, House, U.S. Congress. Three Decades in Chinese Prisons and Labor Camps in Tibet, FEDERAL NEWS SERVICE, April 3, 1995, available in LEXIS, News Library, ARCNWS File (testimony by Mr. Gyatso concerning his life in Chinese prisons).

60 U.S. Still Presses China on Prisoners, N.Y. TIMES, Feb. 28, 1995, at A22 (letter to editor from John Shattuck, Secretary of State).

61 Stephanie Nebehay, China Denies Taking Organs from Executed Prisoners, REUTERS WORLD SERVICE, April 27, 1995, available in LEXIS, News Library, ARCNWS File; Catherine S. Manegold, China is Said to Sell Executed Inmates' Organs, N. Y. TIMES, May 5, 1995, at A10. One of the persons giving evidence before the U.S. Senate hearing was a former member of China's Public Security Bureau while another was a former political prisoner. *Id.*

62 Amnesty International, Six Years After Tiananmen: Increased Political Repression and Human Rights Violations (1995); see Amnesty Blasts China's Crackdown on Dissent, U.P.I., June 1, 1995, available in LEXIS, News Library, ARCNWS File. See also Gao Yu's Award Wanton Interference, XINHUA NEWS AGENCY, June 2, 1995, available in LEXIS, News Library, CURNWS File (for the Chinese reaction to the report).

63 See, e.g., Chinese Said to Detain Dissidents as Parley Nears, N. Y. TIMES, Aug. 10, 1995, at A3; Beijing Deports American as Spy and He Flies Home, N. Y. TIMES, Aug. 25, 1995, at A1.

64 See Patrick E. Tyler, China Charges Leading Dissident With Trying to Overthrow Regime, N.Y. TIMES, Nov. 22, 1995, at A1; see also Patrick E. Tyler, Is Top Dissident Even Alive? Beijing Will Not Say, N.Y. Times, March 31, 1995, at A6. Miss Tong Yi, Mr. Wei's secretary, was detained on April 4, 1994, and spent two and a half years incarcerated in the PRC's re-education through labor program. Jane Macantney, China Dissident Freed after 2 Years Labour, REUTERS WORLD SERVICE, Oct 3, 1996.

65 Daniel Southerland, Wu Says World Bank Funds Forced Labor; Activist Links

Loans to Chinese Work Camps, WASH. POST, Oct. 24, 1995, at A13.

66 Sarah Jackson-Han, World Bank Denies Loans Used in Chinese Forced Labor, Prison Camps, AGENCE FRANCE PRESSE, Dec. 20, 1995, available in LEXIS, News Library, ARCNWS File.

67 Id.; see Daniel Southerland, World Bank Denies Loans Benefit Chinese 'Gulag', WASH. POST, Dec. 21, 1995, at A41. On April 4, 1996, Mr. Wu released a report alleging the same claim as previously alleged, but the World Bank refused to support an independent investigation of his allegation. See Wendy Koch, World Bank Said to Be Funding China Enforcers; Ex-political Prisoner Wu Decries Backing of Quasi-military Organization, SAN FRANCISCO EXAMINER, April 4, 1996, at A2.

68 Daniel Kwan, NPC to Amend Legal System, S. CHINA MORNING POST, Dec. 24, 1995, at 6.

69 Ron Corben & Angeline Oyog, China-Human Rights: Amnesty Warns of Beijing Lobby Blitz, INTER PRESS SERVICE, Mar. 13, 1996, available in LEXIS, News Library, ARCNWS File.

70 See China's Parliament Widens Defendant's Rights, INT'L HERALD TRIBUNE, March 18, 1996, at 4. However, the administrative practice has continued. See Jane Macartney, China Dissident to Serve 3 Years in Labor Camp, REUTERS WORLD SERVICE, Oct. 10, 1996, available in LEXIS, News Library, CURNWS File; Patrick E. Tyler, Champion of Democracy in China Draws 3-Year Sentence, N. Y. TIMES, Oct. 10, 1996, at A4 (both describing how one dissident was taken into custody on October 9, 1996, and the next day received an administrative sentence of three years in a re-education labor camp).

71 See Melinda Liu, Still on the Wing, NEWSWEEK, April 1, 1996, at 44; see also Richard Ingham, Time Runs out for Hong Kong as Haven for Chinese Dissidents, AGENCE FRANCE PRESSE, Oct. 15, 1996, available in LEXIS, News Library, ARCNWS File. Some of the dissidents who were helped to gain asylum via Hong Kong were Wang Xizhe, Wu'er Kaixi, Chai Ling, Li Lu, Wan Runnan and Yan Jaiqi. Tan Ee Lyn, China Dissident Flees to Hong Kong, May Go to U.S., REUTERS WORLD SERVICE, Oct. 13, 1996, available in LEXIS, News Library, ARCNWS File. Wang Xizhe was able to enter the United States as a person admitted "for emergency reasons or for those in the public interest." Michael Dobbs, With Eye on China, U.S. Admits Dissident, INT'L HERALD TRIBUNE, Oct. 17, 1996, at 5.

72 European Union to Take China to Task over Human Rights, AGENCE FRANCE PRESSE, April 1, 1996, available in LEXIS, News Library, ARCNWS File; see EU Joins U.S. In Condemning Chinese Human Rights Record, EUROPEAN REPORT, April 3, 1996, available in LEXIS, News Library, ARCNWS File.

73 Barbara Crossette, China Outflanks U.S. to Avoid Scrutiny of its Human Rights, N.Y. TIMES, April 24, 1996, at A12. In 1995, for the first time, Europe and the United States succeeded in putting the PRC on the Commission's agenda. Id.

74 Patrick E. Tyler, China Frees Official Jailed after '89 Revolt, N.Y. TIMES, May 28, 1996, at A7. Since his release, Mr. Bao has been in isolated detention where he has been denied visitors other than his immediate family. See Patrick E. Tyler, Chinese Aide, Released from Prison, Is Still Held in Isolation, N.Y. TIMES, Sept. 10, 1996, at A7. He has not been allowed a medical examination, nor to contact a lawyer to challenge his detention. Id.

75 G.A. Res. 39/46, U.N. GAOR, 3d Comm., 93rd plen. mtg. (1984). It was adopted on Dec. 10, 1984, and entered into force on June 26, 1987. Id.

76 Chinese Dissident Tortured, Badly Injured after Fall, AGENCE FRANCE PRESSE, Aug. 27, 1996, available in LEXIS, News Library, ARCNWS File. (endangering national security by petitioning the National People's Congress to release all political prisoners). See also Teresa Poole, Torture: Amnesty International Says that the Practice is More Widespread than Ever, THE INDEPENDENT, May 23, 1996, at 18 (describing torture methods used in the PRC).

77 China Executes 1,000 People in Two Months, TORONTO STAR, July 4, 1996, at A15.

78 Id.

79 The Universal Declaration of Human Rights was adopted by the UN General Assembly on Dec. 10, 1948, UN Doc. A/811; See Celebrating Human Rights; What Exactly Was Promised in Covenant of 1948, L.A. TIMES, Dec. 10, 1988, at 8.

80 Article 3 of the Universal Declaration of Human Rights provides: "Everyone has the right to life...." John D.B. Lewis, Non-Governmental Groups and Human Rights Law, N.Y.L.J., Aug. 8, 1991, at 1.

81 The right to life has also been internationally called, "the supreme right", "the most fundamental of all rights" and "the primordial right." WILLIAM A. SCHABAS, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW 9 (1993).

82 See generally James E. Sciutto, China's Muffling of the Hong Kong Media, 547 ANNALS 131 (1996).

83 U.S. Disappointed at Chinese Media Curbs, REUTER BUSINESS REPORT, Jan. 16, 1996, available in LEXIS, News Library, ARCNWS File.

84 "Annual Censorship" of Programmes, BBC SUMMARY OF WORLD BROADCASTS, Sept. 13, 1996, available in LEXIS, News Library, ARCNWS File.

85 Chinese Journalists Were Told to Obey the Party, Follow Political Orientation, BBC SUMMARY OF WORLD BROADCASTS, Oct. 29, 1996, available in LEXIS, News Library, ARCNWS File; see Journalists' Association President Stresses Media's Role as "Mouth-piece of the Party," BBC SUMMARY OF WORLD BROADCASTS, Oct. 30, 1996, available in LEXIS, News Library, ARCNWS File.

86 Rone Tempest, China Puts Roadblocks on Information Superhighway, L.A. TIMES, Sept. 6, 1996, at A10.

87 For example, it was disclosed in March 1995, that two Hong Kong television stations did not air a controversial documentary on Mao Tse-tung that had upset China, and Rupert Murdoch did not air the BBC news on his broadcasts over China on Star TV. See HK Media Already Censoring Itself-editor, REUTERS WORLD SERVICE, March 13, 1995, available in LEXIS, News Library, ARCNWS File. See also the views expressed by Daisy Li Yuet Wah, assignment editor of the Ming Pao newspaper and vice chairwomen of the Hong Kong Journalists' Association; Keith B. Richburg, Hong Kong Residents Fear Freedom Limits; Journalists Feeling Pressure as Transfer to China Nears, WASH. POST, March 29, 1995, at A25.

88 Assurance on Freedom for Journalists, S. CHINA MORNING POST, April 10, 1995, at 6. During March 1995, the PRC top official on Hong Kong affairs, Lu Ping, while on a trip to the United States, indicated that "freedom of the press and of speech are all guaranteed" in Hong Kong. Richburg, *supra* note 87, at A25.

89 See German Reporter Forced from China Rules out Hong Kong, REUTERS WORLD SERVICE, Dec. 27, 1995, available in LEXIS, News Library, ARCNWS File. A German journalist's work permit and visa to remain in the PRC was refused by the PRC for his reporting that was allegedly "aggressive, biased and attacked people and personalities." *Id.*

90 Ban Leaves Sour Taste, S. CHINA MORNING POST, June 23, 1995, at 18.

91 Edward A. Gargan, Hong Kong is Warned By Beijing on Press, N. Y. TIMES, June 26, 1996, at A5. At present, Hong Kong publishes some 59 newspapers and 675 periodicals. *Id.* Mr. Lee stated that newspapers in Hong Kong would not be able to suggest independence for Hong Kong or Taiwan. See Prepared Testimony by Merle Goldman Before the Senate Foreign Relations Committee on Hong Kong, FED. NEWS SERVICE, July 18, 1996, available in LEXIS, News Library, ARCNWS File.

92 Fear Growing, Reports Press Association, S. CHINA MORNING POST, July 1, 1996, at 3.

93 As Reiterated by Zhang Junsheng, Deputy Director of Xinhua, Beijing Reiterates Ground Rules for Press, S. CHINA MORNING POST, Aug. 4, 1996, at 2.

94 Linda Choy, Call to Relax Rules on Reporting in China, S. CHINA MORNING POST, Aug. 17, 1996, at 3.

95 Quinton Chan, Beijing to Check on HK Rights, S. CHINA MORNING POST, Oct. 13, 1996, at 1. Beijing's presence at this meeting would be its first such attendance. Id. The PRC was also considering attendance at the meeting on November 26 of the UN Committee on Economic, Social and Cultural Rights although it was not a party to the International Covenant on Economic, Social and Cultural Rights. Id.

As the PRC has indicated that it will not make reports on human rights after July 1, 1997, non-governmental organizations still seek the Human Rights Committee's approval to submit reports. See Linda Choy, UN to Be Lobbied over Human Rights Reports, S. CHINA MORNING POST, Oct. 21, 1996, at 4.

96 Jonathan Mirsky, China Vows to Stop Hong Kong Press Criticising Leaders, THE TIMES, Oct. 17, 1996, available in LEXIS, News Library, ARCNWS File; John Ridding, Beijing Warns HK Against Interference on Mainland, FINANCIAL TIMES, Oct. 18, 1996, at 6.

97 Act 3(5) reads in part: "Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence...will be ensured by law in the Hong Kong Special Administrative Region..." Joint Declaration, supra note 1.

98 Article 27 reads in part: "Hong Kong residents shall have freedom of speech, of press and of publication; freedom of association, of assembly, of procession and of demonstration..." PUBLIC LAW, supra note 8, at 88.

99 It will be open to interpretation once Article 23 of the Basic Law becomes a reality. Article 23 reads:

The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations of the Region from establishing ties with foreign political organizations or bodies.

PUBLIC LAW, supra note 8, at 88.

Other possible restrictions are outlined by Sidney Jones, Executive Director of Human Rights Water/Asia. Hearing of the East Asian and Pacific Affairs Subcommittee of the Foreign Relations Committee, 104th Cong., 2nd Sess., FED. NEWS SERV., July 18, 1996.

100 Most recently, the British senior trade official in Hong Kong indicated that the

PRC still demonstrated little understanding of Hong Kong's economic success being linked to strong institutions such as the rule of law. See Sheel Kohl, Official Wary of China View on HK; Mainland 'Misunderstands' Economic Success is Linked to Rule of Law, S. CHINA MORNING POST, Oct. 25, 1996, at 10.